

---

# **16** STEPS TO AFFIRMATIVE ACTION COMPLIANCE

---

41 Code of Federal Regulations, Chapter 60

## **A GUIDE FOR FEDERAL CONSTRUCTION CONTRACTORS**

**HUDSONMANN**



This guide is an overview of the Office of Federal Contract Compliance Programs' (OFCCP) 16 Steps to Affirmative Action Compliance as it pertains to 41 Code of Federal Regulations, Chapter 60, Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA), as amended.

If under a review by the OFCCP, the agency will request documentation from the contractor demonstrating good faith efforts towards compliance with all 16 Steps.

## OVERVIEW OF APPLICABLE LAWS

# 41 CODE OF FEDERAL REGULATIONS CHAPTER 60

*Title 41*  
Public Contracts and  
Property Management

### *Part 60-4: Construction Contractors - Affirmative Action Requirements*

§60-40.1 Scope and application.

"This part applies to all contractors and subcontractors which hold any Federal or federally assisted construction contract in excess of \$10,000. The regulations in this part are applicable to all of a construction contractor's or subcontractor's construction employees who are engaged in on site construction including those construction employees who work on a non-Federal or nonfederally assisted construction site. This part also establishes procedures which all Federal contracting officers and all applicants, as applicable, shall follow in soliciting for and awarding Federal or federally assisted construction contracts. Procedures also are established which administering agencies shall follow in making any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of Executive Order 11246, as amended.

In addition, this part applies to construction work performed by construction contractors and subcontractors for Federal nonconstruction contractors and subcontractors if the construction work is necessary in whole or in part to the performance of a nonconstruction contract or subcontract.”

## EXECUTIVE ORDER 11246

## Equal Employment Opportunity

Executive Order 11246 (the Executive Order) prohibits discrimination in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. Contractors and subcontractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment processes.

The Executive Order applies to all contractors and subcontractors holding federal and federally-assisted construction contracts exceeding \$10,000.

# SECTION 503<sup>OF THE</sup> REHABILITATION ACT

## Improve Job Opportunities for Individuals with Disabilities

Section 503 of the Rehabilitation Act of 1973, as amended (“Section 503”) requires affirmative action for qualified individuals with disabilities for all federal contracts over \$15,000. Section 503 also stipulates that contractors and subcontractors that have 50 or more employees and a contract of \$50,000 or more, must develop and maintain a written Affirmative Action Program.

Section 503 prohibits federal contractors and subcontractors from discriminating in employment against individuals with disabilities and requires these employers to take affirmative action to recruit, hire, promote and retain these individuals. The new rule strengthens the affirmative action provisions of the regulations to aid contractors in their efforts to recruit, hire and improve job opportunities for individuals with disabilities. The new rule also makes changes to the nondiscrimination provisions of the regulations to bring them into compliance with the ADA Amendments Act of 2008.

Section 503 does not apply to federally assisted construction contracts, but specifically to Federal construction contracts. ([OFCCP Construction Contractors Technical Assistance Guide](#) page 4)

# “VEVRAA” VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1964

## Improve Job Opportunities for Protected Veterans

The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) requires that contractors and subcontractors with a federal contract or subcontract in the amount of \$150,000 or more for the purchase, sale, or use of personal property or non-personal services (including construction), take affirmative action to employ and advance in employment qualified covered veterans.

Disabled veterans, recently separated veterans (veterans within 3 years of their discharge or release from active duty), veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized (referred to as “other protected veterans”), and Armed Forces service medal veterans are covered veterans under VEVRAA.

In addition, VEVRAA requires contractors and subcontractors to list their employment openings with the appropriate employment service delivery system, and that covered veterans receive priority in referral to such openings.

Further, VEVRAA requires federal contractors and subcontractors to compile and submit annually a report on the number of current employees who are covered veterans. The affirmative action and mandatory job-listing provisions of VEVRAA are enforced by the Employment Standards Administration's Office of Federal Contract Compliance Programs (OFCCP) within the U.S. Department of Labor (DOL). DOL's Veterans' Employment and Training Service (VETS) administers the veterans' employment reporting requirement.

