SUMMARY OF FEDERAL REQUIREMENTS
A Guide for Federal Contractors

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Your Partner in Human Resources and Affirmative Action

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Dear Valued Client,

As a leader in the human resources industry, Berkshire Associates Inc. is pleased to provide you with our *Summary of Federal Requirements*. Our specialists are committed to staying abreast of the latest regulations and keeping you aware of how changes may impact your organization. Inside you will find information on Executive Order 11246, the Rehabilitation Act of 1973, the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, and the Uniform Guidelines on Employee Selection Procedures, among other relevant provisions. You will also find a checklist to help you keep track of your compliance requirements. If you need further information, please contact Berkshire at 800.882.8904 or bai@berkshireassociates.com.

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Are you a “covered” Federal Contractor?

Step 1: Determine Whether You Are Subject To Regulatory Requirements
When you become a federal contractor or subcontractor you may be subject to the provisions of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VEVRAA). Your first step should be to review the regulations and determine whether the federal contract(s) or subcontract(s) you hold are subject to these provisions. The regulations can be found on the Department of Labor’s Office of Federal Contract Compliance Program’s (OFCCP) website: [www.dol.gov/ofccp/index.htm](http://www.dol.gov/ofccp/index.htm). The OFCCP is the government agency responsible for the enforcement of these laws.

After visiting the OFCCP’s website, if you still have questions about your status as a covered contractor, please contact Berkshire at 800.882.8904 or bai@berkshireassociates.com. An account executive or a specialist will be available to answer your questions.

Executive Order 11246 (E.O. 11246) prohibits federal contractors and subcontractors, and federally-assisted construction contractors and subcontractors with contracts that exceed $10,000, from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. It also requires covered contractors to take affirmative action to ensure equal opportunity is provided in all aspects of their employment.

The Rehabilitation Act of 1973, Section 503, prohibits discrimination and requires employers with federal contracts or subcontracts that exceed $10,000 to take affirmative action to hire, retain, and promote qualified individuals with disabilities.

The Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (VEVRAA) requires federal contractors and subcontractors with contracts or subcontracts of $100,000 or more to take affirmative action to employ and advance in employment qualified disabled Veterans, other covered Veterans, Armed Forces Service Medal Veterans, and recently separated Veterans (those discharged from the Services in the past three years).

Now that you have determined your status, what does this mean for your HR department?

Step 2: Preparing Your Company For Compliance
Once you have determined you are a federal contractor or subcontractor covered under these laws, your next step is to ensure you comply with the requirements for each law. This document is designed to give you an overview of these requirements and our suggestions and recommendations for full compliance. More detailed information regarding each of the requirements can be found at the links provided below, or on the OFCCP website under either the New Contractors’ Guide or the Supply & Service Technical Assistance Guide.

New Contractor’s Guide

Supply & Technical Assistance Guide
The following checklist outlines what you need to satisfy federal requirements. The information provided will help you make an informed decision about how you wish to manage your compliance efforts. Companies have the option of conducting the necessary analyses and reports internally, or seeking outside assistance. If you have limited resources or knowledge of affirmative action and related regulations, our recommendation is to obtain expert guidance. Since these laws can be complex, expert interpretation is often needed. Berkshire can provide you with the expertise, tools, and training to ensure you are 100% OFCCP compliant. Whichever option you choose, Berkshire can help you navigate through the compliance process.

**Compliance Checklist**

- **Appoint an Affirmative Action Officer**
  Your first step should be to appoint an Affirmative Action Officer. This person should be assigned the primary responsibility of managing and implementing the affirmative action plan (AAP).

- **Assign overall responsibility**
  While typically the AA Officer is responsible for the management and implementation of the program, overall responsibility should be assigned to the head of HR or the President of your organization.

- **Update HRIS system and review data**
  Accurate data is an integral part of preparing a compliant plan. Poor data can cause erroneous calculations and results that could have a negative impact on your compliance efforts. Therefore, before you conduct any analysis of your employment/applicant flow for your written AAP, review your HRIS system to ensure the following:
    - All required data such as job titles, grades, department codes, term codes, and so on, is complete and reviewed for accuracy
    - Job titles have been reclassified using the new EEO categories (1.1/1.2 in Officials & Managers)
    - New race and ethnicity codes are being captured
    - New covered Veteran categories are being captured and/or have been updated
    - Effective dates of personnel actions are maintained and fall within the AAP date range
  Data is the foundation of your plan. If your data is not organized, and you do not have the time or resources to prepare your data, inquire about data preparation assistance.

