



CHAPTER III
ONSITE REVIEW PROCEDURES



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3A PURPOSE

3A00 GENERAL

- (a) Contents: This Chapter describes the procedures to be followed when conducting the onsite phase of compliance reviews of supply and service contractors covered by Executive Order 11246, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and Section 503 of the Rehabilitation Act of 1973, as amended. It is a guide to how Compliance Officers (CO) should conduct onsite compliance investigations as well as how to prepare an investigative report and summary of the findings. The onsite procedures described in this Chapter, as well as the desk audit procedures described in Chapter 2, follow the Standard Compliance Review Report (SCRR). Appendix A to Chapter 2 contains the parts of the SCRR covering desk audit, analysis of affirmative action programs (AAP), and identification of potential employment discrimination. Appendix A to this Chapter contains the SCRR employment discrimination worksheets and instructions.
- (b) Onsite Review Not Always Required: An onsite is not required in all instances. An onsite review is not required:
- (1) Where the material submitted by the contractor does not demonstrate a reasonable effort to meet the requirements of 41 CFR Part 60-2; or
 - (2) Where the AAP is determined to be acceptable at desk audit, an onsite review has been conducted within the preceding 24 months, and the circumstances of the previous onsite review have not substantially changed.
- (c) Multiple AAP Requests: If the review extends beyond the expiration date of the AAP originally submitted, no additional AAPs will be requested. However, the CO will ensure that the contractor incorporates any corrective actions required as a result of the review in the original AAP, and will obtain the contractor's commitment to update the current and future AAPs in accordance with these corrective actions. The resulting Conciliation Agreement (CA) or Letter of Commitment (LOC) should also contain, in addition to any other reporting requirements, a requirement that the contractor submit those portions of the current AAP which were to be corrected or updated as a result of the compliance review findings.

3A01 ONSITE BACKGROUND



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- (a) Purposes of Onsite: The major purposes of the onsite phase of the compliance review are to ***investigate potential problem areas identified at desk audit, to verify the contractor's*** implementation of its AAPs, and to begin to resolve violations.
- (b) Problems Identified at Desk Audit: Problems identified at the desk audit which require further investigation onsite will usually fall into three basic categories. These are:
- (1) Good-Faith Efforts: Questions of good-faith effort resulting from the contractor's failure to meet goals where there were opportunities, and AAP and support data do not show adequate efforts (SCRR page 11).
 - (2) Potential Employment Discrimination: Questions of potential individual or systemic discrimination (SCRR page 17) which are identified through:
 - (i) Impact Ratio Analyses (IRA) of the contractor's personnel activity that are adverse;
 - (ii) Concentrations/underrepresentations identified through review of the contractor's EEO-1 or EEO-6, workforce analysis, and utilization analysis;
 - (iii) Questionable policies and practices;
 - (iv) Reports from the Equal Employment Opportunity Commission (EEOC) on complaints filed against the contractor and anecdotal information from employees and community sources;
 - (v) Follow-up on problems identified in previous compliance reviews; and
 - (vi) Medical standards which could tend to screen out qualified individuals with disabilities.
 - (3) AAP and Technical Requirements: Problems with the AAP(s), as well as verification of compliance with technical and other non-AAP requirements. Examples of these include: review of the invitation to self-identify, determinations of contractor compliance with the terms of a prior CA or LOC, inspection of I-9s, and verification that the VETS 100 Report has been filed.

3B NOTICE OF ONSITE REVIEW



3B00 PREPARATION - NOTICE OF ONSITE REVIEW

As noted at the end of Chapter 2 (Desk Audit), near the end of the desk audit or after it is completed, the CO will have contacted the contractor by telephone to discuss the information which the CO would like to have at the beginning of the onsite. This provides the contractor with lead time to locate the information. It also allows the CO to determine whether the information is available and in what form. During the conversation, the contractor was told that its I-9 forms would be inspected. A letter confirming this phone conversation, including formal notice of I-9 inspection and the time and date of the onsite, will have been sent to reach the contractor at least three (3) days prior to the onsite. This letter, as well as all other correspondence with the contractor, is signed by the DD/ADD or his/her designee. This letter included a list of materials which the contractor should make available at the start of the onsite.

3B01 LIST OF MATERIALS

As also noted at the end of Chapter 2, the list of materials included with the letter confirming the onsite review will have included the following types of information:

- (a) Materials Related to Desk Audit Findings: Items related to specific preliminary findings made during the desk audit will have been requested. This may have included personnel files, applications, resumes, contractor adverse impact de-terminations, and related material to be made available for inspection. Where the CO identified specific managers for interviews, these individuals may have been identified.
- (b) Materials Not Included in Original Submission: Items which may not have been included in the original AAP and support data submission will have been re-quested. This may have included copies of employment advertisements, labor agreements, position descriptions, policy manuals, and the names of employees and applicants identified as individuals with disabilities, special disabled veter-ans, and veterans of the Vietnam Era along with a notation of any accommodations made for the named individuals. Where desk audit salary data were coded, the contractor would have been asked to supply the key to the codes onsite. Also, the list will have specifically referenced the need for inspection of I-9 forms and the VETS 100 Report.

3C PREAWARDS

A preaward review covers only the contractor's compliance with the Executive order. However, if the preaward review is converted to a postaward review, its scope is the same as that of a regularly scheduled review; i.e., it must cover the contractor's compliance with Section 503 and 38 U.S.C. 4212 as well as



with the Executive order. Further guidance on preaward reviews and revised preaward procedures will be provided at a later date.

3D INFORMATION COLLECTION

3D00 CASE FILE DOCUMENTATION

If the information obtained by the CO is to be useful, it must be reduced to writing. The CO's findings and conclusions must be documented in the case file. For each potential problem identified, the case file will contain a clearly labeled packet of backup material which supports review findings on that problem. This will consist of, as applicable, all CO notes, worksheets, contractor data, and any other material relating to the problem.

3D01 CONTRACTOR FILES

During the onsite, applications and personnel files are among the main sources of written documentation. Labor agreements, policy and compensation manuals, company newsletters, posted job opening announcements, etc., are also important documents to review. Pertinent information to be included in the case file must be either photocopied, transcribed, or summarized. If it is summarized, the CO must describe the document in detail and describe how it was summarized. Also, the CO must ensure that his/her writing is legible. Photocopied data are preferred. Under the regulations, contractors are obliged to provide access to their books, records, and accounts for the purpose of determining compliance (41 CFR 60-1.43; 60-250.53; 60-741.53). If a contractor objects to providing photocopying facilities, the CO should offer to remove the data offsite for photocopying, assuring the contractor that the original will be returned. If the contractor objects on grounds of relevancy to making the requested data available, the CO shall inform the contractor that the contractor can request a ruling from the DD, in accordance with the procedures described in 41 CFR 60-60.4 (c). In the meantime, the information under dispute must be available to the CO offsite.

3D02 VISUAL INFORMATION

While onsite, the CO should visually confirm the posting of EEO posters, policy statements, invitations for self-identification, and notice of the location and hours of availability of the 4212/503 AAPs. This is usually done during the facility inspection, which should also include visual observation of areas where minorities, women, and/or individuals with disabilities or special disabled veterans are/are not working at



the facility, and the working conditions associated with those areas. As noted in 3C03 below, the facility inspection may also include informal interviews.

3D03 INTERVIEW INFORMATION

Interviews may be conducted either informally; e.g., during the facility inspection, or formally; e.g., in a scheduled meeting with a structured list of questions. Also, as the onsite proceeds, there will be continuing discussions between the CO and contractor personnel. The content of these discussions, as it relates to compliance matters, should be documented in writing as soon as possible. It is a good practice for the CO

to review his/her notes with the contractor to ensure they accurately reflect the contractor's statements (see (d) below).

- (a) Reasons for Interviewing: Interviews should be conducted with some identified purpose or goal. Reasons for interviews may include: gaining understanding of contractor policies and procedures, obtaining general information, corroborating information received from other sources, and identifying additional areas for investigation. Also, interviews may give interviewees an opportunity to present problems or issues of concern to them.
- (b) Interview Plan: The CO should plan questions and target interviews to particular compliance issues. Planning is required to ensure that questions are appropriate, and that, when the interviews are complete, the CO will have enough information to make a decision on whether to pursue an issue.
- (c) Contractor's Presence at Interviews: When the CO conducts onsite interviews with nonmanagement personnel, the contractor does not have the right to have a representative present. When interviews are conducted with management personnel, the contractor may have an attorney or other representative present except when the manager is not speaking for management, as when the manager is the complainant or a member of a potential affected class speaking about his/her personal experience.
- (d) Formal Interviews: Each person who is formally interviewed should be asked to read, sign, and date the interview notes. The CO should enter the following phrase above the space where the interviewee will sign: "I have read the above and it is true." At the conclusion of the interview, the CO should review the questions asked and the answers given, and obtain confirmation that a direct quote is accurate, or that a paraphrase conveys the intended meaning. If the interviewee refuses to sign the notes, this should be recorded. The reason(s) for refusal to sign should also be noted.



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- (e) Location of Interviews: Interviews are normally conducted onsite during the compliance review. However, there may be situations when a contractor refuses to allow onsite interviews of nonmanagerial employees. Where possible the CO should attempt to explore alternatives with the contractor, such as conducting interviews during meal breaks. Other options might include interviewing employees onsite prior to the start of work shifts, or at their conclusion. Interviews also may be conducted offsite.
- (f) Telephone Interviews: Telephone interviews should be conducted only when it is not feasible to conduct the interview in person, because the CO cannot observe the interviewee's demeanor during a telephone interview, which makes evaluation of the interviewee's credibility more difficult. However, where telephone interviews of employees or applicants are necessary, the resultant notes should be typed and a copy sent to the interviewee(s) for review, revisions as appropriate, and signature.

3E ONSITE ORIENTATION

3E00 PROBLEM IDENTIFICATION

In general, the problems to be investigated will be noted on the SCRR summary sheets (SCRR pages 9, 11, 13, 17, and optional page 18 when used). The degree to which these sheets were completed at desk audit depends on the quality and quantity of the data that the contractor submitted for desk audit. If the quality of those data was too poor to permit completion of the desk audit portion of the SCRR, and the decision is made to go onsite, then the initial task onsite will be to complete the desk audit portions of the SCRR. See Chapter 2 for information on completing the initial portions of the SCRR.

3E01 ENTRANCE CONFERENCE

The onsite review typically begins with an entrance conference with the chief executive officer of the facility or his/her representative(s). The entrance conference is intended to provide information to the chief executive officer and explain the purposes of the compliance review. These include a general summary of the contractor's obligations under the programs administered by the Office of Contract Compliance Programs (OFCCP), a description of the scope of the onsite plan, the length of time that the CO anticipates being onsite, information needed while onsite, and the need to conduct employee interviews. The entrance conference should also include an explanation of the I-9 inspection procedure and requirements. The conference provides an opportunity for the CO to evaluate top management's attitude toward equal employment opportunity (EEO) and affirmative action (AA). During the



conference the CO should either establish the date and time for the exit conference (see Section 3S below), or inform the chief executive officer of the need to meet again at the end of the onsite.

3E02 PRELIMINARY INTERVIEWS

Following the entrance conference, the CO should meet with key facility personnel who are knowledgeable about the contractor's personnel policies and practices. During these preliminary interviews, the CO should clarify any questions he or she may have such as ones regarding the organization, structure, corporate culture, and other per-sonnel issues raised during the desk audit. The CO will use page 8 of the SCRR (Organization of Contractor's Workforce and Review of Personnel Practices), as a guide for this discussion. The CO will complete any missing items on page 8 at this time. This is the CO's opportunity to become more familiar with the contractor's in-formal policies and practices, and to relate these to written materials and practices outlined in the AAP.

3E03 COMPLIANCE WITH PRIOR CONCILIATION AGREEMENTS/LETTERS OF COMMITMENT

The onsite investigation will include review of the contractor's compliance with the terms of prior CA or LOC. Compliance with the commitments will be discussed with contractor personnel during the onsite, and documentation of continued compliance obtained. If the contractor is found to be in noncompliance with some or all of the commitments agreed upon as a result of the prior compliance review, refer to Chapter 8 for the procedures to be followed.

3E04 FACILITY INSPECTION

The facility inspection is an opportunity for the CO to evaluate the working conditions in departments or other organizational units identified during the desk audit as concentrated or underrepresented, to view the kind of work performed in different job titles, to evaluate the accessibility of the personnel process to applicants with mobility impairments, to conduct brief, informal interviews with employees, and to obtain more information about the history of the facility and the work performed there. Notes should be taken during the inspection. A report summarizing information obtained may be helpful depending on the issues raised or resolved.

3E05 TECHNICAL REQUIREMENTS



The CO's onsite plan includes a list of technical items for which compliance will be verified onsite. These are verified in the course of performing other steps in the review rather than all at once. For example, the required posting of notices is observed during the tour of the facility. See optional SCRR page entitled "Technical Requirements Worksheet" and its accompanying instructions for a complete list of these requirements.

3F I-9 INSPECTION

The CO's onsite plan includes the visual inspection of the Immigration and Naturalization Service (INS) Forms I-9 maintained by the contractor. The results of this inspection are reported on Form ESA-91 (Figure 3-2). The CO should follow current instructions in this inspection and reporting its results. Further guidance will be provided in this area in the near future.

3G EXECUTIVE ORDER AAP REQUIREMENTS

This section discusses:

- (a) Follow-up on problems with the written Executive order AAP and support data submitted for desk audit;
- (b) Implementation of non-goal AAP requirements;
- (c) Investigation of good-faith effort with respect to goals.

3G00 WRITTEN AAP AND SUPPORT DATA SUBMISSIONS

- (a) Written Requirements: During the desk audit, the AAP(s) and support data are examined to determine whether all required elements are included (complete-ness), whether the Executive order AAP is reasonable, and whether the AAP(s) and support data are acceptable. Any problems in these areas are reported on page 9 of the SCRR. The CO also records for each item on page 9 the actions planned to resolve each problem identified. The problems that cannot be re-solved at desk audit are checked for onsite resolution. The CO will review page 9 and identify the AAP and data problems remaining to be resolved onsite.
- (b) Resolution of Deficiencies: Unresolved AAP deficiencies may be briefly mentioned during the entrance conference. However, a detailed explanation of what aspects of the program were found to be unacceptable and why they should be discussed with the individual(s) charged with



developing and maintaining the program. AAP deficiencies range from those which result in the issuance of a show-cause notice; e.g., workforce analysis and utilization analysis, to those which are minor technical deficiencies; e.g., failure to have an official of the contractor sign the program. The CO should identify appropriate corrective action for those deficiencies confirmed during the onsite investigation by the time of the exit conference (see Section 3S below). Deficiencies/violations that will be included in a LOC or a CA must first be included in a Notice of Violations (NOV). This Notice is mailed to the contractor at the conclusion of the review, by certified mail with return receipt requested (see Section 3T below).

