



TRANSMITTAL

U.S. DEPARTMENT OF LABOR
Employment Standards Administration
Office of Federal Contract Compliance Programs

Number: 285 Date: 09/17/2008 ADM Notice/Other

1. **SUBJECT:** Active Case Management.
2. **PURPOSE:** To outline the process and procedure for conducting non-construction compliance evaluations under Active Case Management.

3. **FILING INSTRUCTIONS:**

Holders of ADM and LEG Binders only: File this Notice with the attachment behind the "Other" tab in your Administrative Practices Binder. In Chapter 2 of the Federal Contract Compliance Manual, insert section 2F04 of the attachment after section 2F03, and insert Figures 2-4 through 2-6 of the attachment after Figure 2-3.

District and Area Office EOSs and EOAs only:

File this Notice with the attachment behind the tab for ADM Directives in your FCCM Binder.

4. **OBSOLETE DATA:** None
5. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only)
6. **EXPIRATION DATE:** This directive remains in effect until superseded.

CHARLES E. JAMES, SR.
Deputy Assistant Secretary for
Federal Contract Compliance

DATE

**EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
WASHINGTON, DC 20210**

ADM Notice/Other

1. **SUBJECT:** Active Case Management.
2. **PURPOSE:** To outline the process and procedure for conducting non-construction compliance evaluations under Active Case Management.
3. **BACKGROUND:** On August 19, 1997, OFCCP revised its regulations in 41 CFR Part 60-1 and introduced a new approach for conducting supply and service (non-construction) compliance reviews of federal contractors.¹ Specifically, the regulation at 41 CFR 60-1.20(a)(1) authorized the use of a “tiered” compliance review process. Under the tiered review system, a compliance review begins with a desk audit and may include an on-site review and an off-site analysis, if necessary. The regulations implementing VEVRAA and Section 503 contain parallel provisions. See 41 CFR 60-250.60, 60-300.60, and 60-741.60.

The chief purpose of Active Case Management (ACM) is to concentrate Agency resources on identifying and remedying cases of systemic discrimination, thereby enabling the Agency to use its resources in a more effective and efficient manner. ACM also aims to quickly and efficiently close out reviews where there are no indicators of systemic discrimination present. As most compliance reviews will require only an abbreviated desk audit, as opposed to the full desk audit and onsite, the ACM approach necessitates specific desk audit procedures and closure letters. ACM was put in place by Memorandum from the DAS dated July 25, 2003, and amended by Memorandum dated December 11, 2006. This Directive supersedes those memoranda, institutionalizes the ACM process, and incorporates it into the Directive System. The focus on systemic discrimination under ACM has led OFCCP to have record enforcement results (in terms of back pay and annualized salary and benefits and of number of workers recompensed who had been subjected to unlawful employment discrimination) for three consecutive years, FY 2005-2007.

4. **ACM PROCESS AND PROCEDURES:** All compliance reviews begin with a standard desk audit, which is a major component of a compliance review (41 CFR 60-1.20). By careful and systematic review of the documents and materials provided by covered

¹ In addition, the 1997 revisions to the regulations in 41 CFR Part 60-1 authorized the use of “compliance evaluations” to examine contractor compliance with requirements of Executive Order 11246. The term “compliance evaluation” refers to any one or any combination of the following four investigative procedures: Compliance Review, Off-site Review of Records, Compliance Check, and Focused Review. The compliance evaluation approach was adopted in the VEVRAA regulations in November 1998, and incorporated in the Section 503 regulations in June 2005.

contractors and subcontractors, OFCCP can begin to determine whether these establishments are: 1) complying with relevant provisions of 41 CFR Chapter 60, and 2) providing equal employment opportunity on the basis of race, color, religion, national origin, sex, or status as a qualified individual with a disability or protected veteran. Under ACM procedures, only cases producing indicators of potential systemic discrimination (defined as potential affected classes of 10 or more applicants/workers) are to proceed beyond the desk audit phase with the exception of paragraph 5 (“Quality Control”) below.²

The following are the specific procedures for ACM:

- a. Upon receipt of the contractor’s Affirmative Action Program (AAP) and supporting personnel activity and compensation data, the Compliance Officer (CO) will determine if the personnel activity and compensation data requested in the scheduling letter have been received.³ If so, the contractor’s personnel activity and compensation data will be analyzed for possible systemic discrimination indicators (i.e., a potential affected class of 10 or more applicants/workers).⁴ If the data has not been received within the required time period (30 days from contractor’s receipt of scheduling letter), the CO will contact the contractor establishment and follow regular show cause notice options.
- b. Following these analyses, if there are no indicators of systemic discrimination, no further action is to be taken and the contractor is to be issued the attached ACM closure letter and the compliance evaluation closed as an off-site review of records. The closure letter notes that the closure should not be interpreted as a finding of compliance or of noncompliance.
- c. If systemic discrimination indicators are found, a full desk audit is to be conducted.⁵ The desk audit results will determine whether the contractor should be asked to submit additional information regarding Executive Order 11246 compliance to the