- **Complete a written AAP for Minorities and Females**
  If you meet the minimum requirements of 50 or more employees and a contract or subcontract of $50,000 or more, a written affirmative action plan must be created annually for each establishment. As part of the written plan you will need to:
    - Designate responsibility for the plan
    - Construct an organizational profile
    - Perform a job group analysis
    - Perform a utilization analysis
    - Establish placement goals
    - Identify problem areas
    - Develop and implement action-oriented programs
    - Develop and implement internal audit and reporting systems
    - Maintain all personnel data for required retention period
Summary of Federal Requirements

- **Develop and implement action-oriented programs**
  Develop and execute action-oriented programs designed to eliminate problems and to accomplish stated goals and objectives. Be sure to make your AAP goals and related programs part of your human resource's strategic objectives, and if possible, part of your corporate goals. Included in the narrative section of your written plan should be a discussion of these action oriented programs you have put in place to address any problem areas. These programs need to be results oriented; the outcome of the program should result in increasing the percentage of minority or females in the department or job group where problems were identified. Review your recruitment, compensation, and general workforce planning efforts. Identify areas where you can inject safeguards to ensure AA/EEO compliance. These areas can be vulnerable to noncompliant practices, making it more difficult to reach your goals.

- **Document all outreach communication and activities**
  Throughout the year you should maintain a log of all communication sent to colleges, universities, and other recruiting agencies. Document your company’s outreach programs, targeted recruitment activities, and other community volunteer programs that demonstrate good faith efforts towards affirmative action goals.

- **Develop and implement an internal audit and reporting system**
  In order to measure the effectiveness of your affirmative action program, you must complete an update plan six months into your plan year. The update plan is used to evaluate progress made towards reaching your placement goals that were set at the beginning of the plan year. If you have opted to outsource your plan preparation, make your provider aware you want an update plan. Often, companies will offer a discount of your update plan if purchased along with your annual AAP services. You are also required to conduct top management meetings to discuss the AAP. It is recommended you maintain a copy of the meeting agendas and place them in the exhibits section of the written AAP.

- **Ensure the Uniform Guidelines on Employee Selection Procedures are followed**
  The Uniform Guidelines on Employee Selection Procedures (UGESP) were designed to assist employers in complying with the regulations prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures. Consistent practices are a critical component to ensuring your employees are operating within the framework. If you do not have a standardized selection process in place, develop procedures with the UGESP guidelines in mind—and establish them as policy. All selection procedures should be reviewed to ensure compliance with these guidelines.

- **Review applicant flow requirements and procedures**
  The OFCCP uses the UGESP to define a traditional or paper based applicant. Additionally, the OFCCP has adopted a definition for an “Internet Applicant.” Under this definition, an individual is considered an applicant when specific criteria have been satisfied. The four criteria are:
  
  1. The individual submits an expression of interest in employment through the Internet or related electronic data technologies;
  2. The contractor considers the individual for employment in a particular position;
  3. The individual’s expression of interest indicates the individual possesses the basic qualifications for the position; and
  4. The individual at no point in the contractor’s selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.
During an OFCCP on-site audit you will most likely be asked to provide a copy of your self-identification form. Detailed disposition codes should be used to identify which applicants should be included in the written AAP. Review your recruitment process to ensure race and gender are being solicited from all applicants who meet this definition.

You may also consider investing in a program that can help you automate and streamline your processes. There are a number of applicant management applications on the market today that can help you comply with these requirements. Look for a program that includes pre-screening, online applications, and self-identification capabilities.

- **Review self-identification form and process for requesting race and gender**
  - The request for self-identification of race and gender should be made once a person submits an application and is considered an applicant. The self-identification form must be separate from the application and filed separately from the application.

- **Review self-identification form and process for requesting Veteran & disability status**
  - The request for self-identification of Veteran and/or disability status must follow an offer of employment but occur prior to an individual beginning employment. The self-identification form should include each of the covered Veteran categories as well as a place for disability status and accommodations requests.

- **Comply with record retention requirements**
  - If you have more than 150 employees OR have a contract of $150,000 or more, the minimum record retention period is two years; otherwise the record retention requirement is one year. Any personnel or employment record made or kept by a contractor or subcontractor must be maintained for this period from the date the record was created or the personnel action involved. Recordkeeping requirements specific to Internet applicants can be found on the OFCCP website located at [http://www.dol.gov/ofccp/regs/compliance/faqs/iappfaqs.htm](http://www.dol.gov/ofccp/regs/compliance/faqs/iappfaqs.htm).

- **Update purchase orders, contracts, and leases**
  - The regulations require covered federal contractors to include the provisions of paragraphs (1) through (7) of Section 202 of E.O. 11246 in every subcontract or purchase order, so provisions will be binding upon each subcontractor or vendor. The law requires contractors to take action as a means of enforcing these provisions. Contractors must make vendors aware of their obligation and commitment to Equal Employment Opportunity (EEO) and Affirmative Action (AA). The statement below is an example of what can be included on all purchase orders or subcontracts:

  **Affirmative Action Notice:** Vendors and subcontractors are notified they may be subject to the provisions of 41 CFR Section 60-1.4(c), 41 CFR Section 60-250.4 and/or Section 60-300.5, and 41 CFR Section 60-741.5 with respect to affirmative action program and plan requirements.

