

(2) In all employment decisions, the contractor must make selections in a nondiscriminatory manner. Placement goals do not provide the contractor with a justification to extend a preference to any individual, select an individual, or adversely affect an individual's employment status, on the basis of that person's race, color, religion, sex, or national origin.

(3) Placement goals do not create set-asides for specific groups, nor are they intended to achieve proportional representation or equal results.

(4) Placement goals may not be used to supersede merit selection principles. Affirmative action programs prescribed by the regulations in this part do not require a contractor to hire a person who lacks qualifications to perform the job successfully, or hire a less qualified person in preference to a more qualified one.

(f) A contractor extending a publicly announced preference for American Indians as is authorized in 41 CFR 60-1.5(a)(6) may reflect in its placement goals the permissive employment preference for American Indians living on or near an Indian reservation.

§ 60-2.17 Additional required elements of affirmative action programs.

In addition to the elements required by § 60-2.10 through § 60-2.16, an acceptable affirmative action program must include the following:

(a) *Designation of responsibility.* The contractor must provide for the implementation of equal employment opportunity and the affirmative action program by assigning responsibility and accountability to an official of the organization. Depending upon the size of the contractor, this may be the official's sole responsibility. He or she must have the authority, resources, support of and access to top management to ensure the effective implementation of the affirmative action program.

(b) *Identification of problem areas.* The contractor must perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist. At a minimum the contractor must evaluate:

(1) The workforce by organizational unit and job group to determine whether there are problems of minority or female utilization (*i.e.*, employment in the unit or group), or of minority or female distribution (*i.e.*, placement in the different jobs within the unit or group);

(2) Personnel activity (applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there are selection disparities;

(3) Compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities;

(4) Selection, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women; and

(5) Any other areas that might impact the success of the affirmative action program.

(c) *Action-oriented programs.* The contractor must develop and execute action-oriented programs designed to correct any problem areas identified pursuant to § 60-2.17(b) and to attain established goals and objectives. In order for these action-oriented programs to be effective, the contractor must ensure that they consist of more than following the same procedures which have previously produced inadequate results. Furthermore, a contractor must demonstrate that it has made good faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results.

(d) *Internal audit and reporting system.* The contractor must develop and implement an auditing system that periodically measures the effectiveness of its total affirmative action program. The actions listed below are key to a successful affirmative action program:

(1) Monitor records of all personnel activity, including referrals, placements, transfers, promotions, terminations, and compensation, at all levels to ensure the nondiscriminatory policy is carried out;

(2) Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;

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(3) Review report results with all levels of management; and

(4) Advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60-2.18 Equal Opportunity Survey.

(a) *Survey requirement.* Each year, OFCCP will designate a substantial portion of all nonconstruction contractor establishments to prepare and file an Equal Opportunity Survey. OFCCP will notify those establishments required to prepare and file the Equal Opportunity Survey. The Survey will provide OFCCP compliance data early in the compliance evaluation process, thus allowing the agency to more effectively identify contractor establishments for further evaluation. The Survey will also provide contractors with a useful tool for self-evaluation.

(b) *Survey format.* The Equal Opportunity Survey must be prepared in accordance with the format specified by the Deputy Assistant Secretary. The Equal Opportunity Survey will include information that will allow for an accurate assessment of contractor personnel activities, pay practices, and affirmative action performance. At a minimum, this will include such data elements as applicants, hires, promotions, terminations, compensation, and tenure by race and gender. As use of the EO Survey develops and evolves, the Department may at some time determine that one or more of the data elements currently included in the EO Survey should be altered or deleted. In the event consideration is given to changing a data element requirement, the following circumstances must exist:

(1) The Secretary must clearly demonstrate through statistical analyses of EO Survey submissions that the data element in question is no longer of value; and

(2) The Secretary must follow Notice and Comment procedures.

(c) *How, when, and where to file.* Contractors are encouraged to submit the Equal Opportunity Survey via the Internet. The Equal Opportunity Survey may also be submitted via facsimile to the telephone number indi-

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cated in the Survey instructions. Paper versions of the Equal Opportunity Survey must be mailed to the address indicated in the Survey instructions. The filing deadline will be specified by the Deputy Assistant Secretary.

(d) *Confidentiality.* OFCCP will treat information contained in the Equal Opportunity Survey as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. It is the practice of OFCCP not to release data where the contractor is still in business, and the contractor indicates, and through the Department of Labor review process it is determined, that the data are confidential and sensitive and that the release of data would subject the contractor to commercial harm.

Subpart C—Miscellaneous

§ 60-2.30 Corporate management compliance evaluations.

(a) Purpose. Corporate Management Compliance Evaluations are designed to ascertain whether individuals are encountering artificial barriers to advancement into mid-level and senior corporate management, *i.e.*, glass ceiling. During Corporate Management Compliance Evaluations, special attention is given to those components of the employment process that affect advancement into mid-and senior-level positions.

(b) If, during the course of a Corporate Management Compliance Evaluation, it comes to the attention of OFCCP that problems exist at establishments outside the corporate headquarters, OFCCP may expand the compliance evaluation beyond the headquarters establishment. At its discretion, OFCCP may direct its attention to and request relevant data for any and all areas within the corporation to ensure compliance with Executive Order 11246.

§ 60-2.31 Program summary.

The affirmative action program must be summarized and updated annually. The program summary must be prepared in a format which will be prescribed by the Deputy Assistant Secretary and published in the FEDERAL