² The procedures set forth in this Directive differ from those specified in Federal Contract Compliance Manual (FCCM) Section 2U01, revised January 1999. In particular, 2U01 directs that “[i]n order to close the compliance review after the desk audit, the CO must ensure that no outstanding substantive issues exist.” In order to accomplish this, Section 2U01 states that the CO may need to request additional materials for review during the desk audit, and also suggests areas for further inquiry. However, under the ACM process, the CO will pursue a case beyond the abbreviated desk audit stage **only** when indicators of possible systemic discrimination are found, except as described in paragraph 5. To the extent that **there is a conflict between FCCM guidance and the ACM procedures contained in this Directive, the ACM procedures contained herein take precedence over FCCM instructions.**

³ Follow the procedures outlined in the FCCM 2D through 2F, revised May 2002.

⁴ Follow FCCM 2O and 2P as amended by the April 23, 2007 Directive entitled “Analysis of Contractor Compensation Practices at the Desk Audit Stage of a Compliance Evaluation.”

⁵ Follow FCCM 2G through 2R, revised May 2002.

district/area office, and/or whether an on-site review is necessary. As part of the full desk audit, the CO will also evaluate the contractor's compliance with its obligations under Section 503 of the Rehabilitation Act, the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and Executive Order 13201.⁶ If the CO does a full desk audit under Executive Order 11246, the CO is to do a full desk audit under Section 503 and VEVRAA. If the CO does an on-site review under Executive Order 11246, the CO is to also do an on-site review under Section 503 and VEVRAA. If the full desk audit or on-site review indicates that there is no systemic discrimination or apparent non-compliance with Section 503 or VEVRAA, one of the closure letters at Figure 2-4 or 2-6 in the FCCM (attached) is to be issued, and the compliance evaluation may close as an off-site review of records, a focused review, or a compliance review depending upon the circumstances. For all on-site reviews, the CO will document the contractor's compliance with Executive Order 13201 as provided in Directive Transmittal No. 269. Closure information will be entered in CMS in the appropriate status codes. At no time may a Notice of Violation that alleges discrimination be issued without an onsite review.

- d. If the AAP is not compliant and indicators of a possible systemic violation are absent, the CO should try to remedy the deficiencies during the desk audit. If the AAP or supporting data deficiency is a major violation that cannot be resolved during the desk audit (e.g., summary personnel data is not maintained, but records are available for inspection on-site), the CO may conduct a focused on-site inspection. Based on the desk audit or on-site results, the appropriate closure letter at Figure 2-4 or 2-6 of the FCCM for technical or substantive AAP violation determinations would be issued and the appropriate CMS status closing codes entered.


5. **QUALITY CONTROL:** As a quality control measure, to ensure that contractors are developing and implementing AAPs and that they are maintaining the required supporting data, a full desk audit of the materials submitted is to be conducted on every 25th contractor listed in the Federal Contractor Selection System (FCSS), even in the absence of systemic discrimination indicators. In addition, a full compliance review – including an onsite review – is to be conducted on every 50th contractor listed in the FCSS, even in the absence of systemic discrimination indicators. These contractor establishments will be identified by the FCSS in the National Office.⁷

⁶ Follow FCCM 2I as amended by the July 10, 2008 Directive entitled "Federal Contractor's Online Application Selection System."

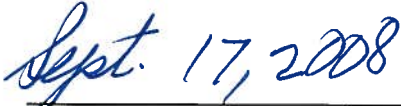
⁷ The use of ACM procedures does not waive the right of OFCCP to conduct a full compliance review in accordance with 41 CFR Part 60-1 to determine compliance with any of the laws under its purview. Nor does it limit in any way OFCCP's authority to pursue an individual complaint of discrimination.

The desk audit results (in the every 25th review) will lead the CO to conclude whether additional information should be requested and/or whether an on-site inspection is required for unresolved problem areas. Included in the full desk audit will be an evaluation of the contractor's compliance with its obligations under Section 503 of the Rehabilitation Act, VEVRAA, and Executive Order 13201. Based on the desk audit and evaluation results for this group of contractors, Figure 2-4 or 2-6 of the FCCM will be issued to the contractor, and the case closed as an off-site review of records, a focused review, or a compliance review, as appropriate. For all on-site reviews, the CO will document the contractor's compliance with Executive Order 13201 as provided in Directive Transmittal No. 269. CMS status codes will be entered based on the type of review closure.