3G01 IMPLEMENTATION OF NON-GOAL AAP REQUIREMENTS (41 CFR 60-2.13)

The onsite investigation must include an assessment of the contractor's implementation of its AAP. The regulations at 41 CFR 60-2.15 require that a contractor's compliance be judged on a review of the contents of its program, the extent of its adherence to the program, and its good-faith efforts to make the program work. The regulations at 41 CFR 60-2.20 through 60-2.26 provide guidance in evaluating contractor compliance with the specific requirements of 41 CFR 60-2.13. In evaluating contractor compliance with 41 CFR 60-2.13, the CO must be prepared not only to identify problem areas, but also to specify what corrective action will be necessary to bring the contractor into compliance.

- (a) Policy Statement; 41 CFR 60-2.13(a): This Section requires that the contractor develop or reaffirm its equal employment opportunity policy in all personnel actions. The desk audit of the AAP will indicate whether the contractor's policy is included therein. 41 CFR 60-2.20 provides guidance in evaluating the contents of the policy. The policy should be signed. The date of signature and the name and title of the person signing the policy should be noted. The CO should compare this to the posted copies of the policy during the facility inspection. In addition to the development or reaffirmation of the EEO policy, implementation of that policy by the contractor in all personnel actions can be evaluated by the CO's onsite review of personnel activities.

- (b) Dissemination of Policy; 41 CFR 60-2.13(b): The contractor's AAP must include internal and external dissemination of its policy. An AAP typically includes some description or listing of how the contractor's EEO policy is disseminated. The contents of the listing often follow the provisions under 41 CFR 60-2.21. In investigating compliance with this requirement, the CO should request that written documentation, such as copies of letters to recruitment sources, trade organizations, suppliers, etc., be provided for verification. These letters may either describe the policy or serve as cover letters to copies of the policy. They may also contain other information relevant to assessing the contractor's overall compliance status. During the facility inspection the CO should identify the locations where copies of the policy are posted, and determine whether these are dated, what dates are shown, if these are signed, and if so, by whom. An out-of-date policy statement, or one signed by an executive no longer at that facility, suggests a lack of



commitment to EEO which may also become evident in other areas. In interviews with supervisors and employees, the CO should determine whether the EEO policy has been explained and whether supervisors understand their responsibility for carrying out the policy.

- (c) Responsibility for Implementation; 41 CFR 60-2.13(c): This Section requires that the contractor establish responsibility for the implementation of its AAP. A typical AAP will identify an individual or individuals responsible for its implementation, and will often include a list of the types of actions to be taken by responsible individual(s). The person appointed should be an executive of the contractor who has the authority and resources to ensure that the AAP is implemented. The CO should obtain a copy of the responsible official's position description to ensure that it includes implementation of the AAP. The CO should also discuss with the responsible official or officials how specific provisions of the AAP are implemented. Compare the responses obtained to the listing in the AAP, where given, or to the provisions of 41 CFR 60-2.22. Look for discrepancies among what officials report, what the AAP outlines, and what the regulations recommend. The CO should evaluate the adequacy of the contractor's implementation and recommend corrective action as needed. 41 CFR 60-2.22 provides detailed guidance on evaluating compliance with this requirement.
- (d) Problem Areas By Organizational Units; 41 CFR 60-2.13(d): In reviewing and evaluating the contractor's identification of problem areas by organizational unit, the CO should follow the guidance provided by 41 CFR 60-2.23. This analysis goes beyond the utilization analysis conducted pursuant to 41 CFR 60-2.11. The intent here is to analyze where women and minorities are located within the organization rather than the more limited analyses based on job groups and availability. The organizational unit analysis is based primarily on the workforce analysis. The contractor should have identified concentrations and absences of minorities and women in any department, section, line of progression (LOP), or other organizational structure it uses. Low utilization may be traced to a problem in low applicant flow. Concentrations may result from placement problems. These problems must be identified in the AAP. Corrective action includes a requirement to correct the problems and to conduct ongoing internal reviews. The Job Area Acceptance Range (JAAR) may be helpful in analyzing whether the contractor has identified all concentrations and underrepresentations. (See the optional SCRR worksheet and instructions in Appendix 3A to this Chapter.)
- (e) Goals by Organizational Unit; 41 CFR 60-2.13(e): Having identified problem areas (deficiencies) by organizational unit, the contractor must under 41 CFR 60-2.13(e) establish goals and objectives to eliminate these problems. Organizational goals and objectives, however, are not the same as numerical goals for job groups. Rather, they are such things as changes in policies and procedures that will correct the identified problem. While onsite, the CO will determine whether the organizational goals and objectives set by the contractor are sufficient to actually correct the identified problems or are merely a reproduction of the contents of 41 CFR 60-2.23.



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- (f) Establishment of Action-Oriented Programs Designed to Eliminate Problems and to Attain Established Goals and Objectives; 41 CFR 60-2.13(f): 41 CFR 60-2.24 provides standards which the CO can use to assess the contractor's compliance with this requirement. As with a number of the other required ingredients of AAPs, documentation of the contractor's compliance with this requirement will often be obtained when investigating other issues during the onsite. For example, in requesting copies of position descriptions for the analysis of adverse IRAs, or the investigation of placement practices, the CO can determine how recently they have been reviewed, and if they are accurate and/or consistently applied. If problem areas are identified during the desk audit or onsite and the contractor has not taken adequate steps to correct these problems, including the development and implementation of action-oriented programs, then corrective action must be required. The CO's ability to assess problems and offer possible solutions depends upon his/her knowledge of community resources available, the capabilities of the contractor, and the magnitude of the problem(s). The CO should assess what progress is being made toward correction of the identified problem areas.
- (g) Internal Audit and Reporting Systems; 41 CFR 60-2.13(g): The contractor is required to design and implement internal audit and reporting systems which measure the effectiveness of the total AAP. Beginning with the desk audit, the CO is evaluating the contractor's internal audit and reporting systems. If the contractor is unable to provide information when requested, or is unable to provide it in a usable form, this should suggest that its audit and reporting systems may be inadequate. The CO should question the contractor and request evidence re-garding how it reports the results of internal EEO and AA audits. Does the contractor prepare written reports, other than the AAP? If so, how often are they required; who prepares them; who reads them; what else, if anything, is done with them? These are all questions which impact on compliance with the audit and reporting requirement. Documentation, in the form of copies of reports, or copies of minutes of meetings, should be requested.
- (h) Compliance with Sex Discrimination Guidelines; 41 CFR 60-2.13(h): The contractor's compliance with each required item under 41 CFR Part 60-20 must be addressed. For many requirements, compliance can be assessed during desk audit. For example, the AAP may include a copy of an employment advertisement with the EEO tag line which would demonstrate compliance with the requirement that the contractor recruit employees of both sexes for all jobs, except where bona fide occupational qualifications are involved. Where such information is not in the AAP, it must be verified onsite. Other compliance issues must be evaluated during the onsite, even though compliance may be asserted in the AAP. This would include, for example, the requirement that there be no distinction in wages based on sex. This can also be verified as personnel files are reviewed for other reasons, such as while investigating adverse IRAs in personnel activity.
- (1) Maternity Leave/Pregnancy Discrimination Act: In 1978 Congress passed the Pregnancy Discrimination Act (PDA), Public Law 95-555 (codified at 42 U.S.C. 2000e(k)), as an



amendment to Title VII (See Appendix 3B to this Chapter for the text of the Act.). The PDA provides that, "...women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work"

- (2) OFCCP Maternity Leave Regulations: The PDA is not coextensive with the OFCCP regulations at 41 CFR 60-20.3(g). For instance, the PDA requires that a woman affected by pregnancy be treated the same as other persons similarly affected in their ability or inability to work; by contrast 41 CFR 60-20.3(g) states that a contractor must always provide a reasonable period of leave to a woman affected by childbirth. The passage of the PDA raised questions as to the continued viability of those portions of the OFCCP regulations which go beyond the PDA; i.e., require more of contractors than does the PDA. These questions were complicated by the Supreme Court's decision in California Federal Savings and Loan Association v. Guerra, 42 FEP Cases 1073 (1987), and have not been finally resolved. Accordingly, guidance on the application of those portions of the regulations (including the application of 41 CFR 60-20.3(g) (2)) is reserved at this time. However, consistent with the PDA, 41 CFR 60-1.4(a), and the EEOC Guidelines on Discrimination Because of Sex, OFCCP shall implement the following policies:
- (i) If a contractor has a sick leave or disability leave policy (written or unwritten), leave (including but not limited to eligibility for leave, duration of leave, accrual of seniority, and reinstatement rights) for conditions associated with childbirth shall be treated the same as leave for disabilities related to other medical conditions; and
 - (ii) If the contractor's leave policy, or lack thereof, has an adverse impact on employees of one sex and is not justified by business necessity, it violates the Executive order.
- (3) Fringe Benefits: The Sex Discrimination Guidelines provide that an employer will not be considered to have violated the Guidelines if his contributions for fringe benefits are the same for men and women or if the resulting benefits are equal. Subsequently, the Supreme Court has held that under Title VII an employer must provide both equal contributions and equal benefits to men and women. Arizona Governing Committee v. Norris, 463 U.S. 1073, 32 EPD ¶ 32,696 (1983); City of Los Angeles v. Manhart, 435 U.S. 702, 16 EPD ¶ 8250 (1978). OFCCP's policy is to interpret the nondiscrimination provisions of the Executive order consistent with Title VII principles. Consequently, if the CO becomes aware of a situation where a contractor is either not paying equal fringe



benefits and/or not making equal contributions to fringe benefits for men and women, the matter should be brought to the attention of the Regional Solicitor of Labor (RSOL).

- (4) Sexual Harassment: Although not specifically mentioned in the Guidelines, sexual harassment (as well as harassment on the basis of race, national origin or religion) is a violation of the nondiscrimination provisions of the Executive order. During the onsite, the CO should be alert for any indications of such harassment. OFCCP follows Title VII principles when determining whether sexual harassment has occurred. Further guidance in this area will be issued.
- (i) Support of Local Groups; 41 CFR 60-2.13(I):
- (1) General: This Section requires that the AAP contain evidence of the contractor's active support of local and national community action and community service programs designed to improve the employment opportunities of minorities and women. Suggested criteria which may be used to evaluate the contractor's compliance with this requirement are found at 41 CFR 60-2.26. In some instances compliance can be determined at the desk audit. Often, however, contractor support of community action programs, like the development and execution of action-oriented programs, is either absent from the AAP in any specific detail, or has not been updated. The CO should ensure that the contractor's support is current.
- (2) Documentation: The CO should obtain documentation of the contractor's support of community action and service programs. If copies of checks, advertisements in brochures, or letters confirming the donation of equipment, the participation of company employees, etc., are not included in the AAP, they should be requested during the onsite. Where the contractor can provide little or no evidence of support of such programs, the CO should identify suitable programs and appropriate means of support as corrective actions. Evaluation of compliance with this requirement, and a decision to cite the contractor, requires professional judgment by the CO. Assessing the contractor's compliance in this area is similar to assessing compliance with the requirement to develop and execute action-oriented programs.
- (j) Consideration of Women and Minorities Not Currently in the Workforce; 41 CFR 60-2.13(j): The AAP must include consideration of minorities and women not currently in the workforce having requisite skills who can be recruited through AA measures. This means that, among other things, the contractor should utilize, as recruitment sources, agencies such as those which train and place in employment displaced homemakers, individuals in rehabilitation programs, and other individuals who, for one reason or another, have been out of the workforce. The CO should ask for documentation that the contractor participates in or requests employment referrals from such agencies. In addition, the contractor may also have taken action, such as establishing part-



time, job-sharing, or flex-time programs, establishing onsite day care programs, etc., to attract and retain in employment skilled individuals who would otherwise be excluded from gainful employment.

3G02 INVESTIGATION OF GOOD-FAITH EFFORTS

- (a) SCRR: During the desk audit the CO completes page 10 of the SCRR (Analysis of Affirmative Action Progress), and records any goal areas requiring further information on good-faith efforts on page 11 (Evaluation of Good-Faith Effort). If there was insufficient information at desk audit to complete page 10, the CO should complete it onsite.
- (b) Onsite Investigation: The purpose of the onsite investigation of good-faith efforts is to evaluate whether the contractor has developed and implemented plans and objectives that are likely to be effective in correcting underutilization. Good-faith efforts consist of more than merely following the same procedures which are not producing results. During the desk audit the CO evaluated the contractor's past goal attainment and progress on meeting current goals, and identified any goal areas requiring further evaluation of good-faith efforts on SCRR page 11. Part of the onsite investigation is for the CO to follow up on the areas identified on page 11.
- (c) Verification of Good-Faith Efforts: Depending on the quality of the AAP submitted for desk audit, the contractor may have provided information about its good-faith efforts. Evaluation of the contractor's good-faith efforts requires verification of that information onsite. The CO must also obtain information about additional good-faith efforts the contractor may have made. To make informed judgments about the quality of the contractor's good-faith efforts, the CO must be familiar with local community resources which can assist contractors in resolving employment problems.
- (d) Good-Faith Efforts - Internal Placements: For internal placements, good faith may include the contractor's efforts to:
 - (1) Disseminate information about internal opportunities (Are job openings posted? If so where, when, how long, and for which jobs or classes of jobs?);
 - (2) Provide training opportunities (including apprenticeship programs, on-the-job training, tuition reimbursement);
 - (3) Provide counseling and encouragement to minority/female employees to apply for internal openings;



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- (4) Recruit externally into feeder job groups; and/or
- (5) Review selection criteria and selection procedures with responsible officials and managers to ensure that they are familiar with the contractor's EEO policies, that the selection criteria are applied in a nondiscriminatory manner, and that the selection criteria do not have a discriminatory impact.
- (e) Good-Faith Efforts - External Placements: For external placement opportunities, investigation of the contractor's good-faith efforts may include:
- (1) Whether, when, and how the contractor uses the recruitment sources for minorities and women listed in its AAP;
- (2) Whether the contractor uses other recruitment sources for minorities and women not listed in its AAP;
- (3) The contractor's use of publications (or other media) which target minorities and women, where these are available, and how employment openings are advertised; and
- (4) Whether the contractor recruits at high schools, colleges, and universities which enroll large numbers of minorities and women.
- (f) Applicant Flow Records: These may provide useful documentation about the effectiveness of the contractor's good-faith efforts, as can internal bid lists or sign up sheets for posted job openings.
- (g) Audit of Employment Activity: An essential part of the contractor's demonstration of good faith is that it audits its employment activity to ensure progress toward meeting its goals. If the contractor has no auditing procedures, this is a definite indication of lack of good-faith efforts.
- (h) Verification/Documentation: The CO should document his/her evaluation of a contractor's good-faith efforts by including in the case file copies of correspondence, job orders, bid lists for posted job openings, contractor recruiting manuals, relevant pages from labor agreements, employee manuals, summaries of conversations and interviews with contractor representatives, recruitment source contacts, minorities and women, and other employees. The CO must verify compliance by contacting at least some of the organizations listed in the AAP to confirm contractor contact.
- (i) Linkage: Linkage is the process of connecting contractors with appropriate recruitment and/or training sources. When the contractor is underutilized and there are recruitment/training resources that are able to assist the contractor, the CO will attempt to execute a linkage agreement with the contractor. (See Section 3J of this Chapter for a complete explanation of linkages.)



