

# **2020 AAP Fundamentals Series/Conference:**

## ***Session 2: Affirmative Action Plan Development***

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# Scope and Usage of the Information

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The Institute for Workplace Equality was formed to assist the contractor community in responding to rapidly changing compliance challenges. The Institute provides national training programs and webinars addressing the latest OFCCP developments and strategies for effective compliance.

For more information on The Institute, visit:  
[www.theinstitute4workplaceequality.org](http://www.theinstitute4workplaceequality.org).

- Elements of the AAP
- Determining AAP Structure
- Self-Identification Process
- Record Collection and Retention
- Workforce Analysis, Job Groups, and Availability
- Utilization and Goals
  - Minorities and Females
  - Individuals with Disabilities
  - Protected Veteran Hiring Benchmark
- Outreach, Recruitment, and Good Faith Efforts
- Preparing Appropriate Narratives

# Elements of the AAP

# Executive Order AAP Overview

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- Developed annually
  - Contractors choose their own Plan date
  - New contractors have 120 days from the commencement of the contract to develop their AAPs
  - Plan is effective for one full year after Plan effective date
- Intended to uncover hidden barriers to equal employment opportunity
- Includes trend analyses regarding applicants, new hires, promotions, compensation, etc.
- If properly designed should be a strategic tool to assist in identifying, addressing, and resolving EEO issues

# Types of Reports in the AAPs

Plan	Report Type	Required Elements
Minorities and Females	Statistical Analyses	Workforce Analysis Job Group Analysis Availability Goals Adverse Impact Analyses
Individuals with Disabilities and Covered Veterans	Statistical Analyses	Veteran Hiring Benchmark Disability Utilization Analysis Data Collection Analysis
Minorities and Females	Written Narratives	Designation of responsibility Identification of problem areas Action-oriented programs Internal audit and reporting system
Individuals with Disabilities and Covered Veterans	Written Narratives	Policy statement Review of personnel processes Physical & mental qualifications Reasonable accommodation Dissemination of policy Audit and reporting system Responsibility for implementation Training

# Determining AAP Structure



# Options for AAP Development

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- By establishment
  - Each establishment with 50 or more employees must have its own AAP
- Locations of less than 50
  - Its own AAP
  - Roll into where manager sits
  - Roll into where HR function sits

# AAP Structure Options

Option 1: Develop an AAP for each Brick and Mortar Building  
("Establishment AAP")

Option 2: Move the BU B (under 50 population) to:

- The AAP which contains their HR group; or
- The AAP which contains their reporting official.

AAP 1



Business Unit A  
75 employees

AAP 2



Business Unit B  
41 employees

AAP 3



Business Unit C  
250 employees

AAP 4



Business Unit D  
165 employees

## Option 3: Develop Functional AAPs (“FAAP”)

- Based on functional or business units within a corporate structure when:
  - A functional or business unit operates somewhat autonomously; and,
  - Has its own managing official; and,
  - Is listed separately on an organizational chart; and/or,
  - Operates under separate cost centers.
- Contractors must formally apply and get written approval from the OFCCP before using a FAAP structure.

# What is a Job Group?

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- Foundation for all statistics and analyses in the AAP
- Artificial construct for AAPs
- Groups of similarly-situated employees (content, opportunities and wages)
- Could be by function or level
- Must be strategic in developing job groups
- Begins with EEO-1 categories
  - But think beyond the categories

# Structuring Job Groups

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- Step One: Align each Job Title to an EEO-1 category:
  - 1.1 - Executive/Senior Level Officials and Managers
  - 1.2 - First/Mid Level Officials and Managers
  - 2 - Professionals
  - 3 - Technicians
  - 4 - Sales Workers
  - 5 - Administrative Support Workers
  - 6 - Craft Workers
  - 7 – Operatives
  - 8 - Laborers and Helpers
  - 9 - Service Workers

**Companies with fewer than 150 employees can use EEO-1 categories in place of job groups.**

# Structuring Job Groups (Cont.)

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- Step Two: Group Jobs by similarity in terms of **content**, **opportunities**, and **wage rates**
  - Similar content = duties and responsibilities of the job titles in the job group
  - Similar opportunities = career advancement options, such as training, transfers, promotions, and pay of the job titles in the job group