6. **REVIEW PERIOD:** As with other compliance reviews, contractor establishments that are evaluated using the ACM abbreviated desk audit process, as outlined in paragraph 4, above, will be exempted from a compliance evaluation for 24-months from the date of case closure.



CHARLES E. JAMES, SR.
Deputy Assistant Secretary for
Federal Contract Compliance



DATE

Attachment: Revised FCCM Chapter 2 inserts.



2F04 ACM PROCESS AND PROCEDURES

All compliance reviews begin with a standard desk audit, which is a major component of a compliance review (41 CFR 60-1.20). By careful and systematic review of the documents and materials provided by covered contractors and subcontractors, OFCCP can begin to determine whether these establishments are: 1) complying with relevant provisions of 41 CFR Chapter 60, and 2) providing equal employment opportunity on the basis of race, color, religion, national origin, sex, or status as a qualified individual with a disability or protected veteran. Under ACM procedures, only cases producing indicators of potential systemic discrimination (defined as potential affected classes of 10 or more applicants/workers) are to proceed beyond the desk audit phase with the exception of the Quality Control provision below.¹

The following are the specific procedures for ACM:

- a. Upon receipt of the contractor's Affirmative Action Program (AAP) and supporting personnel activity and compensation data, the Compliance Officer (CO) will determine if the personnel activity and compensation data requested in the scheduling letter have been received.² If so, the contractor's personnel activity and compensation data will be analyzed for possible systemic discrimination indicators (i.e., a potential affected class of 10 or more applicants/workers).³ If the data has not been received within the required time period (30 days from contractor's receipt of scheduling letter), the CO will contact the contractor establishment and follow regular show cause notice options.

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³ Follow FCCM 2O and 2P as amended by the April 23, 2007 Directive entitled "Analysis of Contractor Compensation Practices at the Desk Audit Stage of a Compliance Evaluation."



- b. Following these analyses, if there are no indicators of systemic discrimination, no further action is to be taken and the contractor is to be issued the attached ACM closure letter and the compliance evaluation closed as an off-site review of records. The closure letter notes that the closure should not be interpreted as a finding of compliance or of noncompliance.
- c. If systemic discrimination indicators are found, a full desk audit is to be conducted.⁴ The desk audit results will determine whether the contractor should be asked to submit additional information regarding Executive Order 11246 compliance to the district/area office, and/or whether an on-site review is necessary. As part of the full desk audit, the CO will also evaluate the contractor's compliance with its obligations under Section 503 of the Rehabilitation Act, the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and Executive Order 13201.⁵ If the CO does a full desk audit under Executive Order 11246, the CO is to do a full desk audit under Section 503 and VEVRAA. If the CO does an on-site review under Executive Order 11246, the CO is to also do an on-site review under Section 503 and VEVRAA. If the full desk audit or on-site review indicates that there is no systemic discrimination or apparent non-compliance with Section 503 or VEVRAA, one of the closure letters at Figure 2-4 or 2-6 in the FCCM (attached) is to be issued, and the compliance evaluation may close as an off-site review of records, a focused review, or a compliance review depending upon the circumstances. For all on-site reviews, the CO will document the contractor's compliance with Executive Order 13201 as provided in Directive Transmittal No. 269. Closure information will be entered in CMS in the appropriate status codes. At no time may a Notice of Violation that alleges discrimination be issued without an onsite review.
- d. If the AAP is not compliant and indicators of a possible systemic violation are absent, the CO should try to remedy the deficiencies during the desk audit. If the AAP or supporting data deficiency is a major violation that cannot be resolved during the desk audit (e.g., summary personnel data is not maintained, but records are available for inspection on-site), the CO may conduct a focused on-site inspection. Based on the desk audit or on-site results, the appropriate closure letter at Figure 2-4 or 2-6 of the FCCM for technical or substantive AAP violation determinations would be issued and the appropriate CMS status closing codes entered.

⁴ Follow FCCM 2G through 2R, revised May 2002.

⁵ Follow FCCM 2I as amended by the July 10, 2008 Directive entitled "Federal Contractor's Online Application Selection System."