3H COMPLIANCE WITH GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN - 41 CFR PART 60-50

3H00 GENERAL

Although the AAP need not include a reference to compliance with 41 CFR Part 60-50, contractor compliance with this Part is required and must be investigated during the onsite phase of the review. The contractor's policy statement should be read to see if it includes reference to nondiscrimination and AA based on religion and national origin, as well as on other covered group status. See Section 3H03 below for a discussion of implementation of nondiscrimination on the basis of religion and national origin.

3H01 EMPLOYMENT PRACTICES - AFFIRMATIVE ACTION

The regulations at 41 CFR 60-50.2(b) provide that the contractor must review its employment practices to determine whether members of the various religions and/or ethnic groups are receiving fair consideration for job opportunities. If the contractor concludes as a result of its review that a problem exists with respect to any religious or ethnic group, then the contractor is required to undertake appropriate outreach and positive recruitment activities. The CO will ask the contractor whether a review of its employment practices has been conducted for this purpose, and if so, when, how, and if the review was documented. In making this assessment, the CO should keep in mind that the scope of the contractor's efforts depends on a review of all circumstances, including the nature and extent of identified deficiencies, as well as the size and resources of the contractor. If the contractor has not undertaken such a review, the contractor will be cited for the violation. If the review was undertaken, verify its results and the sufficiency of any corrective actions implemented by the contractor. Summarize the results of the investigation on page 12 of the SCRR.

3H02 REASONABLE ACCOMMODATION

Section 41 CFR 60-50.3 requires the contractor to accommodate the religious observances and practices of its employees and prospective employees unless it can demonstrate that it is unable to reasonably accommodate a particular practice or observance without undue hardship on the conduct of its business. In interpreting the extent of the contractor's obligation to make reasonable accommodation on religious grounds¹, OFCCP will follow Title VII principles. Further guidance on religious accommodation will be issued. The CO should ask the contractor whether and how it has made accommodation to the religious observances and practices of its employees. If the contractor professes not to know of any specific accommodations made, the CO should review procedures available for evaluating such requests. Also, in

¹ It should be noted that Title VII standards on religious accommodation are not the same as those for accommodation under Section 503 of the Rehabilitation Act.



reviewing employee files, the CO should be alert for any pattern of terminations based on refusal to work on the Sabbath or to work overtime on certain days based on religious observances.

3H03 POTENTIAL RELIGIOUS/ETHNIC EMPLOYMENT DISCRIMINATION

When conducting interviews, reviewing employee listings, applicant flow logs, applications, or personnel files, the CO should make an attempt to identify individuals as covered group persons based on religion or national origin. If the CO suspects a problem; e.g., there appear to be a significant number of applicants of Middle Eastern descent, but few or none are hired; or there appear to be a significant number of employees of a particular religious or ethnic group, but few or none in management, the potential problem should be investigated. In investigating such potential discrimination, the CO should apply the guidance given in Sections 3K through 3Q of this Chapter. Where the investigation identifies issues peculiar to religious or national origin discrimination that are not covered in 41 CFR Part 60-50 or in Sections 3K through 3Q, OFCCP will follow Title VII principles. Also see Chapter 7, Section 7E10, for a discussion of discrimination based on manner of speaking or accent related to national origin.

3H04 COMMUNITY CONTACTS

As part of the onsite, or during the desk audit, the CO may wish to identify organizations representing the interests of various nationalities or religious groups located in the labor area serving the contractor's facility. The CO may find it useful to contact such groups for information about possible employment problems experienced by their members who have applied for employment with the contractor.

3I 503/4212 COMPLIANCE

3I00 INVITATION TO SELF-IDENTIFICATION

- (a) General Requirements: Sections 41 CFR 60-250.5(d) and 41 CFR 60-741.5(c) (1) require that covered contractors invite all applicants for employment and all employees to identify themselves as individuals with disabilities, special disabled veterans, or veterans of the Vietnam era. The invitation must state that the information is provided voluntarily, that it will be kept confidential, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with the Act(s) and the regulations at 41 CFR Part 60-250 or 41 CFR Part 60-741. The contractor should also seek advice from persons so identifying themselves regarding proper placement and appropriate accommodation. Has the contractor invited employees and applicants to self-identify? Has the contractor sought advice on



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- appropriate placement and accommodation? How? When? What were the results? A copy of the invitation should be obtained if it was not provided in the AAP(s).
- (b) Results of the Invitation: Is the contractor able to identify individuals with disabilities, special disabled veterans, and/or veterans of the Vietnam era in its workforce or members of these groups who terminated since the start of the prior AAP year? What was the source of the information for the contractor?
- (c) Identified Individuals: For each of the foregoing persons, or a sample thereof, identified as having a disability (special disabled veteran or Vietnam era veteran) the CO should ask the contractor to describe the individual's disability and any accommodations made to that disability.
- (d) Review of Applications: COs should review application forms for compliance with the regulations. For example, a request on an employment application for information on disabilities, or for status as a Vietnam era veteran, constitutes an invitation to self-identification and must comply with the requirements of 41 CFR 60-250.5(d) and 41 CFR 60-741.5(c) (1); i.e., it must state that the information is provided voluntarily, etc. If the request does not comply with these requirements, it is not acceptable and must be changed.
- (e) Evaluation of Accessibility: The CO's report (see SCRR, page 13b) should include an evaluation of the accessibility of the personnel process to individuals with disabilities (particularly those with mobility impairments) as well as specific examples of individual accommodations made by the contractor. Where the personnel process is found to be inaccessible to individuals with disabilities or special disabled veterans, corrective action may include having a site survey done to determine what steps can be taken to improve accessibility.
- (f) Compliance with the Listing Requirement: Contractors covered by the regulations at 41 CFR Part 60-250 are required to list all "suitable employment openings" (as defined at 41 CFR 60-250.4(h)) with the appropriate local office of the State Employment Service (SES). The CO will have contacted the local SES office prior to the onsite and requested confirmation that the contractor has listed its employment openings with that office. Wherever possible, the CO should obtain from SES a listing of the job orders placed by the contractor, by job title and date. The CO should then compare the SES list with a list of jobs the contractor has filled through new hire, identify any such jobs not listed, and determine whether they should have been listed given the regulatory definition of "suitable employment openings (above)."

3101 AAP COMPLIANCE (SECTIONS 503/4212)

Covered contractors are required to prepare, maintain, and update on an annual basis, AAP(s) covering individuals with disabilities, special disabled veterans, and veterans of the Vietnam era. The regulations at 41 CFR 60-250.6 and 41 CFR 60-741.6 describe the required contents of such programs. The CO,



having reviewed the contractor's 38 U.S.C. 4212 and Section 503 AAP(s) for acceptability during the desk audit, must investigate the contractor's implementation of those requirements. Problems found with various elements of the AAP(s) should have been reported on page 4 of the SCRR and explained on page 9. Problems listed on these pages which were not resolved by the conclusion of desk audit need to be resolved onsite. In addition, page 13 of the SCRR on implementation of the 503/4212 requirements must be completed.

- (a) Proper Consideration of Qualifications: 41 CFR 60-250.6(b) and 41 CFR 60-741.6(b) require that contractors review their personnel processes to determine whether present procedures assure careful, thorough, and systematic consideration of the job qualifications of known individuals with disabilities, special disabled veterans, and veterans of the Vietnam era for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available.
- (1) Personnel Processes Reviewed: Does the contractor's AAP state that personnel processes are reviewed to ensure that the job qualifications of individuals with disabilities and covered veterans are considered? How is this done? What documentation can be provided?
- (2) Use of Procedures in Appendices: Does the AAP state that the procedures in Appendices B (41 CFR Part 60-250) and/or C (41 CFR Part 60-741) are utilized; e.g., personnel files annotated regarding consideration for opportunities? Review applications and personnel files of individuals with disabilities and covered veterans for implementation.
- (3) Use of Relevant Portions of Military Service Record: Under the requirements of 41 CFR 60-250.6(b), a contractor must consider only that portion of a covered veteran's military record which is relevant to the job for which the veteran is being considered. In addition to being addressed in the AAP, the CO must determine how the military records of applicants (including discharge information) are used by the contractor. Is military service or discharge information requested on applications? If so, does the information requested conform to this requirement? How is the information used?
- (4) Adequacy of Present Procedures: Does the contractor assert that present procedures are adequate? If so, can the contractor demonstrate that individuals with disabilities and covered veterans are afforded hire and promotional opportunities?
- (b) Physical and Mental Qualifications: Contractors are required by 41 CFR 60-250.6(c)(1) and 41 CFR 60-741.6(c)(1) to provide in their AAP(s) (and to adhere to) a schedule for the review of all physical and mental job qualification requirements to insure that, to the extent qualifications tend to screen out qualified individuals with disabilities or covered veterans, they are job related and are consistent with business necessity and the safe performance of the job.



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- (1) Purpose of Review: The purpose of such a review is to eliminate those physical and mental job qualification requirements which tend to screen out qualified individuals with disabilities or special disabled veterans and which are neither job related nor consistent with business necessity and safe performance of the job.
 - (2) No Review Conducted: Where no review has been conducted, the schedule must provide for a review of all physical and mental job qualification requirements.
 - (3) Past Review: Where a review has been conducted in the past, the schedule in the AAP should indicate this. It should also state that subsequent reviews of physical and mental job qualification requirements will occur as working conditions change. Increased automation in the work place, for example, can trigger a need to review job qualification requirements. Some contractors do conduct a review of all job qualification requirements on a regularly scheduled basis. This may be true, for example, for jobs in the blue collar sector, which may be reviewed in accordance with labor agreement negotiations.
 - (4) Continuing Review: Job qualification requirements may be reviewed on a continuing basis; e.g., as jobs come open, often as part of the process of confirming and/or updating their duties, skills and experience required, and compensation.
 - (5) Confirming Results of Review: Where a contractor states that a review has been conducted, the CO should ask for copies of position descriptions from both the blue- and white-collar sectors (including, for the latter, positions covered by the overtime provisions of the Fair Labor Standards Act and those which are not, usually referred to as "non-exempt" and "exempt" positions, respectively).
 - (i) The CO should determine when the descriptions were written or last updated.
 - (ii) Are there qualification requirements which would tend to screen out qualified individuals with disabilities or special disabled veterans?
 - (iii) Are they required by business necessity or safety?
 - (6) Positions Without Written Descriptions: The CO should obtain the contractor's explanation for how job qualification requirements are reviewed for positions which do not have written descriptions.
 - (7) Failure to Review: If, after review of position descriptions and discussion with the contractor, the CO determines that the contractor has not reviewed all physical and mental job qualification requirements, the extent of the contractor's noncompliance should be identified; e.g., has no review been conducted, or have only certain positions undergone review, and corrective action steps developed.



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- (8) Qualification Which Would Tend to Screen Out Qualified Individuals With Disabilities or Special Disabled Veterans and Which Are Not Required by Business Necessity or Safety: If the CO identifies any qualifications which would tend to screen out qualified individuals with disabilities or special disabled veterans and which are not required by business necessity or safety, corrective action steps should be developed and the CO should identify any individuals with disabilities or special disabled veterans who were improperly screened out and seek appropriate make-whole relief for such individuals.
- (c) Pre-Employment Medical Examinations: Contractors are permitted by 41 CFR 60-250.6(c)(3) and 41 CFR 60-741.6(c)(3) to conduct comprehensive medical examinations prior to employment. The results of such examinations, however, may be used only in accordance with the requirements of the regulations.
- (1) Are Examinations Conducted: The CO must determine whether or not the contractor conducts such examinations (or otherwise inquires into an applicant's physical or mental condition prior to employment).
- (2) Use of Information: If pre-employment physical examinations or inquiries are conducted, the CO must determine what use is made of the information obtained.
- (i) Persons who make placement decisions based on medical information should be interviewed.
- (ii) The CO should ask the contractor for the names of persons, if any, who, as the result of a medical examination, were placed in different positions from those for which they originally applied. These individuals should be interviewed if appropriate.
- (iii) The CO should ask the contractor when in the hiring process the medical examination is conducted. Is it given to all applicants or only to those referred? If the latter, anyone disqualified by the examination was presumably disqualified because of the examination.
- (iv) In reviewing the applications of unsuccessful applicants, the CO should determine whether the contractor has refused employment to persons who have undergone medical examinations. The CO should request the medical information as well as the application form, since the basis for rejection might not be apparent from review of the applications alone.
- (v) The CO should make special note of any applications showing possible disabilities or medical conditions likely to have affected employment; e.g., back



injuries, epilepsy. The CO should request, review, and evaluate the reasons given for failure to hire.