# Exercise: Structuring Job Groups

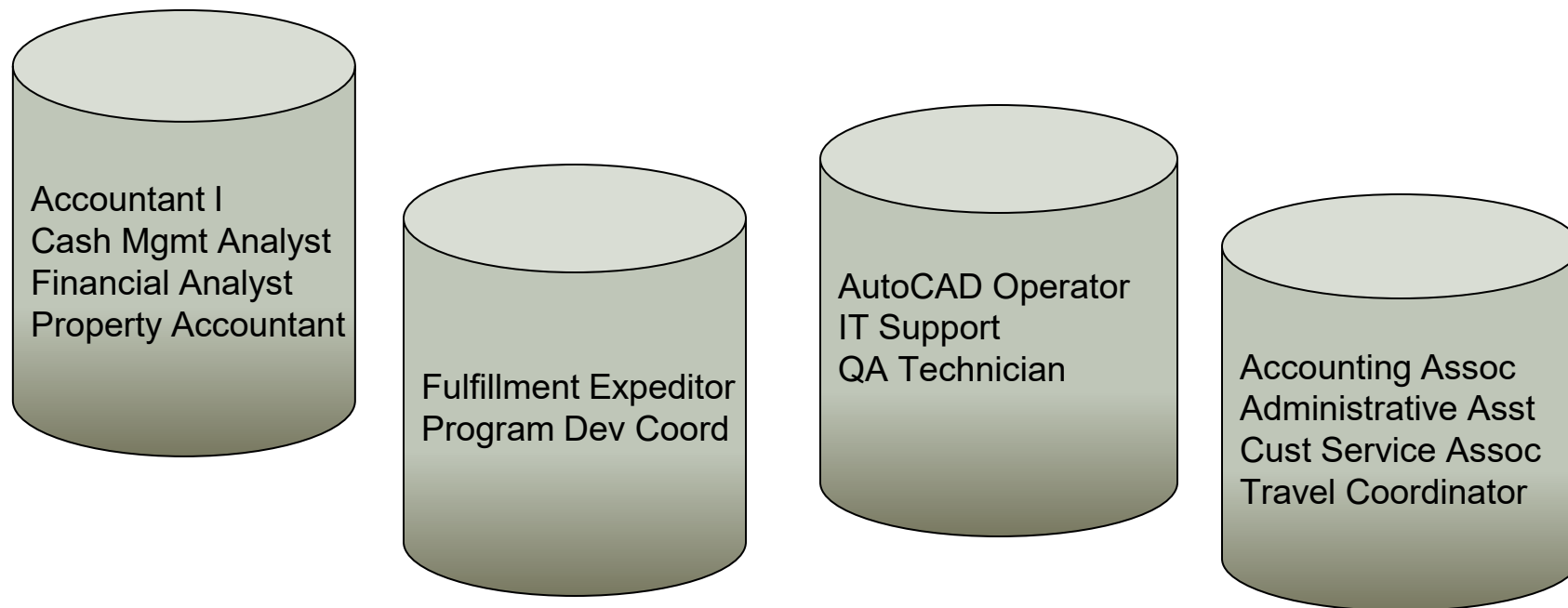
- What questions would you ask to determine the most appropriate Job Group structure for these titles?



- Accountant I
- Accounting Associate
- Administrative Assistant
- AutoCAD Operator
- Cash Management Analyst
- Customer Service Associate
- Financial Analyst
- Fulfillment Expeditor
- IT Support
- Manager, Accounting
- Network Systems Administrator
- Paralegal
- Property Accountant
- Program Development Coordinator
- Purchasing Coordinator
- QA Technician
- Travel Coordinator

# Exercise: Structuring Job Groups (Cont.)

- How might the titles be grouped?



What about: Manager, Accounting; Network Systems Administrator,  
Paralegal; Purchasing Coordinator?



# Protected Groups Analyzed

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- Executive Order 11246
  - Sex:
    - Women
    - Men
- Race/Ethnicity:
  - Minorities
    - Some reports by “Total Minority”; some reports by Minority sub groups
  - Non-minorities
- Section 503 of the Rehabilitation Act (Section 503)
  - Individual with Disabilities
- Vietnam Era Veterans Readjustment Assistance Act, amended (VEVRAA)
  - Covered Veterans

# Self-Identification Process

# Voluntary Self-Identification – Race/Ethnicity & Sex

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- Contractor Identification of Record (41 CFR § 60-1.12(c))
  - Gender & race/ethnicity of each employee
  - Where possible, gender & race/ethnicity for each applicant

- Contractors should solicit race/ethnicity information in two steps:
  - Step 1: Ethnicity
    - Hispanic or Latino
  - Step 2: Specific race category/categories
    - American Indian or Alaskan Native (not Hispanic or Latino)
    - Asian (not Hispanic or Latino)
    - Black or African American (not Hispanic or Latino)
    - Native Hawaiian or other Pacific Islander (not Hispanic or Latino)
    - Two or more races (not Hispanic or Latino)
    - White (not Hispanic or Latino)

# Voluntary Self-Identification: IwDs and Veterans

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- Solicit applicants to provide voluntary self-identification of disability and protected veteran status
  - Pre-Offer
    - Consistent with timing of request for race and sex information
  - Post-Offer
    - After job offer, but prior to beginning work duties
- Solicit employees to provide voluntary self-identification of disability status

# Voluntary Self-Identification

SECTION 503	VEVRAA
3 solicitations – <ul style="list-style-type: none"><li>▪ Pre-offer,</li><li>▪ Post-offer,</li><li>▪ Employee/incumbents</li></ul>	2 solicitations – <ul style="list-style-type: none"><li>▪ Pre-offer</li><li>▪ Post-offer</li></ul>
Form mandated by OFCCP – same form used for ALL self-ID processes	Recommended language to be included in invitation, and sample acceptable forms are included the Appendix to the regulations
Response options are: <ul style="list-style-type: none"><li>▪ Yes,</li><li>▪ No, or</li><li>▪ I do not wish to answer</li><li>▪ (also must be able to skip completing form)</li></ul>	Response options are: <ul style="list-style-type: none"><li>▪ Yes, Protected Veteran*</li><li>▪ No</li><li>▪ I do not wish to answer</li></ul>