- **Include EEO clause in solicitations and advertisements**
  - As a covered employer, you are required to include the EEO clause in all solicitations and advertisements for employees, stating all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability, or status as a protected Veteran. “EEO/AA employer M/F/D/V” is an acceptable abbreviation. Include the EEO clause on the organization’s website and maintain copies of employment ads and recruitment materials with your written AAP.

- **Notify labor unions and worker representatives**
  - Once a year, you must notify each labor union, or other worker representatives, including temporary staffing firms with which you have a collective bargaining agreement or contract, of your organization’s commitment to Equal Employment Opportunity. A draft version of this letter is available as Appendix A in the Minority and Female narrative of your AAP.
Display EEO poster

The EEO Poster must be posted in conspicuous places used by employees and applicants, such as lunchrooms, break rooms, and on bulletin boards where workplace notices are usually posted. It is available at [www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm](http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm) at no cost.

**NOTE:** The [Beck Notice](http://www.dol.gov/ofccp/regs/compliance/posters/beck.htm) or [Beck Poster](http://www.dol.gov/ofccp/regs/compliance/posters/beck.htm) is no longer required to be posted as per an Executive Order signed by President Obama on January 30, 2009. Unionized contractors will be required to post another “yet-to-be-defined” notice informing employees of their rights to organize, once the DOL issues new regulations.

Complete a written AAP for covered Veterans and Individuals with Disabilities

If you are covered under the [Rehabilitation Act of 1973](http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm), Section 503 you are required to develop and implement an affirmative action program for Individuals with Disabilities. Additionally, federal contractors and subcontractors covered under [Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (VEVRAA)](http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm) must develop an affirmative action program for Veterans. Since both require a written AAP but do not include any statistical analyses or reports, you can combine the two plans into one. You must complete the Veteran and Individuals with Disabilities AAP for each establishment annually. As part of this written AAP you will need to:

- Assign responsibility for implementation
- Develop Veterans and Individuals with Disabilities policy and post policy statement
- Review personnel practices
- Review all physical and mental job qualifications
- Review reasonable accommodations, practices, and procedures
- Implement an anti-harassment policy
- Conduct outreach and positive recruitment, and external dissemination of policy
- Disseminate policy internally
- Develop and implement audit and reporting system
- Train personnel to ensure EEO/AA compliance

Post jobs with the state or local employment office

Jobs that have been open for more than three days, excluding executive and senior level manager positions and ones being filled from within, must be posted with the state or local employment office. Keep confirmation from these agencies as documentation in case of an OFCCP audit.

Complete and submit EEO-1 Report

If you follow the EEO-1 Schedule, you must complete and file your EEO-1 reports on an annual basis by September 30. For more detailed information, go to [www.eeoc.gov](http://www.eeoc.gov) under the Employers & EEOC Surveys section.

Complete and submit VETS-100/100A Reports

The VETS-100 and VETS-100A reports must also be completed by September 30 each year. The VETS-100A report is part of an amendment to VEVRAA which changed some reporting categories and raised the monetary reporting threshold. You may be required to file either reports or just the VETS-100A report depending on the award date and amount of your contracts. Similar to your AAP, if you are outsourcing your plans, ask your provider to include preparing and filing your EEO-1 and/or VETS-100/100A report. Contact your Berkshire consultant for more information.

Review I-9 forms

Periodically review your I-9 forms, particularly preceding an on-site review from the OFCCP, to ensure compliance with procedures for collecting and maintaining I-9 forms.
E-Verify

E-Verify is a federal program that electronically confirms a person’s employment eligibility after the I-9 form has been completed. It is an Internet-based system that allows employers to verify the employment eligibility of their employees, regardless of citizenship. As a result of E.O. 13465, the Federal Acquisition Regulation (FAR) was amended to require federal contractors to use E-Verify, which is the system designated to implement the Executive Order.

The FAR E-Verify clause has been inserted in all contracts issued after September 2009. If you are performing work on a contract received after this date, in addition to using E-Verify as a complement to your I-9 process, additional posters and subcontractor notifications are required. Please check with your Berkshire consultant regarding E-Verify compliance requirements.

Conclusion

This guide was designed to provide an overview of AAP requirements for federal contractors. Complying with affirmative action reaches far beyond the race and gender of your employees. From hires to terminations, just about every personnel decision has an effect on the outcome of your AAP. Therefore, affirmative action compliance should be approached as a corporate-wide, strategic effort, and not relegated to a once-a-year task. As you can see from the various requirements outlined in this guide, AAP warrants a healthy investment in the right resources. Compliance is certainly foremost, but adopting a company mission to maintain a balanced and equitable workplace, means equal employment opportunity becomes ingrained in your work culture—and consequently a welcome by-product.

Berkshire can help you with all your OFCCP compliance needs, and we’ll help you get the most out of the time and resources invested. Our experts will take advantage of the information, data, and analyses conducted during your AAP process, and use it to help you create your ideal, balanced workforce. Please feel free to contact us should you need further assistance or questions about the information in this guide.

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