- (3) **Confidentiality Requirement:** Whenever a contractor inquires into an applicant's or employee's physical or mental condition or conducts a medical examination prior to employment, or change in employment status, information obtained as a result should be kept confidential, except it may be made available to supervisors and managers, first aid and safety personnel, and Government officials investigating compliance with the Act(s). The CO should make an assessment of acceptability of the contractor's system for maintaining confidentiality of medical information.
 - (4) **Drug and/or Alcohol Screening:** Discussion of drug and/ or alcohol screening is reserved for future guidance.
- (d) **Accommodations to Physical and Mental Limitations of Employees:** Contractors are required by 41 CFR 60-250.6(d) and 41 CFR 60-741.6(d) to make reason-able accommodation to the physical and mental limitations of individuals with disabilities and special disabled veterans, unless the contractor can demonstrate that such accommodation would impose an undue hardship on the conduct of its business. This obligation exists regardless of whether the applicant or employee has responded to an invitation to self-identify, if the contractor knew of the individual's disability. In determining the extent to which a contractor is obligated to make accommodations; i.e., whether an undue hardship would be created, such factors as business necessity and financial costs and expenses may be considered. In addition to work place modifications, actions such as the provision of part-time work, flexible hours, changes in job duties or transfer/return to light-duty jobs, as well as the construction of ramps, lowered work tables, etc., when taken on behalf of specific individuals with disabilities or special disabled veterans, constitute accommodations.
- (1) **Interview Individuals with Disabilities and Special Disabled Veterans:** The CO should interview individuals identified as disabled, including not only those identified by the contractor, but also individuals whom the CO may observe during the facility inspection, to determine what, if any, efforts have been made by the contractor to provide reason-able accommodations. The CO should obtain a description of any accommodations made (or needed).
 - (2) **Additional Accommodations:** Where additional accommodations are determined to be necessary, they should be discussed with the contractor. Where the CO is aware of financial incentives available which may offset some or all of the costs of accommodations, the contractor should be provided with this information. Accommodations are not required in those situations where an individual with a disability is qualified without the need for accommodations.



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- (3) Post-Hire Disabilities: The CO may find that accommodations involve employees who have become disabled or acquired a disability after employment. The degree of severity of a disability or disability may also change over time. Guidance on job reassignment as an accommodation is presently reserved but will be provided in the future.
- (4) Report of Results: The CO's onsite report should recap the results of the investigation of the contractor's compliance with the accommodation requirements (See SCRR, page 13b).
- (e) Compensation: The AAP must affirm that, in offering employment or promotion to individuals with disabilities, special disabled veterans, or veterans of the Vietnam era, the amount of compensation offered is not reduced due to their receipt of any disability income, pension, or other benefit received from another source. To verify compliance with this requirement, the CO can request the files of identified individuals with disabilities and/or special disabled veterans, along with those of persons without disabilities in the same job titles, and compare their compensation.
- (f) Outreach, Positive Recruitment, and External Dissemination of Policy: The AAP(s) must affirm that the contractor reviews its employment practices, and must describe the appropriate outreach and recruitment activities undertaken as a result of such reviews. The CO must verify during the onsite:
- (1) That the contractor has reviewed its employment practices; and
 - 2) That it has, as a result of such review, actually engaged in outreach and positive recruitment activities.
 - (i) Implementation of Affirmative Action Obligations: The regulations at 41 CFR 60-250.6(f) and 41 CFR 60-741.6(f) provide guidance for the CO in evaluating the contractor's outreach and positive recruitment activities. The CO should be prepared to draw conclusions as to the adequacy of those efforts, and to document the conclusions with specific examples.
 - (ii) Relationship to Linkage: Outreach and positive recruitment may also include linkage. Linkage for individuals covered by the provisions of 38 U.S.C. 4212 or by Section 503 of the Rehabilitation Act of 1973, as amended, should be considered when review of applications and/or applicant flow logs indicates there are few or no applicants who are individuals with disabilities, Vietnam era and/or special disabled veterans, and the contractor has failed to identify and/or monitor applications from such persons, or the contractor has no effective outreach and recruitment program. The CO should be prepared to refer the contractor to



groups which serve individuals with disabilities, Vietnam era and/or special disabled veterans (see Section 3J01).

- (g) Internal Dissemination of Policy: The AAP must address the contractor's procedures for internal dissemination of its affirmative action policy. Sections 41 CFR 60-250.6(g) and 60-741.6(g) describe ways in which contractors may accomplish this objective. The methods used by the contractor to disseminate its policy must be set out in its AAP(s). The CO must verify that these measures are actually implemented while onsite. The CO should obtain documentation and verify through interviews that the meetings have taken place and the policies discussed thoroughly. An evaluation, of the adequacy of the contractor's efforts to disseminate its policy internally should be made in the onsite report, reported on page 13a of the SCRR, and supported by documentation reviewed. The effectiveness of the contractor's methods of internal dissemination can also be evaluated, in part, from the participation of individuals with disabilities, special disabled veterans, and veterans of the Vietnam era in promotions and in training programs.
- (h) Responsibility for Implementation: The CO should obtain documentation of the contractor's compliance with the requirements regarding the establishment of responsibility for implementation of its program. The regulations at 41 CFR 60-250.6(h) and 41 CFR 60-741.6(h) should be used in evaluating the contractor's efforts to comply. The contractor must appoint an executive to serve as director or manager of the company affirmative action activities. That individual should be interviewed. The interview should identify the specific responsibilities and authority assigned to that individual, determine how those responsibilities are carried out, and how performance is assessed. Documentation, such as a copy of the individual's position description, or copies of reports prepared, should be obtained.
- (i) Development and Execution of Action Programs: The contractor is required to develop and execute action-oriented programs. The extent of a contractor's efforts in this regard will depend on the results of its review of its employment practices. If the written AAP is detailed, the CO should review the specific actions described in the AAP with contractor personnel. Documentation for those actions where a written record is said to be maintained should be obtained. The CO should schedule interviews with employees, particularly those identified as individuals with disabilities, special disabled veterans, or veterans of the Vietnam era, to determine if such programs have affected their employment with the contractor.
- (1) Evaluation and Documentation: In assessing the adequacy of the contractor's specific action-oriented programs, the CO should be guided by the regulations at 41 CFR 60-250.6(i) and 41 CFR 60-741.6(i). While all of the elements in these regulations are not required, they do provide a means by which the contractor's efforts to comply with its AA and EEO obligations can be evaluated. The CO should determine what the contractor has done and document the case file accordingly.



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- (2) Work Place Modifications: Work place modifications, such as ramps, specially marked parking spaces, lowered work tables, etc., may be considered action steps which a contractor can take in meeting its obligations under the regulations to take AA, conduct positive outreach and recruitment, and implement action-oriented programs. In addition, such modifications made on behalf of specific individuals may be considered accommodations.
- (j) Sheltered Workshops: Contractors may not substitute contracts with sheltered workshops for their own AA efforts. Where the sheltered workshop trains employees for the contractor and the contractor is obligated to hire the trainees, such relationships may be included in the contractor's AAP(s).

3I02 AVAILABILITY OF THE AAP(s) FOR INSPECTION

41 CFR 60-250.5(c) and 41 CFR 60-741.5(d) require that the contractor post in a conspicuous place, available to both employees and applicants for employment, a notice which states that the 38 U.S.C. 4212 and Section 503 AAP(s) is available for inspection to any employee or applicant for employment, upon request. The notice must include the location and hours during which the documents may be obtained; e.g., "the AAP is available in the personnel office during regular business hours". The CO must determine whether such a notice is posted and if it meets the requirements of the regulations. The CO should address this in the onsite report.

3I03 COMPLIANCE WITH THE VETS 100 REPORT

Each contractor covered by the requirements of 41 CFR Part 60-250 must report, at least annually, the number of special disabled veterans and the number of veterans of the Vietnam era in its workforce, by job category and hiring location. The contractor must also report the total number of new employees, special disabled veterans, and veterans of the Vietnam era hired during the period covered by the report. The report is to be submitted to the Office of the Assistant Secretary for Veterans' Employment and Training Service (OASVETS) no later than March 31 of each year, on the form titled "Federal Contractor Veterans' Employment Report (VETS 100)." See Figure 3-3. The CO will determine whether the required report was submitted in a timely manner. Compliance with this requirement will be recorded as part of the onsite report. Noncompliance will be reported to the National Office, Division of Program Operations, for transmittal to OASVETS.

3J LINKAGE



3J00 LINKAGE UNDER EXECUTIVE ORDER AAPs

- (a) Linkage Requirement: As a routine part of a compliance review, COs are required to make community contacts to determine whether contractors have made good-faith efforts towards achieving their affirmative action objectives. In order to make this good-faith determination, the CO must have knowledge of the resources available in the community that can provide assistance to contractors in resolving employment deficiencies. Linkage involves OFCCP efforts to facilitate and encourage working relationships between contractors and community recruitment resources.
- (b) Linkage Goals:
- (1) To increase employment opportunities available to minorities, women, individuals with disabilities, and Vietnam era and special disabled veterans;
 - (2) To enhance the effectiveness of OFCCP's compliance activities by providing COs with additional recruitment sources which may be recommended to contractors;
 - (3) To assist Federal contractors in meeting their affirmative action hiring and promotion goals; and
 - (4) To increase cooperation between private-sector employers and community-recruitment resources.
- (c) Where Linkage Is Required: Linkage is the successful outcome of a process wherein Federal contractors agree to contact recruitment/referral sources which are likely prospects for helping the employer acquire applicants from the covered groups. Such efforts will be made with contractors who are undergoing compliance reviews, the findings of which reveal that the contractor has made insufficient good-faith efforts at generating appropriate applicants to meet affirmative action needs. Before contractors are urged to use such resources, those organizations will be contacted to affirm that they may be of assistance.
- (d) Implementation of Linkage: Where linkage is required, the following actions will be taken by all COs to establish linkage during the normal course of a compliance review:
- (1) The CO will identify those job groups in the contractor's workforce where goals were established and there was employment activity, but the goals were not met.
 - (2) The CO will evaluate the contractor's good-faith efforts to identify possible sources for minorities and women for those underutilized job groups where there was activity and the goals were not met.



- (3) The CO will contact all appropriate linkage resources to obtain specific information on availability of applicants and potential trainees for positions in the areas of underutilization. If possible, the CO will arrange a meeting between the recruitment/referral resources and the contractor.
- (4) Where a resource indicates that it can provide applicants or trainees, the CO will include the contractor's commitment to utilize the linkage source along with other actions in the LOC or CA.
- (5) Semiannual progress reports will be required under CAs and/or LOCs. These reports will contain:
 - (i) Total hire activity by job group, broken out by sex, race, and other covered group status; and
 - (ii) Total hire activity and number of persons referred for each linkage source agreed to in the CA or LOC, broken out by sex, race, and other covered group status.
- (e) Where Linkage Is Not Required: Regardless of recruitment sources being used, if a contractor's utilization approximates availability for a given job group, then availability of minorities/ women would not appear to be a problem and the CO is not required to propose any linkage activity. Linkage is also not required if, after community resource files are reviewed and appropriate contacts are made with potential recruitment/referral sources, those sources indicate that they are unable to provide assistance.

3J01 LINKAGE FOR INDIVIDUALS WITH DISABILITIES AND COVERED VETERANS

- (a) When Linkage Is Required: Linkage involving recruitment/referral sources for individuals with disabilities, Vietnam era veterans, and special disabled veterans is necessary when:
 - (1) Review of employee records, applications and/or applicant flow logs shows that there are few or no employees or applicants who are members of these covered groups (this is usually coupled with failure to identify and/ or monitor applicants from these groups); or
 - (2) There are few such applicants and there is no effective outreach and recruitment for persons from these groups.
- (b) Resolution Documents: Linkage effected for individuals with disabilities and covered veterans will be included in a CA or LOC, as appropriate.



3J02 CONFIRMATION LETTER

At the conclusion of the review, the CO will send a letter to the linkage sources notifying them of the agreement with the contractor. A copy will be sent to the contractor. Also, a copy of the letter will be maintained in the case file. (See Figure 3-4 for a sample letter.)

3J03 VOLUNTARY (INFORMAL) LINKAGE

COs should discuss with the contractor any appropriate recruitment/referral sources that the contractor is not utilizing even though a linkage is not required.

3K EMPLOYMENT DISCRIMINATION - GENERAL

3K00 INTRODUCTION

- (a) Material Covered: This Section concerns investigative techniques for employment discrimination. It concentrates on the processes used onsite to gather relevant facts and how to analyze those facts to determine whether they prove discrimination. The theoretical bases for the discrimination proofs are covered in Chapter 7. The SCRR Potential Discrimination Worksheets and their instructions, which are designed to illustrate the investigative process discussed in this Chapter, are provided in Appendix 3A. Remedies are described in Chapter 7.
- (b) Applicability: The remainder of this Chapter is primarily applicable to identifying employment discrimination in selections under Executive Order 11246. The techniques discussed apply to discrimination based on minority status (as defined in (d) below), sex, and, where data are available and discrimination suspected, can be applied to discrimination in selections based on religion or national origin (see Section 3H03). While some of the techniques can be used in cases based on disability or covered veterans status, these cases generally do not involve quantitative analysis and often do involve unique issues--such as whether a person meets the statutory definition of "disability," or the contractor's obligation to make reasonable accommodation--that are beyond the scope of this Chapter (see Chapter 6). Also note that use of the phrase "members of a minority group and women" is used as a shorthand term and is not meant to imply that other groups such as nonminority/males are not protected from employment discrimination.
- (c) Title VII Principles: It is OFCCP policy, in conducting analyses of potential discrimination under the Executive order, to follow Title VII principles.