*\*Note: only solicit overall “protected veteran” status pre-offer. Post-offer may choose to request specific veteran category, but not required*

## Voluntary Self-Identification of Disability

OMB Control Number 1250-0005  
Expires 05/31/2023

Name: \_\_\_\_\_  
Employee ID: \_\_\_\_\_  
(if applicable)

Date: \_\_\_\_\_

### Why are you being asked to complete this form?

We are a federal contractor or subcontractor required by law to provide equal employment opportunity to qualified people with disabilities. We are also required to measure our progress toward having at least 7% of our workforce be individuals with disabilities. To do this, we must ask applicants and employees if they have a disability or have ever had a disability. Because a person may become disabled at any time, we ask all of our employees to update their information at least every five years.

Identifying yourself as an individual with a disability is voluntary, and we hope that you will choose to do so. Your answer will be maintained confidentially and not be seen by selecting officials or anyone else involved in making personnel decisions. Completing the form will not negatively impact you in any way, regardless of whether you have self-identified in the past. For more information about this form or the equal employment obligations of federal contractors under Section 503 of the Rehabilitation Act, visit the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) website at [www.dol.gov/ofccp](http://www.dol.gov/ofccp).

### How do you know if you have a disability?

You are considered to have a disability if you have a physical or mental impairment or medical condition that substantially limits a major life activity, or if you have a history or record of such an impairment or medical condition. *Disabilities include, but are not limited to:*

- Autism
- Autoimmune disorder, for example, lupus, fibromyalgia, rheumatoid arthritis, or HIV/AIDS
- Blind or low vision
- Cancer
- Cardiovascular or heart disease
- Celiac disease
- Cerebral palsy
- Deaf or hard of hearing
- Depression or anxiety
- Diabetes
- Epilepsy
- Gastrointestinal disorders, for example, Crohn's Disease, or irritable bowel syndrome
- Intellectual disability
- Missing limbs or partially missing limbs
- Nervous system condition for example, migraine headaches, Parkinson's disease, or Multiple sclerosis (MS)
- Psychiatric condition, for example, bipolar disorder, schizophrenia, PTSD, or major depression

### Please check one of the boxes below:

- ☐ Yes, I Have A Disability, Or Have A History/Record Of Having A Disability
- ☐ No, I Don't Have A Disability, Or A History/Record Of Having A Disability
- ☐ I Don't Wish To Answer

**PUBLIC BURDEN STATEMENT:** According to the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. This survey should take about 5 minutes to complete.

### For Employer Use Only

*Employers may modify this section of the form as needed for recordkeeping purposes.*

*For example:*

Job Title: \_\_\_\_\_ Date of Hire: \_\_\_\_\_

<https://www.dol.gov/agencies/ofccp/self-id-forms>

# Section 503 – Mandatory Disability Form

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- Must use OMB approved form for soliciting disability information
- May convert to electronic form, but be sure the form:
  - Displays OMB number and expiration date,
  - Contains the text of the form without alteration (i.e., verbatim),
- Now approved for the following languages:
  - English, Spanish, Chinese, French, German, Japanese, Korean and Russian



Name \_\_\_\_\_

Date \_\_\_\_\_

This employer is a Government contractor subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, 38 U.S.C. 4212 (VEVRAA). This regulation requires Government contractors to take affirmative action to employ and advance in employment: (1) disabled veterans; (2) recently separated veterans; (3) active duty wartime or campaign badge veterans; and (4) Armed Forces service medal veterans. These categories are defined as follows:

- A "disabled veteran" is one of the following:
  - a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
  - a person who was discharged or released from active duty because of a service-connected disability.
- A "recently separated veteran" means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval, or air service.
- An "active duty wartime or campaign badge veteran" means a veteran who served on active duty in the U.S. military, ground, naval or air service during a war, or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.
- An "Armed forces service medal veteran" means a veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985.

As a Government contractor subject to VEVRAA, we request this information in order to aid in assessing our outreach and recruitment efforts. Providing this information is voluntary. Refusing to provide this information will not subject you to any adverse treatment. Any information provided will be kept confidential and will not be used in a manner inconsistent with VEVRAA.

If you believe you belong to one of the categories above and are willing to disclose that, please check the first box below. If you are not a protected veteran or do not wish to self-identify, please check the second or third box.

- ☐ I identify as one or more of the categories of protected veteran listed above.
- ☐ I am not a protected veteran.
- ☐ I do not wish to self-identify my veteran status.