Covered contractors and subcontractors with 50 or more employees and a federal contract or subcontract in the amount of \$150,000 or more must develop and maintain a written VEVRAA affirmative action program.

VEVRAA does not apply to federally assisted construction contracts, but specifically to Federal construction contracts. ([OFCCP Construction Contractors Technical Assistance Guide](#) page 4)

Below are listed each of the 16 Steps required by the designated Code of Federal Regulations along with examples requested in OFCCP compliance reviews.

---

# 16 STEPS TO AFFIRMATIVE ACTION COMPLIANCE

---

41 Code of Federal Regulations, Chapter 60

1. Ensure a Harassment-Free Work Environment
2. Identify Recruitment Sources
3. Track Applicants & Results
4. Document Relationships with Union(s)
5. Develop Training Process
6. Disseminate (Internally) EEO Policy
7. Review EEO with Management
8. Disseminate (Externally) EEO Policy
9. Document Outreach & Recruitment
10. Encourage Employee Referrals
11. Validate Test Associated with Employment
12. Evaluate Employee Advancement Opportunities
13. Review Seniority Practice
14. Ensure No Segregation
15. Document Minority & Female Subcontract Solicitation
16. Review EEO and AA Obligations with all Supervisors

# STEP 1

## Ensure a Harassment-Free Work Environment

(41 CFR 60-4.3(a) 7.a)

“Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project.

The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.”

### Examples of requests from OFCCP audits:

- Distribute either paper or electronic copies of EEO Policy and statements prohibiting harassment to all employees.
- Post copies of EEO & no-harassment policy at all construction sites to include company vehicles.
- Review and give supervisory personnel written instructions addressing the need to maintain a work environment free of harassment, intimidation, and coercion.
- Document training to supervisors and key personnel outlining formal procedures of handling complaints of harassment and record management.
- Document records of EEO Policy meetings where harassment awareness training was provided to include, but not be limited to, date and time, personnel in attendance, location, and subject matter.
- Maintain copies of certificates, if applicable, of all personnel who took training.

# STEP 2

## Identify Recruitment Sources (41 CFR 60-4.3(a) 7.b)

“Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.”

### Examples of requests from OFCCP audits:

- Document relationship with the appropriate Employment Service Delivery System (ESDS) and/or Employment Service Office to include contact information of office representative, all communications verbal or written, and copies of postings.
- Forward all employment openings to Minority, Women, Veterans and Individuals with Disabilities recruitment sources.
- Track outcomes of sources as well as inviting all job applicants to self-identify their race, gender, veteran and disabled status.



# STEP 3

## Track Applicants & Results (41 CFR 60-4.3(a) 7.c)

“Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.”

### Examples of requests from OFCCP audits:

- Document Applicant Flow Log for each job filled including the job applicants':
  1. Date of Application – date candidate completed application
  2. Name – First & Last Name of job applicant
  3. Gender - (Male or Female)
  4. Race – per [EEO Race Categories](#)
  5. Position Applied to - the position applied to must match the position title listed in job postings to the ESDS as well as minority, women, veteran and individuals with disabilities outreach organizations  
*Job titles must match the job titles defined within your HRIS/Payroll system.*
  6. EEO Job Category or Job Group assigned to each position  
*Contact your HR Department or EEO Coordinator for a list of Job Groups & Titles.*  
*Job groups must match the job groups defined within your HRIS/Payroll system.*
  7. Referral Source – if applicable, identifies how the job applicant was made aware of job opening
  8. Disposition – Applicant status (hired, not qualified, etc.)
  9. Last Step - indicates last step in the application process (i.e. interview)
  10. Date Hired
  11. Protected Veteran – (Yes or No)
  12. Disabled Veteran – (Yes or No)

# STEP 4

## Document Relationships with Union(s) (41 CFR 60-4.3(a) 7.d)

“Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.”