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- (d) Use of Term Minorities: Minorities are those minority groups for whom EEO-1 reporting is required; i.e., Blacks, Hispanics, Asians/Pacific Islanders, and American Indians/ Alaskan Natives. As used in onsite analysis of potential discrimination issues, minorities means the particular minority group or groups for whom a problem has been identified (see Sections 3K03(a)(2) and 3K03(b)(2) below).
- (e) Use of Term Statistical Significance: The term statistical significance relates to the likelihood a result occurred by chance. Normally, if that likelihood is 5% (.05) or less, the result is considered statistically significant. In an employment discrimination case, what is often being compared is a disparity in selection rates, wages, etc., for members of a minority group/ women vs. others. Where that disparity is statistically significant at the .05 level; e.g., would occur by chance only 5% of the time or less, there is a good probability that some other factor (potentially discrimination) caused the disparity.
- (1) Normal Measurement: In most instances, the formula provided in Appendix A (SCRR Worksheet 17-12a) may be used. This formula yields the number of standard deviations in the difference between the selection rates, etc., for the groups being examined. The 5% level noted above is approximately equal to 2 standard deviations.
- (2) Measurement with Small Numbers: Where the numbers being examined are small, the standard deviation measurement described above may not be meaningful. More specifically, if the number of total persons (minority group members/women plus others) in the pool (of applicants, of candidates) is less than 30 and the number of expected minority/female selections is less than 5, a small numbers test (preferably Fisher's exact) should be used. The number of expected minority/ female selections may be found by multiplying the overall selection rate by the number of minority/female candidates (see IRA instructions in Appendix 2A for examples). Where the analysis being conducted meets these two conditions, the CO should contact appropriate AO/RO personnel, and ask that a Fisher's exact test (which has been supplied in a computer program) be run on the data. Rather than yielding the number of standard deviations, Fisher's exact directly measures the probability that a difference in selection rates, etc., would occur by chance. Therefore, a Fisher's result of 5% (.05) or less is normally considered statistically significant.
- (3) Cautionary Note on Very Large Numbers: With very large numbers, there may be statistical significance but no adverse impact (see Chapter 7, Section 7E06(b)). Therefore, if there are very large numbers in a refined IRA, go on to compute statistical significance even if there is no adverse impact.
- (4) Statistics Do Not Stand Alone: In the last analysis, all discrimination cases are evaluated on the totality of the evidence. Although statistical significance at the 5% level (2 standard deviations or .05, as appropriate) is usually needed to establish a prima facie



pattern or practice case of discrimination, where there is additional evidence of discrimination statistical significance may not be necessary. In such a case, statistical test results should still be included since the degree of difference in selection rates, etc., would be weighted along with the other evidence of discrimination.

- (f) Potential Discrimination Worksheets: Use of the SCRR Potential Discrimination Worksheets included in Appendix 3A is strongly encouraged but optional. However, the "Key Factors" given at the beginning of the instructions for each Worksheet must be addressed in the investigation if the Worksheet itself applies to the problem involved; e.g., Worksheet 17-3 applies to individual cases while Worksheet 17-4 (and some others) apply to pattern or practice cases). The organization of the remainder of this Chapter generally parallels that of the Worksheets. The "Key Factors," therefore, provide a summary of the major points discussed from here on in this Chapter.

3K01 ANALYSIS OF PROBLEM AREAS

At the conclusion of the desk audit, all areas of potential employment discrimination are listed on page 17 of the SCRR. The precision with which such problem areas could be identified at desk audit depended upon the quality of the data submitted for desk audit. Once onsite, it is usually necessary for the CO to refine the data used at desk audit to verify that the potential problem areas identified represent real issues as opposed to those growing out of confusion about the meaning of the data.

3K02 INTERVIEWING

- (a) Interview before Examining Records: It is preferable to interview contractor officials concerning their employment processes and procedures before reviewing the company records. As a general rule, the CO does not know enough about the selection processes and criteria before going onsite to make intelligent decisions about which records to examine and what to look for in the records.

The CO should inform the contractor officials, however, that it may be necessary to interview them further after examining the records.

- (b) Initial Onsite Interviews: Initial onsite interviews about potential problem areas identified at desk audit should concentrate on the employment process involved with the problem area being examined. The information gained will permit the CO to make some decisions about data refinement (discussed below) and whether to proceed on the basis of an individual case or a class case. Each discussion with contractor officials should be documented and, where possible, signed statements should be obtained (see Section 3D03(d) above).



3K03 DATA REFINEMENT

The file should explain the rationale for the CO's decisions about data refinement.

- (a) Refined Impact Ratio Analysis: At desk audit, the CO will have conducted an IRA (IRAs - see Chapter 2, Section 2O and the instructions for SCRR page 15) to identify areas where employment activity should be investigated further onsite. However, data provided for desk audit are rarely more detailed than by job group. Job group data, while sufficient for an initial analysis, must be refined.
- (1) True Candidate Pools: Job group data may have reflected decisions for jobs with different candidate pools. For example, hires into a Scientist II job group may include Chemists and Physicists, and would need refinement to compare Chemist applicants with Chemist hires and Physicists applicants with Physicist hires. (Please note, however, that refinement may also increase the pool; e.g., it may be found that several entry level job groups draw from the same applicant pool. Also, job group data may contain persons who applied/became eligible for selection after the date of the last selection. It is, therefore, usually necessary to refine data so that they reflect selection for jobs with similar qualification requirements from among persons who were in the pool when the selections occurred. (See SCRR Worksheet 17-1 and the accompanying instructions for further examples.)
- (2) Particular Minority Group: If the adverse IRA under investigation is for minorities in the aggregate; i.e., the CO has not already narrowed the focus to particular minority groups--see Chapter 2, Section 2O02, it should now be refined to determine for which minority group(s) selection is adverse, and subsequent analyses focused on that group(s). (See the instructions for SCRR Worksheet 17-1 for further guidance.)
- (3) Lack of Data: If the contractor has not maintained records sufficient to permit refining the IRA to identify the job title(s) for which selection was adverse, the CO should cite the contractor for a violation of 41 CFR Part 60-3. See Chapter 2, Sections 2G14(d), 2H01 (a) for a discussion of 41 CFR Part 60-3 data requirements. If the job group is underutilized for the group for whom the IRA is adverse (and/or titles within the group are underutilized), the CO should also specifically cite 41 CFR 60-3.4D which permits OFCCP to draw an inference of adverse impact where such underutilization is present and the contractor has failed to maintain the required data.
- (b) Refined Concentrations/Underrepresentations: On SCRR page 14, the CO recorded results of his/her review of the workforce analysis for concentrations and underrepresentations. Such employment patterns may have developed at any time in the past. The purpose of SCRR Worksheet 17-2 is to determine whether factors contributing to those patterns continued into the



normal liability period; i.e., for a compliance review, the two-year period preceding the contractor's receipt of the Scheduling Letter.

- (1) Openings and/or Potentially Discriminatory Policy: During the normal liability period:
 - (i) Were there openings in underrepresented job area(s) that have similar qualification requirements to areas where members of a minority group or women are concentrated; or
 - (ii) Was there an employment policy or system in effect that served to create or maintain the concentration? (An analysis for similar factors may also be done for areas where there is underrepresentation but no associated concentration.)

If there was no such activity or policy in effect into the normal liability period, the area need not be pursued further for potential discrimination. (See the instructions for SCRR Worksheet 17-2, and the discussion of continuing violations in Chapter 7, Section 7B01.)

- (2) Particular Minority Group: If the workforce pattern under investigation is reachable during the normal liability period (per (1) immediately above) and is for minorities in the aggregate; i.e., the CO has not already narrowed the focus to particular minority groups--see Chapter 2, Section 2N00, it should now be refined to identify the particular minority group(s) that are concentrated/underrepresented in the area. Subsequent analyses will then be focused on that group(s).

3K04 EMPLOYMENT DISCRIMINATION THEORIES

While the following discussion frequently mentions the two major theories of employment discrimination (disparate treatment and disparate impact), it is important to note that there are no rigid guidelines on when the particular theories are used. In order to provide structure to the investigation and for ease of analysis, this Chapter recommends that objective criteria be analyzed first and that subjective criteria be addressed only where the objective criteria do not account for the bottom-line effect (see Sections 3M02, 3M03, and 3O00). Also, this Manual generally discusses the disparate impact theory in relationship to objective criteria rather than to subjective criteria although both impact and treatment theories may be applied to subjective criteria. The U.S. Supreme Court in Watson v. Fort Worth Bank & Trust, ___ U.S. ___ (June 29, 1988), stated that "...subjective or discretionary employment practices may be analyzed under the disparate impact approach in appropriate cases." COs should concentrate on developing sufficient facts to show that the problem being investigated was caused by discrimination and not become overly concerned about the theory of discrimination involved. (See Chapter 7 for a complete discussion of the different proofs.)



3K05 INDIVIDUAL VS. PATTERN OR PRACTICE

The first step in analyzing a problem area is to determine whether it involves an "individual" or "pattern or practice" problem. The investigative processes and, to some extent, the methods of proof, differ for individual and pattern or practice cases.

- (a) Identifying Individual Cases: Individual cases are those which are based upon what happened to an identified individual. The most common way to develop an individual case is to reconstruct the selection decision and make one-on-one comparisons of candidates (cohort analysis). The decision about whether a case is individual or pattern or practice is based primarily upon whether a properly refined IRA or other analysis shows a statistically significant difference in selection rates, wages, etc., using a statistical test appropriate to the numbers involved (see Section 3K00(e) above)².

However, where the essence of the case is suspected discrimination against a few identified individuals, an individual analysis is more appropriate. Contractors are given initial notice of individual discrimination in a NOV (see Section 3T below).

- (b) Identifying Pattern or Practice Cases: Pattern or practice cases are based upon the contractor's regular or normal way of making employment decisions. Pattern or practice cases look at how members of a minority group or women, as a group (as opposed to individual members of a group), are affected by the contractor's policies and practices. A few individual, isolated cases of discrimination do not make a pattern or practice. The usual way to establish a pattern or practice case is through the use of statistics to show the "impact" of the contractor's employment policies or practices and/or a statistical analysis of the "treatment" of members of a minority group or women by the contractor. For example, in a statistical disparate treatment pattern or practice case, the difference between the selection rate of members of a minority group/women and others is extreme enough to, in itself, suggest discrimination. "Extreme enough" in this context means statistically significant. (See discussion of statistical significance in 3K00(e) and in Chapter 7.) Contractors are given notice of a pattern or practice case in a Predetermination Notice (see Section 3P).
- (c) Series of Cohorts: A series of cohorts (see Section 3K05(a) above) alone does not usually establish a pattern or practice case. A series of such cohorts is a perfectly legitimate basis for seeking relief for the specific individuals involved. It does not, however, automatically create a presumption that any other members of the minority group or any other women were also potential victims.

² Some cases, however, are inherently pattern or practice regardless of any statistics or the number of persons affected--such as a case based on a specific policy; e.g., a discriminatory maternity leave policy.



- (d) Discrimination Victims in Pattern or Practice Cases: Once a pattern or practice is established, the CO does not need to show that each minority/female was a victim. The presumption is that each was, unless the contractor can show otherwise, by demonstrating, for example, that there was no job opening at the time the individual applied, that a better qualified person was selected, or any other legitimate nondiscriminatory reason. A pattern or practice case, therefore, always has the potential of securing more relief than a series of individual cases, and is the preferred approach where a potential class of members of a minority group or women is involved. Normally, if a properly refined IRA is adverse and the numbers are sufficiently large, a pattern or practice approach should be attempted (see further discussion of this matter in Chapter 7).
- (e) Efficiency in Choice of Case: Whether to proceed on an individual or a pattern or practice basis is also a matter of practical judgment. Where the number of selections/persons in the pool is relatively small, the most efficient use of review time may be an individual analysis. Where, however, the number of selections/ persons in the pool is large, a pattern or practice analysis is normally more efficient than going through the files/ other data to reconstruct each selection decision on a case-by-case basis.

3L INDIVIDUAL-TYPE DISCRIMINATION

3L00 MATERIAL COVERED

The detailed steps to follow in investigating individual-type discrimination cases are set out on SCRR Worksheets 17-3a and 17-3b. Also, see the instructions that accompany those SCRR pages. The material contained in the following sections is more general in nature.

3L01 IDENTIFYING THE EMPLOYMENT PROCESS

In most selection decisions there are several candidates competing for a particular job opening, and their relative qualifications are compared to determine who is the best qualified. Therefore, the CO should obtain from the EEO Coordinator and/or main selecting official both:

- (a) The minimum objective criteria a person must meet to be considered; and
- (b) What factors are most important in choosing among those who meet minimum standards.

Some selection decisions, however, are not dependent on an opening. Rather than competing with others, a person is supposed to be selected as soon as he/she individually meets a given standard. This is most



common in career ladder promotions. In these cases, the CO need only obtain the minimum objective criteria.

3L02 EVALUATION FOR INDIVIDUAL DISPARATE IMPACT

Before beginning the analysis, examine the stated selection criteria. In an individual type analysis, a criterion may have been applied only to one or a few persons and, thus, the contractor's data may show no significant adverse impact. The criterion, however, may have a foreseeable adverse impact on a minority group(s) or women based on wider societal data. For example, given national statistics on height, a minimum height requirement of 6 feet would have a foreseeable adverse impact on women, Hispanics, and Asians. If a minority/woman is rejected because of a criterion with such foreseeable impact, it is an individual disparate impact case. The minority/woman is due relief unless the contractor can show evidence of job relatedness or business necessity (see Chapter 7, Section 7E). If no minority or woman was rejected because of the criterion with foreseeable adverse impact, the contractor should be informed that it must be pre-pared to justify use of the criterion as job related or required by business necessity if the criterion does eliminate members of a minority group or women in the future.

3L03 EVALUATION FOR INDIVIDUAL DISPARATE TREATMENT

- (a) Records: Obtain the records necessary for the analysis (usually the applications of the minority group members or women rejected and of others selected). The minimum information needed from these records is:
- (1) The date each minority or woman applied (if application is not a part of the process, enter the date he/she entered the source group for selection for hire, promotion, etc.);
 - (2) The date each nonminority/male was selected; and
 - (3) The level of each person's qualifications on the contractor's objective criteria. (It is not necessary to consider the contractor's subjective criteria at this stage. The concern is to establish that the minority group member or woman not selected was at least as well qualified as the person selected on the basis of objective qualifications. It is up to the contractor to raise any subjective elements as a response to the case. The differences between objective and subjective criteria are discussed below.)
- (b) Analysis: Compare each minority's/woman's level of qualifications on the contractor's objective criteria with those of nonminorities/males selected when he/ she was in the candidate pool. If the minority or woman was equally or better qualified than one or more of those selected when



he/she was in the pool, ask the contractor the reason why the nonminority/male was selected (SCRR Work-sheet 17-3a).