# Types for Increasing Voluntary Self-ID Rates

- Building Trust:
  - Communication
    - Self ID campaign
  - Transparency
  - Ensuring confidentiality
  - Support
    - Training
    - FAQs
  - Employee friendly method of updating
  - Create or Utilize Employee Resource Groups
  - Highlight programs related to 503/VEVRRAA



# Record Collection and Retention

# Maintaining Disability Self-ID Data

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- Paper and Electronic Invitations
  - Retain hard copies and/or electronic copies of completed forms
  - Retain any log, spreadsheet, or database used to record results
  - *\*If a contractor's electronic system does not store individual completed forms, you must be able to verify how the form was delivered to the applicant or employee*
- All self-identification information must be confidentially maintained
  - In a “data analysis” file, not in the medical or personnel files of an individual employee
  - May use existing HRIS or ATS as the data analysis file repositories for the disability data collected
  - *\*Ensure that individuals who can influence hiring decisions (e.g., recruiters and hiring managers) do not have access to disability or veterans information provided pre-offer*

# Recordkeeping Requirements

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- Maintain the following records for 1 or 2 years:•
  - All applications, resumes, employment, and personnel records
  - Most requirements are to retain documentation for at least two years from the date of the related action or documentation was made, whichever is later
  - Description of review/modification to personnel processes
  - Direct threat defense explanation records for veterans

***\*One year if less than 150 employees, and less than \$150,000 in contracts.***

# Recordkeeping Requirements (Cont.)

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- When a contractor receives notice that a discrimination complaint has been filed, a compliance evaluation has been initiated, or an enforcement action has been commenced, all records related to the audit must be retained.

# Records to Maintain

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- Records include, but are not necessarily limited to, records pertaining to:
  - Hiring
  - Assignment
  - Promotion
  - Demotion
  - Transfer
  - Lay off
  - Termination
  - Rates of pay or other terms of compensation
  - Selection for training or apprenticeship
  - Records having to do with requests for reasonable accommodation
  - Results of any physical examination
  - Job advertisements and postings
  - Applications
  - Resumes
  - Any and all expressions of interest
  - Interview notes
  - Self-ID of race/sex, gender, disability and protected veteran status

# Recordkeeping under 503/VEVRAA

Under 503/VEVRAA, contractors must maintain the following records:

Records pertaining to:	Employees: < 150 Contract: < \$150k	Employees: 150 + Contract: \$150k +
<b>Any employment decision or personnel action</b>	1 year from when personnel action/decision occurred	2 years from when personnel action/decision occurred
<b>Annual evaluation of outreach and recruitment</b>	3 years	3 years
<b>Data collection analysis</b>	3 years	3 years
<b>VEVRAA Hiring Benchmark</b>	3 years	3 years
<b>Complaint, compliance investigations or enforcement actions initiated</b>	Until final outcome is reached	Until final outcome is reached



- Preserving Employment and Personnel Records in Electronic Format (Number 279; May 14, 2008; ADM Notice/Other):
  - Electronic records must be accurate, complete and accessible to the OFCCP
  - Paper originals stored in electronic format are readily convertible into legible and readable paper copies
  - Adequate records management practices are established and implemented

# AAP Statistical Reports

- Organizational Profile (41 CFR § 60-2.11)
- Job Group Analysis (41 CFR § 60-2.12)
- Availability Analysis (41 CFR § 60-2.14)
- Utilization Analysis (41 CFR § 60-2.15)
- Placement Goals (41 CFR § 60-2.16)
- Goal Attainment (41 CFR § 60-2.16)
- *Personnel Activity Analysis (41 CFR § 60-2.17)\**

*\*Personnel Activity will be covered in a later session.*

# Basics on Data Needed to Develop AAPs

## Current and Prior Year Rosters

- Static Snapshot of your workforce as of plan date

## Hire File (look backward)

- Information on anyone hired during preceding 12 months

## Promotion File (look backward)

- Information on anyone promoted during the previous 12 months – need the promotion TO and the promotion FROM information

## Termination File (look backward)

- Information on anyone who terminated during the previous 12 months

## Applicant File (look backward)

- All qualified applicant pools associated with each hire in the hire file for the previous 12 months

## Helpful: A full transactions file (look backward)

- All movements, lateral, demotions, job reclassifications, etc.
- \*Workforce – anyone paid through your HR payroll system
- \*\*Promoted – YOU define promotion within your organization

- Workforce Analysis (or Organizational Display)
  - Depicts the staffing patterns within departments/ organizational units
  - Report employees in low-to-high (salary or salary range) order
  - By race/ethnicity and sex
    - Report where reporting by minority sub-group is required
  - Provides an overview of the workforce that may assist in identifying areas where under-representation exists

# Workforce Analysis Sample

Department name

2019 Annual AAP - 1/1/2019

Department		CAFETERIA							Department Total Employees:	39
Job Title		91514 - FOOD SERVICES WORKER ENTRY							Code	D
Female		White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total	
		9	0	2	7	0	0	0		
	Pct	37.5	0	8.33	29.17	0	0	0	75	
Male		1	1	1	2	0	0	1	6	
	Pct	4.17	4.17	4.17	8.33	0	0	4.17		
Minority Employees: 14									Job Title Employees:	24
(58.33%)										

Job Title		91500 - DIET ASST JRN							Code	D
Female		White	Black	Hispanic	Asian	Amer Indian	Pac Islander	Two or More	Total	
		1	0	0	0	0	1	0		
	Pct	33.33	0	0	0	0	33.33	0	66.67	
Male		1	0	0	0	0	0	0	1	
	Pct	33.33	0	0	0	0	0	0		
Minority Employees: 1 (33.33%)									Job Title Employees:	3