### Examples of requests from OFCCP audits:

- If the contractor believes that the union has impeded the company's efforts to comply with EEO obligations and EO 11246 initiatives, the contractor should maintain a record of all communications with unions. This communication shall include, but not be limited to, all minutes and records of union meetings relating to claims that a union has impeded compliance efforts.

# STEP 5

## Develop Training Process (41 CFR 60-4.3(a) 7.e)

“Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor.

The Contractor shall provide notice of these programs to the sources compiled under 7b above.”

### Examples of requests from OFCCP audits:

- Provide notice regarding on-the-job training opportunities to include minorities and women employees.
- Maintain a list of all training notifications signed by minorities and women employees acknowledging that they were offered the opportunity to enter into on-the-job training opportunities.
- Maintain copies of completion certificates (if applicable) for all employees specifically women and minorities.
- Provide all employees with copies of memoranda concerning referral requests and policy updates to ensure that employees are aware of contractor's commitment to being an Equal Employment Opportunity/Affirmative Action Employer.

# STEP 6

## Disseminate (Internally) EEO Policy (41 CFR 60-4.3(a) 7.f)

“Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.”

### Examples of requests from OFCCP audits:

- Retain documentation from employees acknowledging receipt of company manuals and handbooks.
- Post EEO Policy statement at all construction sites and in all work trucks.
- Provide supervisory personnel and employees with memoranda and other written instructions addressing the need to maintain a work environment free of harassment, intimidation and coercion.
- Conduct meeting to inform supervisory personnel of their duty to carry out the contractor's obligation to maintain a workplace free of harassment, intimidation, and coercion. Maintain minutes of such meetings.
- Develop formal procedures to handle complaints of harassment and maintain records of such complaints and how they were handled.
- Provide harassment awareness training to supervisors and employees and retain records of such training that indicate the dates of the training, the names of those conducting the training, the names of those attending the training, and a copy or description of training materials.

# STEP 7

## Review EEO with Management (41 CFR 60-4.3(a) 7.g)

“Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.”

### Examples of requests from OFCCP audits:

- Maintain documentation of training with senior management, managers, and supervisors as it pertains to the company's EEO policy and written affirmative action programs. Include topics discussed, personnel in attendance and copies of certificates, if applicable.

# STEP 8

## Disseminate (Externally) EEO Policy (41 CFR 60-4.3(a) 7.h)

“Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.”

### Examples of requests from OFCCP audits:

- Include the EEO “tagline” in employment advertisements or job announcements as openings occur.
- State that the contractor is “an equal opportunity employer” or that contractor “will provide equal opportunity to all applicants and to prohibit any discrimination because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, marital status, genetic information, disability or veteran status. Applicants are treated on the basis of their job-related qualifications, ability and performance”.

# STEP 9

## Document Outreach & Recruitment (41 CFR 60-4.3(a) 7.i)

“Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs.

Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.”

### Examples of requests from OFCCP audits:

- Document date and time of phone calls, meetings, onsite visits or any effort to communicate with recruitment sources, ESDS, state workforce offices, schools, community organizations, etc.
- Forward all employment openings to Minority, Women, Veterans, and Individuals with Disabilities recruitment sources.
- Track outcomes of sources as well as inviting all job applicants to self-identify their race, gender, veteran and disabled status.
- Provide written notices to recruitment sources stating that the contractor is “an equal opportunity employer” or that contractor “will provide equal opportunity to all applicants and to prohibit any discrimination because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, marital status, genetic information, disability or veteran status. Applicants are treated on the basis of their job-related qualifications, ability and performance”.
- Maintain a list of minority & women recruitment sources.
- Obtain from the union a list of who was referred from the recruitment sources and who was accepted in training programs.
- Develop a formal process of recruitment with organizations for the purpose of soliciting their assistance with the identification and referral of minority and female applicants.

- Maintain a “contact log” spreadsheet listing communications and confirmations of job notifications to minority, women, veterans and individuals with disabilities organizations.



# STEP 10

## Encourage Employee Referrals (41 CFR 60-4.3(a) 7.j)

“Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.”