- (c) **Contractor's Response:** SCRR Worksheet 17-3b is used to record and evaluate the contractor's explanation of why the nonminority/male was selected. The usual response in this type of case is that the person selected was better qualified or there was some impediment to the selection of the minority or woman. These responses are referred to as the contractor's articulated nondiscriminatory reasons. If the contractor offers a response, then the CO must determine whether the response is a pretext.
- (d) **Pretext:** Pretext means that the reason offered by the contractor for selecting the nonminority/male is not true. Further investigation and analysis is usually necessary in order to determine whether the contractor's articulated reason for selecting the nonminority/male was a pretext. The investigation should determine whether the contractor's stated reason is true, evenly applied, and without disparate impact. For example, where the contractor asserts that a White male was selected for a job because he had an MA, at least three types of inquiries could be made. First, it should be determined whether, in fact, the White applicant had an MA. If not, the contractor's assertion does not explain the selection and has been shown to be a pretext. If the White does have an MA, it should be determined whether the MA requirement was evenly applied; e.g., did the Black also have an MA and/or has the contractor consistently preferred applicants with an MA in similar employment contexts? This is a disparate treatment inquiry and should be conducted in the same manner as other comparative disparate treatment analyses. If the MA requirement is true and is evenly applied, then the CO should consider whether it has an unjustified adverse impact; e.g., does the MA requirement have an adverse impact against Blacks and, if so, is it justified? (See the instructions for SCRR Worksheet 17-3b and Chapter 7, Section 7D05(g) for further discussion of pretext.)

3M PATTERN OR PRACTICE - GENERAL

3M00 INTRODUCTION

- (a) **Causation:** Since pattern or practice cases can involve extremely complex fact situations, it is very important to proceed with the investigation in an organized manner. It is important to never lose sight of the purpose of the investigation; namely, to determine whether the problem being investigated was caused by legitimate factors or by discrimination. The CO's objective in the investigation is to find out what caused the problem.
- (b) **SCRR:** SCRR Worksheet 17-4 may be used to record the contractor's process, the individual steps in that process, who makes the employment decisions, the selection criteria, how the criteria



are used, and the steps in the process where members of a minority group or women are disproportionately screened out. In addition, provision is made for determining whether the selection criteria are uniformly administered.

3M01 ANALYZING THE EMPLOYMENT PROCESS

- (a) Identifying and Mapping the Employment Process: The first step in the investigation is to determine how the employer's process works (Column "b" of SCRR Worksheet 17-4). This involves identification of all the steps and decision points involved in getting to the job or opportunity being investigated. The process usually will consist of things the employee/applicant must do, such as apply for the opportunity, and decision points resulting in selection, such as an interview. Once the employer's process has been identified, it is helpful to actually draw a map of it, and identify those steps at which persons may be screened out.
- (b) Identifying Pass/Fail Points: If a person must successfully pass through a certain step in the process before proceeding on to the next, that step is a pass/fail point. If data are available, each pass/fail point can be examined to see if members of a minority group or women are being disproportionately screened out. However, if people are not eliminated at separate steps but their performance at each step is weighted for a final decision, then the process as a whole is evaluated. In evaluating the process as a whole, the CO should ask the contractor to describe the importance of each step in the selection decision. Where the contractor can do so and data are available on performance at each step, the CO should accordingly weight his/her analysis to attempt to determine the particular factor(s) that disproportionately eliminated members of a minority group or women.
- (c) Identifying Problem Steps: As an example, a process may consist of:
- (1) Filing an application;
 - (2) Screening for possession of a high school diploma;
 - (3) Taking a written test; and
 - (4) Undergoing an interview during which the applicant is selected or rejected.

Applicants must demonstrate they have a high school diploma before being tested, and must pass the test before being interviewed. Assuming data are available on the total number of applicants by race/sex, the number with a high school diploma, the test results, and the results of the interview, one could determine the proportion of members of a minority group or women eliminated at each step of the process.



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- (d) Lack of Data: If it is impossible to determine at which step and/or by which criterion members of a minority group or women were disproportionately screened out because the contractor failed to maintain adequate data as required by 41 CFR Part 60-3, cite the contractor for violating that Part and do the analysis based upon the bottom line effect as provided for in 41 CFR Part 60-3. However, under such circumstances the CO should obtain as much information as possible about the process and make every effort to identify the step/criterion causing the problem.
- (e) Relevant Pools: The relevant pools for each step will be the persons who made it to that step compared with those who made it through that step. In the ex-ample in (c) above, if the CO were analyzing a bottom-line disparity in hiring rates, the CO would first consider the pool of all applicants to determine whether the high school diploma requirement has an adverse impact. If the high school diploma requirement does not fully explain the disparity in hiring, the CO would next determine whether the test disproportionately eliminated members of the minority group/women. Finally, the proper pool for evaluating the effect of the interview would be all applicants who have a high school diploma and passed the test. All such persons meet the "minimum objective qualifications" for the job. From the perspective of minimum objective qualifications, they are all similarly situated. Therefore, any difference in their selection rates would be attributable to the interview.

3M02 ANALYSIS OF SELECTION CRITERIA - SEQUENCE

Where practical, objective criteria should be analyzed before subjective criteria. Objective criteria are generally easier to analyze than subjective ones. This is because objective criteria tend to result in "hard" data; e.g., whether or not a person has a high school diploma is a straightforward determination. In addition, it is relatively simple to determine if the contractor uniformly applied an objective criterion and to assess its impact upon members of a minority group or women. Subjective decisions tend to consist of judgement calls by the contractor and can be very hard to assess. Further, if data about the application of subjective criteria are lacking, it may be possible to evaluate their effect by analyzing objective factors first. Once objective factors are analyzed, any residual disparities may be attributed to subjective criteria. Also, objective factors are usually the ones first encountered in the contractor's employment process. Where there are both objective and subjective factors, the contractor will frequently assess the subjective through an interview. However, the contractor will generally interview only persons who meet the minimum objective qualifications.

3M03 DISTINGUISHING OBJECTIVE VS. SUBJECTIVE SELECTION CRITERIA

- (a) Objective Criteria: The central characteristic of an objective criterion is that it can be independently verified; i.e., different people measuring objective criteria will normally reach the



same results. For example, if the criterion is possession of a high school diploma, there is normally no doubt whether a person meets the criterion.

- (b) Subjective Criteria: Subjective criteria require judgment in their application. Therefore, people can differ on whether a particular candidate possesses such a criterion. For example, two selecting officials can easily differ on whether a candidate "speaks with authority."

3N PATTERN OR PRACTICE - ANALYSIS OF OBJECTIVE CRITERIA/ PROCESSES

3N00 TYPICAL USES OF OBJECTIVE CRITERIA

- (a) Selections From a Pool: In a typical selection problem, the CO will be examining what caused a significant disparity in the selection rates of members of a minority group/women and others from a pool of similarly situated persons. Minimum objective criteria are generally used to determine who will get into the pool of candidates. A subjective process, such as an interview, is generally used to make selections from the pool of minimally qualified candidates.
- (b) Exclusive Use of Minimum Objective Qualifications: There could be an employment process where everyone who meets an objective criterion is selected, such as a promotion process where persons are supposed to be promoted when they have a certain amount of time in grade, or a salary review process where persons are supposed to get a raise when they receive a college degree. In this type of situation the analysis is obviously confined to the relative effect of the objective criterion.
- (c) Multiple Objective Criteria: There may be several objective criteria that are critical to a selection decision. Where there is more than one criterion, the CO must determine if the selectee must meet each criterion individually or whether the contractor balances the criteria in reaching a decision. If each criterion must be met, perform the analysis for each one. If they are balanced, analyze them in the way they are used by the contractor. The CO should remember, however, that he/she has the ultimate burden of establishing that it was discrimination that caused the problem.

3N01 CRITERIA VERIFICATION (OBJECTIVE)

The first step in analyzing the objective criteria is to determine that they were, in fact, used to make selections and were required of both members of a minority group/ women and others. This issue is addressed on SCRR Worksheet 17-5.



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- (a) Single Criterion: In some situations, this determination is rather straightforward, such as where there is a test and the contractor maintains a list of those tested and whether they passed. Assuming the test results are annotated for race/sex, a copy will readily show whether a stated pass score was uniformly required of all. However, where there are several criteria, a more detailed analysis is required.
- (b) Multiple Criteria: Where there are multiple criteria, or there is no summary re-cord available to determine whether the selectees met the criteria, the CO will need to create a summary record. This can be done by creating a "matrix" with the criteria listed across the top of a page and the names and race/sex of all persons selected during the relevant period down the left side. The CO will then go through the personnel files for the persons selected and note on the sheet whether they satisfied the criteria.
- (c) Interpreting the Results of Criteria Verification:
- (1) When the review of persons selected has been completed, review the matrix to see if everyone met the criteria. It may be concluded that the contractor did actually use the criteria if either everyone met the criteria or there were very few exceptions. If the criteria were used, analyze the criteria and their use for discrimination as discussed below.
 - (2) If a substantial number of selectees (of any race/sex) do not meet a particular criterion, the CO may discount the employer's statement that the criterion forms a basis for his/her decision.
 - (3) If the contractor used the criteria in a nonuniform manner, that is, it applied different standards to members of a minority group/women and others, this probably indicates employment discrimination based on disparate treatment, and a disparate treatment analysis should be conducted. See SCRR Worksheet 17-5 and accompanying instructions.

3N02 DISPARATE IMPACT ANALYSIS

A disparate impact³ analysis consists of two steps: calculating the adverse impact of the criterion and the statistical significance of that impact and determining whether the contractor can justify use of the criterion based on job relatedness or business necessity (see Chapter 7, Section 7E08). This Section deals with step 1. Step 2 is normally completed following issuance of a Predetermination Notice and, therefore, is addressed in Section 3Q00 below.

³ In Title VII case law the terms disparate impact and adverse impact are used interchangeably.



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- (a) Pool of Persons Used for Statistical Calculation: In an adverse impact calculation, the number of persons from each group who were assessed on the criterion is compared to the number from each group who met the criterion. This yields a pass rate for each group, and the difference in pass rates is then tested for adverse impact and statistical significance.
- (b) Identify the Nature of the Criteria: First, determine whether each objective criterion is a pass/fail requirement; i.e., it eliminates a person from further consideration if it is not met, or whether it is considered along with others to make a final decision.
- (1) Pass/Fail Criteria: For each pass/fail criterion, determine whether the difference in pass rates for members of a minority group/women and others shows adverse impact and is statistically significant. Where the pool is not sufficiently large for the usual test of statistical significance to be meaningful, see Section 3K00(e).
- (2) Cumulative Evaluation of Criteria: Where the criteria are not considered singly but balanced together in reaching a decision, determine from the contractor how it balances the criteria in making a selection. If possible, use a weighted calculation to determine which criteria are causing the adverse impact. If it is impossible to isolate the contributions of the individual criterion to the bottom line effect, calculate the cumulative effect of all the criteria. This calculation can be justified on the basis of the contractor's failure to keep records as required by 41 CFR Part 60-3.
- (c) Preliminary Findings: If the criterion(ia) shows adverse impact (as discussed in Chapter 7, Section 7E06), issue a Predetermination Notice (3P)⁴ and ask the contractor for evidence that the criterion(ia) is job related or required by business necessity.
- (d) Disparate Impact Finding and Alternatives with Less Adverse Impact: A disparate impact finding should await receipt and analysis of the contractor's response to the Predetermination Notice (3P, 3Q00(a) and (b)), and a consideration of alternative selection procedures with less adverse impact (Section 3Q00(c) below).

3N03 DISPARATE TREATMENT ANALYSIS

⁴ While still onsite, however, it is desirable to ask the contractor at least whether it has a formal validation study (and, if so, to obtain a copy and any related materials--see instructions in Appendix 3A for Worksheet 17-6b). If there is such a study, the Predetermination Notice should cite the adverse impact and indicate that OFCCP will evaluate the study.



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- (a) Pool of Persons Used for Statistical Calculation: In a disparate treatment calculation, the pool of persons who met the criterion(ia) is compared with the number who were selected. This yields a selection rate (of persons deemed "qualified" based on the contractor's legitimate objective criteria) for each group, and the difference in rates is then tested for statistical significance.
- (b) Defining the Pool: The relevant pool of similarly situated (qualified) persons used to calculate the disparity in selection rates should be the same pool from which the contractor made its selections. The relevant pool depends upon the contractor's employment process and selection criteria. For example, if the criteria were an MBA plus three years of sales experience, and the CO was comparing women to men, he/ she would divide the number women selected by the number who had an MBA and three years sales experience, then do the same for men and test the resulting selection rates for adverse impact and statistical significance.
- (1) Use of Minimum Objective Criteria: In forming the pool of "qualified" persons for this analysis, the CO need only consider the contractor's stated legitimate minimum objective criteria.
- (2) Relationship to Criteria Verification: If, as a result of criteria verification (see Section 3N01(c) above), the CO determined that a stated criterion was not used by the contractor. For example, if the contractor stated that the minimum objective criterion for a job was an MBA, but actually hired both men and women with a Bachelor's Degree in Business Administration (BSBA), the CO could either disregard the educational "requirement," or form the pool based on all persons with a BSBA.
- (c) Basis for Allegation of Statistical Disparate Treatment: In a pool of similarly qualified persons, each person has approximately the same chance of being selected. For example, if the pool of similarly qualified persons was 20 percent minority, it is reasonable to expect that, absent discrimination, approximately 20 percent of the selections from the pool would be minority. If the difference in selection rates among similarly situated members of a minority group/women and others is greater than would be expected by chance, then there is a presumption that the difference is due to discrimination.
- (d) Measurement of Statistical Significance: Measurement of the statistical significance of a difference in selection rates (whether by standard deviations or another method) indicates the probability that a particular disparity in those rates could have occurred by chance. The greater the disparity between the percent-age selected and the percentage expected, the more likely the variation did not happen by chance but was a result intended by the contractor. When there is a significant chance that the disparity in selection rates for members of a minority group/women and others could not have happened by chance, this is strong evidence of discrimination. The precise significance level required varies with the facts of the case. While a 5% significance level (approximately two standard deviations or .05 on Fisher's--see Section 3K00(e) above) is usually sufficient to establish a prima facie case of employment discrimination, statistical significance



may not be necessary to support a finding of a pattern or practice of discrimination where there is a significant amount of other evidence. However, the greater the number of standard deviations (or the lower the Fisher's result), the greater the probability that the disparity is due to the use of a prohibited factor in the decision.