Job Title		91505 - COOK JRN							Code	D
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# Job Group Analysis

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Utilizes the Job Group structure created

Based on jobs with similar content, wage, and opportunity



No prescribed number of employees is mandated, but Job Group populations should be large enough to be analyzed

30 or more employees in a Job Group is ideal for statistical coverage reasons

# Job Groups Analysis Summary Sample

Location	HQ - Corporate Headquarters	Loc Total	3,596	525	1,592	14.60	44.27
	Job Group	Total Employees	Minority	Female	Minority %	Female %	
	1A - Executives	532	46	89	8.65	16.73	
	1B - Upper Management	919	99	283	10.77	30.79	
	1C - Mid Management	724	103	316	14.23	43.65	
	1D - Entry Management	99	9	60	9.09	60.61	
	2A - Senior Professionals	137	45	53	32.85	38.69	
	2B - Mid Professionals	123	15	112	12.20	91.06	
	2C - Entry Professionals	307	50	159	16.29	51.79	
	3A - Senior Technicians	41	5	12	12.20	29.27	
	3B - Entry Technicians	117	25	80	21.37	68.38	
	4A - Sales	30	1	4	3.33	13.33	
	5A - Office & Clerical	436	77	363	17.66	83.26	
	6A - Lead Craft Workers	6	2	2	33.33	33.33	
	6B - Entry Craft	14	2	0	14.29	0.00	
	7A - Lead Operators	35	13	10	37.14	28.57	
	8A - Laborers	37	15	13	40.54	35.14	
	9A - Security	39	18	36	46.15	92.31	



# Job Groups Analysis Detail Sample

Job Group	2B - Prof-Sale & Marketing	JG Total	123	15	112	12.20	91.06
	Job Title	Total Employees	Minority	Female	Minority %	Female %	
	MS03850001-2B - Marketing Analyst	1	0	1	0	100	
	MS03850009-2B - Marketing Analyst	1	0	1	0	100	
	MS04270001-2B - Sales Analyst	3	0	2	0	66.67	
	MS05280002-2B - Pricing Analyst	1	0	0	0	0	
	MS05740001-2B - Business Development Analyst	2	2	2	100	100	
	MS06030001-2B - Sr Mgr Business Ops - Beef/Por	1	0	0	0	0	
	ND00010001-2B - Lead Documentation Analyst	1	0	1	0	100	
	NS00030001-2B - Rep Customer Service	40	5	38	12.5	95	
	NS00040001-2B - Sales Coordinator	1	0	1	0	100	
	NS00050001-2B - Sr Customer Service Rep	37	5	35	13.51	94.59	
	NS00120001-2B - VMI Analyst	31	1	27	3.23	87.1	
	NS00130001-2B - Asst Pricing Coord II	2	1	2	50	100	
	NS00140001-2B - Asst Pricing Coord I	1	1	1	100	100	
	NS00170001-2B - Asst Sales Development	1	0	1	0	100	

- Availability is an estimate (expressed as a percentage) of the number of qualified minorities or women available for employment in a given Job Group.
- The purpose is to establish a benchmark against which the demographic composition of the workforce can be compared, in order to determine whether barriers to EEO exist within particular Job Groups.

# Availability (Cont.)

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- Determining availability requires consideration of at least two factors:

## **External Availability**

Percentage of minorities and females within a reasonable recruitment area that have the requisite skills to fill the positions in question

+

## **Internal Availability**

Percentage of minorities or females promotable, transferable or trainable, within your organization



Two-Factor (Availability) Analysis

## Determining External Availability

### 1. Establish reasonable recruitment area for job group\*.

- Where do you recruit to fill openings in this job group?
  - County(ies) or places (of 50,000+)
  - State
  - Entire United States

*\*The contractor may not draw its reasonable recruitment area in such a way as to have the effect of excluding minorities or women.*

### 2. Assign Census Occupation Codes for all job titles.

### 3. Calculate minority and female availability for Census Occupation Codes within recruitment area.

- Use 2006-2010 EEO Tabulation
  - <http://www.census.gov/people/eeotabulation/data/eeotables20062010.html>
- Calculate weighted availability for all job titles within job group

## Calculate Percentage of Minorities and Females within Feeders

- The internal availability of minorities and females should reflect the current incumbency percentages of the feeder groups for that job group.
- The pool of promotable, transferable and trainable may not be defined in a way that excludes minorities or women.
- Feeder jobs must be potential movements from one job group (or job title) to another job group.
  - Some job groups may not have feeder pools, and rely solely on external data

# Factor Weighting



When combining the internal and external availability to calculate the total availability, factor weighting allows for adjusting the relative importance of internal vs. external sources



What percentage of jobs filled will go to internal applicants? External applicants?