QUALITY CONTROL: As a quality control measure, to ensure that contractors are developing and implementing AAPs and that they are maintaining the required supporting data, a full desk audit of the materials submitted is to be conducted on every 25th contractor listed in the Federal Contractor Selection System (FCSS), even in the absence of systemic discrimination indicators. In addition, a full compliance review – including an onsite review – is to be conducted on every 50th contractor listed in the FCSS, even in the absence of systemic discrimination indicators. These contractor establishments will be identified by the FCSS in the National Office.⁶

The desk audit results (in the every 25th review) will lead the CO to conclude whether additional information should be requested and/or whether an on-site inspection is required for unresolved problem areas. Included in the full desk audit will be an evaluation of the contractor's compliance with its obligations under Section 503 of the Rehabilitation Act, VEVRAA, and Executive Order 13201. Based on the desk audit and evaluation results for this group of contractors, Figure 2-4 or 2-6 of the FCCM will be issued to the contractor, and the case closed as an off-site review of records, a focused review, or a compliance review, as appropriate. For all on-site reviews, the CO will document the contractor's compliance with Executive Order 13201 as provided in Directive Transmittal No. 269. CMS status codes will be entered based on the type of review closure.

REVIEW PERIOD: As with other compliance reviews, contractor establishments that are evaluated using the ACM abbreviated desk audit process, as outlined in paragraph 4, above, will be exempted from a compliance evaluation for 24-months from the date of case closure.

⁶ The use of ACM procedures does not waive the right of OFCCP to conduct a full compliance review in accordance with 41 CFR Part 60-1 to determine compliance with any of the laws under its purview. Nor does it limit in any way OFCCP's authority to pursue an individual complaint of discrimination.

November 25, 1998

Chapter II – Desk Audit

Document Format Revised – September 2008



Figure 2-4:

ACM Abbreviated Desk Audit Closure Letter

Certified Mail
Return Receipt Requested

Date

Name of Establishment CEO
Title of CEO
Establishment Name
Street Address
City, State, Zip

Dear [Name of CEO]:

We recently scheduled a compliance review of the equal employment opportunity policies and practices at your establishment located at [address]. Based on the findings made during the desk audit, we have determined not to proceed further with the compliance review.

This letter is to notify you that the compliance review of your establishment has been closed. Please be aware that this did not constitute a comprehensive evaluation of your employment practices and policies. Accordingly, this closure should not be interpreted as either a finding of compliance, or of noncompliance. We encourage you to continue your efforts toward equal employment opportunity, and your vigorous self-monitoring of both your efforts and results.

We appreciate the cooperation and courtesies extended by you and your staff.

Sincerely,
[District Director]

cc: [Name of Corporate CEO]
[Name of properly designated representative]

Figure 2-5:

CLOSURE LETTER FOR NO APPARENT VIOLATIONS OR
TECHNICAL VIOLATIONS

(Name of CEO)
(Title of CEO)
(Establishment Name)
(Street Address)
(City, State, Zip Code)

Dear (Name of Contractor Official):

Our recent evaluation of your equal employment opportunity policies and practices at (Name and Location of the Establishment reviewed) has been completed.

[Select either Paragraph 2 or Paragraphs 3 and 4]

(2)

During the compliance review process we found no apparent violations of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212). This determination may be modified by the Regional Director, or by the Deputy Assistant Secretary for Federal Contract Compliance, within 45 days of the issuance of this letter.

[OR]

(3) and (4)

During the compliance review process, we identified and resolved the following violation(s): [identify the technical violation(s) resolved during the compliance evaluation, including the appropriate regulatory citation and specific remedy]. It is understood that this/these problem area(s) will not recur.

We found no additional apparent violations of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, or the Vietnam Era Veterans' Readjustment



Assistance Act of 1974, as amended (38 U.S.C. 4212). This determination may be modified by the Regional Director, or by the Deputy Assistant Secretary for Federal Contract Compliance, within 45 days of the issuance of this letter.

[Optional]

The Office of Federal Contract Compliance Programs sincerely appreciates the cooperation and courtesies extended by you and your staff during the conduct of the compliance review.

Sincerely,

(Name of District Director)
District Director

cc: (as appropriate)



Figure 2-6:

CLOSURE LETTER FOR SUBSTANTIVE VIOLATIONS

(Name of CEO)
(Title of CEO)
(Establishment Name)
(Street Address)
(City, State, Zip Code)

Dear (Name of Contractor Official):

Our recent evaluation of your equal employment opportunity policies and practices at (Name and Location of the Establishment reviewed) has been completed.

Subject to the implementation of commitments detailed in our Conciliation Agreement dated (date), it is the determination of this office that there are no further apparent violations of the requirements of our regulations. This determination may be modified by the Regional Director, or by the Deputy Assistant Secretary for Federal Contract Compliance. However, if neither the Regional Director nor the Deputy Assistant Secretary for Federal Contract Compliance takes action on it within 45 days of my signature on this Agreement, it shall be deemed approved.

This determination does not preclude a future determination of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

[Optional]

The Office of Federal Contract Compliance Programs sincerely appreciates the cooperation and courtesies extended by you and your staff during the conduct of the compliance review.

Sincerely,

(Name of District Director)
District Director

cc: (as appropriate)