- (e) **Supporting Evidence:** While courts have held that statistics alone may be sufficient to prove disparate treatment discrimination where disparities are gross, statistical cases are strengthened by supporting evidence, including anecdotal evidence. Anecdotal evidence consists of producing members of a minority group/women who can show that they met all of the contractor's requirements but still did not receive the benefits at issue, and any first-hand accounts of discriminatory acts on the part of the contractor that support the statistical inference. In addition, direct evidence; e.g., biased statements by the contractor's officials involved in the employment transaction at issue, are relevant to intent. In addition to anecdotal evidence, statistical disparate treatment cases could be supported by evidence that the statistical disparity is "longstanding," that it has existed for some time and is not just a statistical fluke based on the particular time period being examined. COs should collect as much supporting evidence as is practical in all cases regardless of the number of standard deviations or Fisher's result. SCRR Worksheet 17-8 provides a guide for collecting and recording supporting evidence.
- (f) **Preliminary Findings:** If the result of the disparate treatment calculation based on minimum objective qualifications is statistically significant (but see cautions in Section 3K00(e)), the CO then must determine whether there are any remaining subjective criteria or processes (such as an interview).
- (1) **Remaining Subjective Criterion(ia):** If there are remaining subjective criteria or processes, the CO should analyze them as discussed in 3O below. Please note that where there are such remaining subjective criteria/processes, the comparison here between those who met objective criteria and those selected, will also directly reflect the result of the subjective criteria/ processes. For example, if the selection process consisted of a screening for an MBA followed by an interview of all those who had an MBA, a comparison of those who had an MBA with those selected would be mathematically identical with the result of the interview.
- (2) **No Remaining Subjective Criterion(ia):** If there are no remaining subjective criteria or processes, the CO should develop any supporting evidence (see Section 3N03(e)), and issue a Predetermination Notice (see 3P) asking for the contractor's explanation of the difference in selection rates. Section 3Q01 below discusses typical contractor responses in Statistical Disparate Treatment cases.



30 PATTERN OR PRACTICE - ANALYSIS OF SUBJECTIVE CRITERIA/ PROCESSES

3000 ANALYZE SUBJECTIVE CRITERIA/PROCESSES AFTER OBJECTIVE

An analysis of subjective criteria/processes will generally be undertaken only after first determining the effects of any objective qualifications used by the contractor. Once the effect of the objective criteria/processes has been determined, any remaining effect is due to the subjective criteria/processes. The effect of the remaining subjective criteria/ processes is determined by comparing the selection rates of members of a minority group/women and others from the pool of persons who met the objective requirements. If the disparity in these selection rates is not significant (but see cautions in Section 3K00(e)), then it is highly unlikely that a statistical case can be made based upon the subjective criteria or processes. If the disparity is significant, proceed as described below.

3001 ANALYTICAL PROCESS

Subjective criteria/processes are analyzed in essentially the same way as objective criteria/processes; namely, a determination is first made whether the stated subjective criteria are actually being used (verification) and then whether they are being applied in a uniform manner to both members of a minority group/women and others. If the subjective criteria/processes are being applied in a uniform manner, then a statistical case may be established based on their impact.

3002 CRITERIA VERIFICATION (SUBJECTIVE)

The same method is used to determine whether stated subjective criteria/processes are actually used as that used with objective criteria/processes. Examine the persons selected and determine whether they were rated on the subjective factor(s). If they were, then it is safe to assume that the subjective factor was used. If some were rated and some were not, look for any pattern in application to members of a minority group/ women vs. others. If there is no pattern, then the criteria may be disregarded. If there is a pattern; i.e., they are not uniformly applied to members of a minority group/women and others, then this is disparate treatment. For example, if in an interview women are asked personal, sex related questions not relevant to the job, this is direct disparate treatment.

3003 UNIFORM APPLICATION/SAFEGUARDS



Safeguards consist of efforts made by the contractor to limit the possibility of differential application of the selection criteria/processes. In other words, treating members of a minority group or women differently than others in the application/evaluation of the criteria/processes. An example of a uniformly applied subjective process with safe-guards could be an interview where all persons who pass the required test are interviewed regardless of minority or sex status; all interviewers are professionally trained in interviewing; all persons interviewed are asked the same questions; responses are documented; and answers are all evaluated in the same manner. Under these circumstances it would be appropriate for the CO to calculate the statistical effect of the subjective criteria/processes and allege that adverse impact exists where the criterion eliminates a statistically significant (see Section 3K00(e) above) proportion of members of a minority group or women. However, if only nonminority persons who passed the test were interviewed, this would be an example of nonuniform application of the interview process and would indicate disparate treatment on its face.

3004 SPECIFIC SAFEGUARDS

SCRR Worksheet 17-7 lists and explains specific safeguards to be evaluated. These are: consistency, guidelines, documentation and review, and knowledge of the job and the candidates. If the contractor has instituted others, they may be discussed in the evaluation of the safeguards. Record the results of this analysis on SCRR Worksheet 17-7.

3005 EVALUATION

- (a) Few Safeguards: Where the subjective criterion/process has relatively few safe-guards and is poorly documented, there is considerable room for differential assessment of members of a minority group/women vs. others. Under such circumstances, the CO may be able to establish discrimination based upon a showing of different treatment. If members of a minority group/women are selected at a statistically significant lower rate than others, discrimination based upon statistical disparate treatment may be alleged. Under these circumstances, supporting evidence of intent should be collected.

- (b) Many Safeguards: If there are many safeguards and the system is well documented, this suggests members of a minority group/women may be treated similarly to others. If members of a minority group/women are selected at a statistically significant (see Section 3K00(e) above for cautions) lower rate, the subjective criterion/process nonetheless is having an adverse impact in the same way that a neutral, uniformly applied objective criterion may have an adverse impact. Under these circumstances disparate impact may be alleged.



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- (c) Safeguards Not Definitive: In many cases it will not be possible to definitely determine whether subjective criteria have been uniformly applied through an analysis of safeguards. In these cases, both disparate impact and treatment should be alleged in the alternative and evidence to support both theories should be sought.

3P PATTERN OR PRACTICE - PREDETERMINATION NOTICES

3P00 BACKGROUND

A Predetermination Notice (Figure 3-8) is used in pattern or practice discrimination cases. In litigation, such cases often proceed in two phases. The first is liability and the second is remedy.

- (a) Liability Phase: In the liability phase, the inquiry centers around whether discrimination has occurred. In litigation, the obligation is on the plaintiff to prove discrimination. Analogously, in a compliance review, this obligation is OFCCP's. In a compliance review, if OFCCP does not make at least a prima facie showing of discrimination, the case can be dismissed summarily without the contractor producing any evidence. However, if OFCCP makes a prima facie showing, the contractor is given an opportunity to respond. If discrimination is found; i.e., the contractor's response is insufficient to rebut OFCCP's prima facie case or is shown by OFCCP to be pretextual, the discriminatory practice must be terminated, and the case should move to the second or remedial phase.
- (b) Remedial Phase: Once liability is established, it is presumed that all class members are victims of the discrimination. In the remedy phase, therefore, the contractor cannot challenge the general finding of discrimination made in the first or liability phase, but may challenge whether a particular class member suffered from that discrimination. Although the burden was on OFCCP at stage one to show that it was more likely than not that discrimination had occurred, at the remedy stage the burden shifts to the contractor to overcome the presumption that a given class member is entitled to a remedy; i.e., a given class member is presumed to be entitled to a remedy unless the contractor proves that he/she is not. In short, the second stage is designed to identify specific class members entitled to relief and the exact remedy to which they are entitled. (See Chapter 7, Section 7F, for a complete discussion of remedies in class cases.)

3P01 USE OF PREDETERMINATION NOTICE

- (a) Pattern or Practice Cases Found During a Compliance Review: A Predetermination Notice (Figure 3-8) will be used in pattern or practice cases found during compliance reviews under



Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 U.S.C. 4212, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. It does not apply to affirmative action deficiencies or to individual discrimination deficiencies.

- (b) When Issued: Pattern or practice discrimination investigations generally will be conducted in accordance with the bifurcated (two stage) process described in Section 3P00 above. After the CO has identified a potentially discriminatory employment pattern or practice, the matter will be investigated until the file contains sufficient information to establish discrimination absent adequate explanation by the contractor. At that point, the contractor will be notified via the Predetermination Notice of the alleged discrimination and of its opportunity to respond to this allegation. The contractor's response will be evaluated. Further action by OFCCP, including additional investigation, will depend on the adequacy of the contractor's response.

3P02 CONTENTS OF THE PREDETERMINATION NOTICE

A Predetermination Notice will:

- (a) Describe the Discrimination: Describe the discrimination which has been revealed by the review. Identify the class, the employment action giving rise to the allegation and the basis for the liability determination; e.g., disparate treatment in the selection of minority technicians.
- (b) Offer the Contractor the Opportunity to Respond: Offer the contractor an opportunity to respond in writing by a given date. In determining how much time to allow, consider the complexity of the issues, the length of the review, and the amount of information on the problem already provided during the review and at the exit interview (see Section 3S). The time allowed, however, will not normally exceed one (1) month.
- (c) Other Issues: If the review also involved other affirmative action and/or individual discrimination deficiencies, state that the Notice is not intended to be all inclusive and addresses only an identified pattern or practice of discrimination, and that the contractor will be notified of these other deficiencies at a later date.

3P03 PROCEDURE WHEN CONTRACTOR DOES NOT RESPOND

If the contractor does not respond by the date indicated or extensions thereof, issue a NOV (Section 3T below). The NOV will cite the contractor's failure to rebut the pattern or practice issue and give a



proposed remedy. It will also address AA or individual discrimination deficiencies involved in the review, and will describe proposed corrective actions.

3P04 PROCEDURE WHEN CONTRACTOR RESPONDS

If the contractor does respond, review the information presented. If issues are raised that require further investigation, request and analyze the additional information needed either onsite or offsite. Consider not only whether the contractor's response is a non-discriminatory explanation for the results you have observed, but also whether the response is pretextual; i.e., even though it is a logical explanation, it is not an accurate reflection of why the contractor behaved as it did.

- (a) Contractor Adequately Rebutts: If the contractor's response adequately rebuts all the issues raised in the Predetermination Notice, and there are no other remaining review issues, acknowledge OFCCP's acceptance of the response and issue a Notice of Review Completion (Figure 3-5).
- (b) Some Issues Rebutted: If the contractor's response adequately rebuts some of, but not all of, the issues raised in the Predetermination Notice and/or there are other remaining review issues, issue a NOV indicating OFCCP's acceptance of the response in those areas where it was sufficient, proposing remedy in those areas where it was not sufficient, and including any remaining issues and pro-posed corrective action.
- (c) No Issues Rebutted: If the contractor's response does not rebut any of the issues raised in the Predetermination Notice, incorporate both those issues and any remaining issues into a NOV.

3Q PATTERN OR PRACTICE - ANALYZING THE CONTRACTOR'S RESPONSE TO PREDETERMINATION NOTICE

3Q00 DISPARATE IMPACT CASES

- (a) Common Contractor Responses: The following are some of the most common contractor responses in a disparate impact case:
 - (1) Wrong Data: The contractor may simply allege that the criterion does not have adverse impact based on revised data; e.g., they found that more members of a minority group or women passed a test than was originally known.



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- (2) Wrong Statistical Test: The contractor may allege that the statistical test the CO used was not appropriate, because of sample size and/or other factors.
- (3) Misunderstanding of the Employment Process: The contractor may allege that the criterion was not used as a "pass/fail" factor, but rather as one of several factors weighed in reaching the selection decision.
- (4) Use of Criterion Based on Job Relatedness: The contractor may simply allege that the criterion is job related, or may provide a validation study in support of its contention of job relatedness.
- (5) Use of Criterion Based on Business Necessity: The contractor may allege that use of the criterion is essential to the safe and efficient operation of its business.
- (b) Evaluation of Contractor Responses: Contractor responses alleging erroneous data or a misunderstanding of the employment process are normally questions of fact that may be resolved through reexamination of the data and/or further investigation into how the selection process was actually administered. If, upon investigation, the contractor is found to be correct, the CO should redo the analysis to take account of the changes. Contractor responses concerning correct statistical tests or presenting formal validation studies normally require expert evaluation. If COs encounter arguments about statistical methodology, or receive formal validation studies, they may contact the Division of Policy, Planning and Review, in the National Office for assistance. See Chapter 7 and the instructions in Appendix 3A, Worksheet 17-6b for further discussion in this area, particularly on the type of fact gathering that may assist expert evaluation of a validation study. Where the contractor simply asserts job relatedness (no formal validation study) or business necessity, the CO should also see Chapter 7, Section 7E08, and the Worksheet 17-6b instructions⁵. If the contractor cannot show that the criterion is job related or required by business necessity, then the CO will conclude that the criterion is having a disparate (discriminatory) impact on members of a minority group/women. (See Chapter 7 for instructions on designing a remedy.)
- (c) Alternative with Less Adverse Impact: Even if the contractor is able to show that the criterion having an adverse impact is job related or required by business necessity, OFCCP can show pretext if it can identify another method that has substantially equal validity for the contractor's purpose but has less adverse impact. Such another method may be, for example, an alternative

⁵ With business necessity claims it is important to remember that showing a business purpose for a criterion with adverse impact is not sufficient. That purpose must be legitimate, the criterion must be essential to carrying it out and to the safe and efficient operation of the business, and there must be no reasonably available alternative system (see 3Q00(c) immediately above) with less discriminatory effects.



criterion, a different combination of tests in a test battery, the use of a different cutoff score or pass/ fail rather than ranking on a test, etc. (41 CFR 60-3.3B). The search for such alternatives often requires expert assistance, and the CO may contact the Division of Policy, Planning and Review, in the National Office if necessary.