Weighting will differ by job group, as not all job groups will have the same proportion of promotions vs. external hires



Some job groups may use 100% external availability

Job groups with no internal feeders (e.g., entry-level positions)  
Job groups where feeder groups contain no current employees

# Availability Analysis Sample

## Job Group: 1B - First-Mid Level Officials and Managers

Factor	Raw Availability		Factor Weight	Weighted Availability	
	Female	Minority		Female	Minority
1. Percentage of minorities and women among those having requisite skills in the reasonable recruitment area. Census of Population, United States	40.69	21.36	55.00	22.38	11.75
2. Percentage of minorities and women among those promotable, transferable, and trainable within the contractor's organization.  Feeder Job Groups: Office and Clerical (5), Operatives (7), Professionals (2), Sales (4A)	67.08	13.10	45.00	30.19	5.89
Final Availability:				52.56	17.64
Incumbency:				46.88	11.81

# Availability Analysis Sample

**Job Group: 1B - First-Mid Level Officials and Managers**

Factor	Raw Availability		Factor	Weighted Availability	
	Female	Minority	Weight	Female	Minority
1. Percentage of minorities and women among those having requisite skills in the reasonable recruitment area. Census of Population, United States	40.69	21.36	55.00	22.38	11.75
2. Percentage of minorities and women among those promotable, transferable, and trainable within the contractor's organization.	67.08	13.10	45.00	30.19	5.89
Feeder Job Groups: Office and Clerical (5), Operatives (7), Professionals (2), Sales (4A)					
Final Availability:				52.56	17.64
Incumbency:				46.88	11.81

External  
Availability

Internal  
Availability

How much weight is given  
to external and internal  
availability percentages

Final availability percentages,  
after taking into account  
internal and external weights  
and raw availability



# Goals: Minorities and Females Under Executive

# Utilization Analysis: Minorities and Females

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- Compares actual representation of minorities and women to “expected” representation within each job group (as calculated in the Availability Analysis).
- When the percentage of minorities or females employed in a particular job group is less than would reasonably be expected given their availability, underutilization is deemed to exist.

# Utilization Analysis (Cont.)

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- Four types of utilization tests:
  - *Any Difference*
    - Any time availability exceeds current employment.
  - *Whole Person*
    - Availability exceeds current employment by at least one whole person.
  - *80% Rule*
    - Current employment is less than 80% of availability.
  - *Statistical Significance*
    - Two tests:
      1. Standard Deviation: The difference between availability and employment is at least two standard deviations from the expected value
      2. Exact Binomial: A statistically precise probability that the difference between availability and employment is due to something more than just chance

# Utilization Analysis Sample

Job Group	Total Employment	Incumbents #	Employment %	Availability %	Placement Goals #
<b>1A-Executive-Sr. Level Officials and Managers</b>	<b>18</b>				
Female		1	5.56	28.36	Yes
Minority		1	5.56	13.15	
<b>1B-First-Mid Level Officials and Managers</b>	<b>288</b>				
Female		135	46.88	52.56	
Minority		34	11.81	17.64	Yes
<b>2-Professionals</b>	<b>285</b>				
Female		160	56.14	50.21	
Minority		38	13.33	11.53	
<b>3-Technicians</b>	<b>3</b>				
Female		0	0.00	22.34	
Minority		0	0.00	14.99	
<b>4A-Sales</b>	<b>88</b>				
Female		62	70.45	35.06	
Minority		9	10.23	8.58	
<b>5-Office and Clerical</b>	<b>168</b>				
Female		156	92.86	77.69	
Minority		14	8.33	17.17	Yes

Final availability  
percentages from Factor  
Availability report

Outlines which job  
groups are  
underutilized for  
females and/or  
minorities.

*Quantitative analysis that compares female and minority incumbency in a contractor's establishment to those that are qualified for employment to determine if a contractor is underutilized.*

If total employment in a job group is:

- Greater than or equal to 30, use Standard Deviation to test for underutilization
- Less than 30, use the Exact Binomial to test for underutilization

**Location** HQ - Corporate Headquarters

**Job Group** 1A - Executives

Groups	# Incumbents	Percentage	Availability	Test Result	Placement Goal?
Female	89 of 532	16.73	33.64	SD: 8.2568	Yes
Minority	46 of 532	8.65	12.39	SD: 2.6181	Yes

**Job Group** 1B - Upper Management

Groups	# Incumbents	Percentage	Availability	Test Result	Placement Goal?
Female	283 of 919	30.79	42.55	SD: 7.2071	Yes
Minority	99 of 919	10.77	17.58	SD: 5.4199	Yes

**Job Group** 1C - Mid Management

Groups	# Incumbents	Percentage	Availability	Test Result	Placement Goal?
Female	316 of 724	43.65	52.57	SD: 4.8111	Yes
Minority	103 of 724	14.23	21.23	SD: 4.6054	Yes

**Job Group** 1D - Entry Management

Groups	# Incumbents	Percentage	Availability	Test Result	Placement Goal?
Female	60 of 99	60.61	56.41	SD: -0.8419	
Minority	9 of 99	9.09	23.79	SD: 3.4352	Yes

# Placement Goals

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- Goals are established for the percentage of placements into Job Groups
  - Established for underutilized Job Groups
  - Simply a restatement of Availability