### Examples of requests from OFCCP audits:

- Maintain copies of policies and memoranda to all employees which reference the encouragement of employee referrals of qualified individuals.
- Define a written process associated with employee referrals.

# STEP 11

## Validate Test Associated with Employment (41 CFR 60-4.3(a) 7.k)

“Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.”

### Examples of requests from OFCCP audits:

- When 100 or more employees, maintain records for each job to determine whether your total selection process, including testing, has a negative impact on minorities and females.
- Document all reviews of physical and mental job qualifications to ensure that they are job-related and consistent with business necessity and safety.

# STEP 12

## Evaluate Employee Advancement Opportunities (41 CFR 60-4.3(a) 7.I)

“Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.”

### Examples of requests from OFCCP audits:

- Maintain written records (memoranda, letters, personnel files, etc.) showing that promotional opportunities for women and minorities are reviewed annually and that participation of women and minorities in promotional opportunities is encouraged.
- Document supervisors and managers training on the steps and processes of conducting performance evaluations.
- Retain documentation acknowledging receipt of supervisor and manager training.

# STEP 13

## Review Seniority Practice (41 CFR 60-4.3(a) 7.m)

“Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.”

### Examples of requests from OFCCP audits:

- Maintain written records of seniority selection processes.
- Monitor seniority practices and ensure, through documentation, that they do not have a disparate impact on minority and female employees.

# STEP 14

## Ensure No Segregation (41 CFR 60-4.3(a) 7.n)

“Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.”

### Examples of requests from OFCCP audits:

- Maintain records of all internal publications (letterheads, notices, memoranda, etc.) indicating that the contractor is “an equal opportunity/affirmative action employer”.
- Ensure both internal and external job postings include the EEO “tagline”.
- Include EEO “tagline” in employee invitations and notices of company events (picnics, annual company events, etc.).

# STEP 15

## Document Minority & Female Subcontract Solicitation (41 CFR 60-4.3(a) 7.o)

“Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.”

### Examples of requests from OFCCP audits:

- Maintain a list of subcontracts that the contractor awarded to minority and female contractors or suppliers, and the dollar amounts involved.

# STEP 16

## Review EEO and AA Obligations with all Supervisors (41 CFR 60-4.3(a) 7.p)

“Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.”

### Examples of requests from OFCCP audits:

- Maintain documentation of training provided to managers and supervisors for EEO and Affirmative Action. Documentation should include, but may not be limited to, course material, certificates of completion, overview of training, and copies of training agreements with external training organization(s).
- Document EEO Policy meetings with managers and supervisors referencing date and time, personnel in attendance, location of meeting, and subject matter.
- Maintain a record of supervisory actions or performance that adversely or positively affect the contractor's EEO/AA obligations.
- Include EEO/AA compliance in supervisory performance evaluations.

## Sources and Resources

- \* Department of Labor  
Office of Federal Contract Compliance Programs:  
[www.dol.gov/ofccp](http://www.dol.gov/ofccp)
  - Executive Order 11246, As Amended
  - Section 503 of the Rehabilitation Act, As Amended
  - Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA), As Amended
  
- \* Electronic Code of Federal Regulations  
<https://ecfr.federalregister.gov>
  
- \* OFCCP Construction Contractors Technical Assistance Guide  
[https://www.dol.gov/sites/dolgov/files/OFCCP/Construction/508\\_cctag\\_12032020.pdf](https://www.dol.gov/sites/dolgov/files/OFCCP/Construction/508_cctag_12032020.pdf)
  
- \* Equal Employment Opportunity Commission  
[www.eeoc.gov](http://www.eeoc.gov)



## **WANT HELP WITH AFFIRMATIVE ACTION COMPLIANCE?**

<http://hudsonmann.com/contact/>

### **Schedule A Custom Demo**

HudsonMann's Affirmative Action outsourcing solution provides complete OFCCP audit support along with:

- Compliant AAP development
- Year-round support
- Custom web portal
- And more...

**GIVE US A CALL!**

**843.884.5557**