# Placement Goals Sample

**Location**      **HQ - Corporate Headquarters**

Job Group	Protected Class	Goal %
<b>1A - Executives</b>	Female	38.58
	Minority	13.69
<b>1B - Upper Management</b>	Female	49.35
	Minority	18.39
<b>1C - Mid Management</b>	Female	52.57
	Minority	21.23
<b>1D - Entry Management</b>	Minority	23.79
<b>2B - Mid Professionals</b>	Minority	19.85
<b>2C - Entry Professionals</b>	Minority	30.64
<b>3A - Senior Technicians</b>	Minority	28.96
<b>3B - Entry Technicians</b>	Minority	34.79
<b>4A - Sales</b>	Female	42.99
<b>5A - Office &amp; Clerical</b>	Minority	35.08
<b>6B - Entry Craft</b>	Female	35.14

# Prior Year Goal Attainment

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- Placements that occurred during the previous 12 months
  - Measure movement into Job Groups where Placement Goals had been established in prior AAP
    - Count hires, promotions and transfers (if any), using data from the Personnel Activity Reports
  - Not required for the AAP; but required for submission to the OFCCP during a compliance review
  - Provides a look into trends and potential problem areas



# Prior Year Goal Attainment Sample

Prior Year Goal

Job Group 1B - Upper Management				
Target Group	Female	Goal Pct	39.49	Goal Attained Yes
Target Group Count			Total	Percent
External Hires	12		33	36.36
Promotions	35		83	42.17
Total	47		116	40.52
Target Group	Minority	Goal Pct	19.63	Goal Attained No
Target Group Count			Total	Percent
External Hires	4		33	12.12
Promotions	15		83	18.07
Total	19		116	16.38

# Utilization and Goals: Individuals with Disabilities Under Section 503

# Disability Utilization Goal

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- Utilization goal of **7%** for employment of qualified individuals with disabilities
- Must annually evaluate goal in each job group per AAP\* (must match EO 11246 job groups)
  - If utilization is less than goal, must assess whether and where impediments exist and develop and execute action-oriented programs designed to correct the identified problem area(s)

*\* If contractor's total workforce is comprised of 100 employees or less, then may analyze goal against entire workforce*

# Sample Section 503 Utilization Analysis Report

*Sample report if company has more than 100 employees*

503 Utilization Analysis by Job Group	Employment %	Utilization Goal	Goal Attained?
1A – Executives/Senior Level Officials and Managers	4%	7%	No
1B – First/Mid Level Officials and Managers	6%	7%	No
2 – Professionals	7%	7%	Yes
3 – Technicians	5%	7%	No
4 – Sales Workers	8%	7%	Yes
5 – Administrative Support Workers	9%	7%	Yes
6 – Craft Workers	3%	7%	No
7 – Operatives	10%	7%	Yes
8 – Laborers and Helpers	6%	7%	No
9 – Service Workers	7%	7%	Yes

*Sample report if company has 100 or fewer employees*

503 Utilization Analysis	Employment %	Utilization Goal	Goal Attained?
ACME Production Company	4%	7%	No

\*The *Any Difference Rule* is used to determine if a goal is met.

# Protected Veteran Hiring Benchmark

# Hiring Benchmark

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- Annually set hiring benchmark for establishment (not job group) using one of two methods:
  1. Use current national percentage of veterans in the labor force (currently at 5.9%); OR
  2. Establish your own using a combination of factors
- OFCCP will annually publish the national percentage of veterans in the labor force on its website
- OFCCP FAQs have been posted to clarify what is expected of contractors with regard to using this benchmark for analysis

# History of Hiring Benchmark

Percentage*	Effective Date**	
	From	To
5.7	03/31/2020	-
5.9	03/31/2019	3/30/2020
6.4	03/31/2018	03/30/2019
6.7	03/31/2017	03/30/2018
6.9	03/04/2016	03/30/2017
7	04/21/2015	03/03/2016
7.2	03/24/2014	04/20/2015

<https://www.dol.gov/agencies/ofccp/annual-vevraa-benchmarks>

# Sample VEVRAA Hiring Benchmark

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- Annually set hiring benchmark for establishment (not job group) using one of two methods:
  1. Use current national percentage of veterans in the labor force (currently at 5.9%); OR
  2. Establish your own using a combination of factors
- OFCCP will annually publish the national percentage of veterans in the labor force on its website
- OFCCP FAQs have been posted to clarify what is expected of contractors with regard to using this benchmark for analysis



# Sample VEVRAA Hiring Benchmark

## Basic Requirement

*XYZ Company* has set the Veteran Hiring Benchmark at **5.7%** per OFCCP guidance for the Affirmative Action Plan year.

## Proactively Going Beyond Requirements

Veteran Hires	% Protected Veterans (Responses)	Difference (Responses)	Benchmark Met (Responses)	% Protected Veterans (All Hires)	Difference (All Hires)	Benchmark Met (All Hires)
2	25	18.1	Yes	5.88	-1.02	No

<https://www.dol.gov/agencies/ofccp/annual-vevraa-benchmarks>

# Sample VEVRAA Hiring Benchmark

## Method 2:

The Company established its own benchmark for this establishment using the following formula:

Factors Considered	Value	Factor Weight
1. The benchmark provided by OFCCP	7.2%	20%
2. Number of veterans in ESDS over previous 4 quarters in state (on OFCCP website)	120	20%
3. The applicant ratio for previous year	10%	20%
4. The hiring ratio for previous year	5%	20%
5. The outreach and recruitment assessments	Effective	20%
6. Any other factors relevant.		

Hiring Benchmark Method	AAP Year	Hiring Benchmark
Calculated benchmark based on factors provided in VEVRAA	2015	9%

# Outreach and Recruitment

# Outreach and Recruitment: Minorities and Females

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- Develop strategies to identify targeted recruitment sources for the jobs in the job groups where underutilization exists
  - Magazines, newspapers, journals, publications, radio or news media that tailor to protected groups
  - Minority/Women career fairs
  - More diverse Universities/Colleges
  - Establish personal working relationships with minority and female organizations
- OFCCP Employment Resource Referral Directory (ERRD):
  - <http://www.dol-esa.gov/errd/index.html>
- Place all qualified job openings with state employment offices
- **Keep documentation of all Good Faith Efforts**

# Evaluation of Outreach Efforts: lwDs and Veterans

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- Annual evaluation of each effort required
  - Document the evaluation of each effort, including:
    - Criteria used to evaluate effectiveness
    - Conclusion as to whether each effort was effective
    - Conclusion must be reasonable as determined by OFCCP
  - Alternative efforts listed in (f)(1) or (f)(2) should be identified and implemented if totality of efforts were not effective
- If efforts not effective overall, must implement alternatives
- Maintain for 3 years

# Evaluation of Outreach Efforts: IwDs and Veterans (Cont.)

- At a minimum: data collection pursuant to paragraph 44(k) for current year and two most recent prior years
  - Data collected pursuant to paragraph (k) for current and two most recent prior years (number of applicants and hires who self-identify; total number of applicants and hires; total job openings and total number filled)
  - Example:

Location	HQ - Corporate Headquarters						
Job Openings	Jobs Filled	Applicants	Hires	Veteran Applicants	Veteran Hires	IWD Applicants	IWD Hires
654	654	20,088	654	1,673	54	1,183	38

# Recommendations

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- Ensure that you regularly list job openings with:
  - Veteran and disability recruitment sources
  - State employment services
  - Minority and female sources
- Record referral source and document all efforts
- *Monitor* the number and quality of applicants referred by these sources and, as appropriate, change these sources
- Measure effectiveness of each outreach effort
- Federal construction contractors have additional GFE and recordkeeping obligations

# Preparing Appropriate Narratives



# Narrative Elements (41 CFR § 60-2.17)

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- Designation of responsibility
- Identification of problem areas, including:
  - Minority or female utilization or distribution
  - Selection disparities in personnel activity
  - Compensation disparities
- Action-oriented programs
  - Used to correct identified problem areas

# Narrative Elements (Section 502 and VEVRAA)

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- Assign responsibility
- EO Policies
- Contract Language Requirements
- EEO Tagline
- Internal Policy Dissemination
- Availability
- Reasonable Accommodation Requirements

# Audit & Reporting System

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- Design and implement an **Audit and Reporting System** that accomplishes the following:
  - Measures effectiveness of AAP
  - Indicates need for remedial action
  - Determines degree to which objectives have been obtained
  - Determines whether protected Veterans and Individuals with disabilities have received opportunities to participate in company-sponsored training and activities
  - Measures compliance with specific AA/EEO obligations



***Elizabeth B. Bradley***, Esq. has over fifteen years of experience representing employers and federal contractors in litigation and mediation matters before state and federal agencies and courts, as well as counseling and training private, public, and non-profit employers in all aspects of employment law.

Ms. Bradley has extensive knowledge and experience in counseling federal contractors in matters relating to OFCCP. She has represented U.S. corporations in successfully defending against OFCCP's review of the contractor's utilization rates and compensation practices as well as representing companies during OFCCP compliance reviews.

***Joanna L. Colosimo***, M.A., SHRM-SCP is the Director of Compliance & Workforce Analytics at DCI Consulting Group, where she provides guidance and support to clients regarding employment discrimination statutes, Affirmative Action, pay equity, and diversity and inclusion. Joanna manages DCI's Compliance & Workforce Analytics division, consisting of consultants and analysts who consult with large organizations on OFCCP compliance, Affirmative Action, pay equity, talent distribution, and related issues. She is an Industrial-Organizational Psychologist with over fourteen years of experience with OFCCP-related work. Joanna is the current President of the Washington DC Metro ILG (WMILG) and the Vice President of the Radford University I/O Psychology Advisory Board.

# Thank you so much!

**Session 3: Adverse Impact and EEO Statistical Disparities,**  
Thursday, October 22nd, 4-5 pm ET

Presenters:

Elizabeth Bradley from FortneyScott in Washington, DC

Joanna Colosimo from DCI Consulting in Washington, DC

In session three, we will review key concepts on analyzing the personnel activity (hires, applicants, promotions, terminations, etc.) portion of an Affirmative Action program. The session will focus on the regulatory basis for conducting EEO disparity analytics, how to conduct and interpret the analyses, and will discuss key take-aways on understanding risk to the organization.