3Q01 DISPARATE TREATMENT CASES

- (a) Common Contractor Responses: The following are some of the most common contractor responses to statistical disparate treatment cases:
- (1) Overlooked Selection Criterion: This is one of the most common contractor responses. The contractor argues that some criterion (qualification) was overlooked in constructing the pool of minimally objectively qualified persons. As a result, the pool contained a number of persons who were not really qualified or considered for the selection. Therefore, statistics based on the pool are invalid. In this argument, the contractor is required to show that it in fact used the criterion and, had the proper criterion been used in forming the pool, the statistical analysis would have produced a different result. If the contractor does show that a facially neutral evenly applied criterion explains the difference in selection rates, the contractor effectively demonstrates that the criterion has an adverse impact, and a disparate impact investigation should be conducted.
 - (2) Incorrect Employment Process: This argument states that the CO has based the analysis on the wrong feeder groups. In essence, it states that the CO misunderstood the employment process and therefore was unable to identify the pool of persons from which the contractor made its selections. For example, the CO may have based the analysis on an internal group of engineers when the contractor makes selections from both internal and external sources. The contractor must document this allegation and, if it is true, the CO should conduct a new analysis based on the proper pools.
 - (3) Wrong Statistical Method: The contractor may state that the CO used the wrong statistical test based on sample size and/or on other factors.
- (b) Evaluation of Contractor Response in Statistical Disparate Treatment Cases: Evaluation of these types of contractor responses are largely issues of fact or correct statistical method. There is one particular situation that the CO must be aware of when the contractor argues that some important selection criterion was not considered. The relevant criteria are those that were actually used at the time the selections were made, not what the persons may have acquired after being placed on the job. Thus, when the contractor asserts that the CO failed to account for a particular criterion, the CO should determine whether all the individuals actually selected (hired, promoted, etc.)



possessed the asserted qualification at the time of their selection. Issues of statistical methodology may have to be settled by an expert. If COs encounter arguments about statistical methodology, they may contact the Division of Policy, Planning and Review, in the National Office for assistance. (See Chapter 7, Section 7D05(g) and the SCRR instructions for further discussion in this area.)

3R COMPENSATION ANALYSIS

The term "compensation discrimination" encompasses at least four distinct concepts:

- (a) Disparate treatment in pay in relationship to the established range for a job, whether at entry or later; e.g., Blacks with backgrounds similar to Whites on the legitimate factors considered for initial salary are hired at less money, etc.;
- (b) Discrimination in the opportunity to earn money; e.g., discrimination in placement, job assignments, promotions, the opportunity to work overtime, etc.;
- (c) Equal Pay Act-type discrimination; i.e., sex-based differentials in wages paid for "substantially equal" work); and
- (d) Comparable worth discrimination (paying different wages for jobs of equal value).

The Executive order reaches at least as far as the first three type of compensation discrimination. However, courts have generally been hostile to Title VII cases based on the comparable worth theory. Further guidance on compensation analysis will be provided.

3S EXIT CONFERENCE

As the CO evaluates information obtained onsite, tentative findings are clarified. These findings will be discussed during the exit conference. The exit conference is generally held on the last day of the onsite, although it may be delayed for a few days. It should be held with the chief executive officer at the facility, or a representative designated by that official. At the exit conference, the CO should be prepared to discuss the review findings in general terms and to elucidate both the positive and negative aspects of these. The CO should inform the top official that the written results of the compliance review will be forthcoming as soon as possible, and should provide the contractor with an estimate of the time within which it can expect to receive such written results. Where it is anticipated that a NOV (see Section 3T below) will be issued (for unresolved pattern or practice findings and/or for other issues such as affirmative action deficiencies and/or individual instances of discrimination), the CO should inform the



contractor that such a Notice will describe the identified deficiencies and include recommended corrective actions.

3T NOTICE OF VIOLATIONS

No violation of any of OFCCP's three programs identified as a result of a compliance review should be resolved without first issuing a NOV. This includes situations where:

- (a) Pattern or Practice Violation: The contractor either does not respond to a Pre-determination Notice (see Section 3P) or its response does not substantially alter OFCCP's preliminary determination of pattern or practice employment discrimination. In this instance, the NOV incorporates both the remaining pattern or practice violation and any other violations.
- (b) Other Violations Only: No pattern or practice issue is identified during the review, but other violations (such as AA and/or individual discrimination) are identified.

3T00 USE FOR PATTERN OR PRACTICE ISSUES

When there are issues of pattern or practice discrimination remaining after the issuance of a Predetermination Notice, the NOV will:

- (a) Restate the Problem: Restate the problem, with any modifications that may have been caused by the contractor's response.
- (b) Analyze the Response: Analyze the contractor's response, giving the reasons why it does not substantially alter OFCCP's preliminary determination.
- (c) Defenses on Relief: State that the contractor may present any legitimate defenses available regarding relief and those entitled to relief.
- (d) Describe Remedy: Describe the proposed remedy in class terms. Include scope of relief; e.g., all minorities rejected for Technician positions since (date) will be made whole by providing, the type of relief (job offers, back pay, etc.) and, where relevant, the time period involved; e.g., back pay from date of application to date of settlement, etc.
- (e) Cessation of Discrimination: Specifically require termination of the identified discriminatory practice(s) if the practice has not already been terminated.



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- (f) Conciliation Agreement Required: Indicate that resolution of the pattern or practice violation (and any other violations included in the Notice) must be incorporated in a CA.

3T01 USE FOR OTHER ISSUES

For each non-pattern or practice issue addressed in a NOV, the Notice will include a complete description of the violation/ deficiency and a statement of the corrective action or remedy required (see Figure 3-9). As noted in 3T00(f) above, where the Notice includes a pattern or practice finding along with other issues, a CA will be required. Where the Notice solely concerns non-pattern or practice issues, it will indicate whether resolution must be in a CA or a LOC (see Sections 8E and 8F).

3T02 NOTICE TO LABOR UNION

Where remedy for a violation cited in a NOV would require a change in or otherwise affect a provision of a Collective Bargaining Agreement (CBA) between a contractor and a union, or require the award of retroactive seniority where seniority is governed by a CBA, the union will be notified of the particular violation and proposed remedy, and will be invited to participate in its conciliation (see Sections 8C and 7F06).

3U REPORT WRITING

- (a) The Standard Compliance Review Report (SCRR; CC-50 as revised 12/88) is used to report the results of all supply and service compliance reviews. The SCRR is both a desk audit and onsite report. Appendix A to Chapter 2 provides a copy of the SCRR form and its instructions.
- (b) In addition to the SCRR, there are a number of optional Potential Discrimination Worksheets which, along with their instructions, are provided in Appendix A to Chapter 3. (See particularly the "Key Factors" portions of those instructions for items that must be addressed in particular types of potential discrimination analyses.)

3V NOTICE OF REVIEW COMPLETION

- (a) When the contractor's AAP is found to be acceptable and all other apparent deficiencies are resolved, the contractor should be so notified. A review of a supply and service contractor is complete when a Notice of Review Completion is issued to the contractor.



-
- (b) Figure 3-5 provides a sample Notice of Review Completion where no violations were found. Where a violation(s) was found, sample Notices of Review Completion are provided in Chapter 8. Specifically:
- (1) Figure 8-15 is used where minor deficiencies were resolved in a LOC.
 - (2) Figure 8-13 or 8-14 is used where major deficiencies were voluntarily resolved in a CA. If a Show-Cause Notice was issued, use Figure 8-13, which includes rescission of the Show-Cause Notice. If no Show-Cause Notice was issued, use Figure 8-14.
- (c) Refer to Chapter 8 for enforcement procedures when deficiencies cannot be resolved voluntarily.



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APPENDIX A: STANDARD COMPLIANCE FORMS



Figure 3-1: Employment Eligibility Verification (Form I-9)

① EMPLOYEE INFORMATION AND VERIFICATION: (To be completed and signed by employee)

Name: (Print or Type) Last		First	Middle
Birth Name			
Address: Street Name and Number		City	State
Zip Code			
Date of Birth (Month/Day/Year)		Social Security Number	

I attest, under penalty of perjury, that I am (check a box):

- 1. A citizen or national of the United States.
- 2. An alien lawfully admitted for permanent resident (Alien Number A _____).
- 3. An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A _____ or Admission Number _____, expiration of employment authorization, if any _____)

I attest, under penalty of perjury, the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature:	Date (Month/Day/Year):
------------	------------------------

Preparer/Translator Certification (To be completed if prepared by person other than the employee). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature:	Name (Print or Type):		
Address (Street Name and Number):		City:	State:
Zip Code:			

② EMPLOYER REVIEW AND VERIFICATION: (To be completed and signed by employer.)



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Instructions: Examine one document from List A and check the appropriate box, OR examine one document from List B and one from List C and check the appropriate boxes. Provide the *Document Identification Number* and *Expiration Date* for the document checked.

List A Documents that Establish Identity and Employment Eligibility	List B Documents that Establish Identity	List C Documents that Establish Employment Eligibility
<ol style="list-style-type: none"> 1. United States Passport 2. Certificate of United States Citizenship 3. Certificate of Naturalization 4. Unexpired foreign passport with attached Employment Authorization 5. Alien Registration Card with photograph 	<ol style="list-style-type: none"> 1. A State-issued driver's license or a State-issued I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State: _____) 2. U.S. Military Card 3. Other (Specify document and issuing authority) _____ _____ 	<ol style="list-style-type: none"> 1. Original Social Security Number Card (other than a card stating it is not valid for employment) 2. A birth certificate issued by State, county, or municipal authority bearing a seal or other certification 3. Unexpired INS Employment Authorization. Specify form # _____.
Document Identification # _____	Document Identification # _____	Document Identification # _____
Expiration Date (if any) _____ _____	Expiration Date (if any) _____ _____	Expiration Date (if any) _____ _____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine and to relate to the individual named, and that the individual, to the best of my knowledge, is eligible to work in the United States.

Signature:	Name (Print or Type)	Title
Employer Name Date		Address



Employment Eligibility Verification

NOTICE: Authority for collecting the information on this form is in Title 8, United States Code, Section 1324A, which requires employers to verify employment eligibility of individuals on a form approved by the Attorney General. This form will be used to verify the individual's eligibility for employment in the United States. Failure to present this form for inspection to officers of the Immigration and Naturalization Service or Department of Labor within the time period specified by regulation, or improper completion or retention of this form, may be a violation of the above law and may result in a civil money penalty.

Section 1. Instruction to Employee/Preparer for completing this form

Instructions for the employee.

All employees, upon being hired, must complete Section 1 of this form. Any person hired after November 6, 1986, must complete this form. (For the purpose of completion of this form the term "hired" applies to those employed, recruited or referred for a fee.)

All employees must print or type their complete name, address, date of birth, and Social Security Number. The block which correctly indicates the employee's immigration status must be checked. If the second block is checked, the employee's Alien Registration Number must be provided. If the third block is checked, the employee's Alien Registration Number of Admission Number must be provided, as well as the date of expiration of that status, if it expires.

All employees whose present names differ from birth name, because of marriage or other reasons, must print or type their birth names in the appropriate space of Section 1. Also employees whose names change after employment verification should report these changes to their employer.

All employees must sign and date the form.

Instructions for the preparer of the form, if not the employee.

If a person assists the employee with completing this form, the preparer must certify the form by signing it and printing or typing his or her complete name and address.

Section 2. Instructions to Employer for completing this form



(For the purpose of completion of this form, the term “employer” applies to employers and those who recruit to refer for a fee.)

Employees must complete this section by examining evidence of identity and employment eligibility, and:

- checking the appropriate box in List A *or* boxes in both Lists B and C;
- recording the document identification number and expiration date (if any);
- recording the type of form if not specifically identified in the list;
- signing the certification section.

NOTE: Employers are responsible for reverifying employment eligibility of employees whose employment eligibility documents carry an expiration date.

Copies of documentation presented by an individual for the purpose of establishing identity and employment eligibility may be copied and retained for the purpose of complying with the requirements of this form and no other purpose. Any copies of documentation made for this purpose should be maintained with this form.

Name changes of employees which occur after preparation of this form should be recorded on the form by lining through the old name, printing the new name and the reason (such as marriage), and dating and initialing the changes. Employers should not attempt to delete or erase the old name in any fashion.

RETENTION OF RECORDS.

The completed form must be retained by the employer for:

- three years after the date of hiring; or
- one year after the date the employment is terminated, whichever is later.

Employers may photocopy or reprint this form
as necessary.



Figure 3-2: Employment Eligibility Verification Recordkeeping Requirements

66d01 <u>Sample ESA-91</u> EMPLOYMENT ELIGIBILITY VERIFICATION U.S. Department of Labor RECORDKEEPING REQUIREMENTS Employment Standards Administration																	
ESA Case # _____ INS # - - -	Date: _____/_____/_____ Submission Date: _____/_____ <div style="text-align: right;">(mm) (yr)</div>																
Business Name: _____ Trade Name: _____ Address: _____ City: _____ State: _____ Zip Code: _____ SIC: _____ Desc: _____ Phone #: _____ Sample (Y/N) _____ Sample Size _____	EIN: _____ Contact: _____ Mail Address: _____ Mail City: _____ Mail State: _____ Mail Zip: _____ Establishment #: _____ # of Employees: _____ I-9 Employees: _____ Pub Provided (Y/N) _____																
I. EMPLOYMENT ELIGIBILITY VERIFICATION RECORDKEEPING REQUIREMENTS																	
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%;"><u>Apparent/Adjusted Compliance</u></td> <td style="width: 33%;"><u>Apparent Noncompliance</u></td> <td style="width: 33%;"><u>Undertermined Compliance</u></td> </tr> <tr> <td>1. ___ App Comp</td> <td>2. ___ Nonexistent Records</td> <td>5. ___ Records Elsewhere</td> </tr> <tr> <td> ___ Adj Comp</td> <td>3. ___ Incomplete Records</td> <td>6. ___ No Advance Notice</td> </tr> <tr> <td> ___ Comp by WN</td> <td>4. ___ Other</td> <td>7. ___ Suspect Documents</td> </tr> <tr> <td></td> <td></td> <td>8. ___ Other</td> </tr> </table>			<u>Apparent/Adjusted Compliance</u>	<u>Apparent Noncompliance</u>	<u>Undertermined Compliance</u>	1. ___ App Comp	2. ___ Nonexistent Records	5. ___ Records Elsewhere	___ Adj Comp	3. ___ Incomplete Records	6. ___ No Advance Notice	___ Comp by WN	4. ___ Other	7. ___ Suspect Documents			8. ___ Other
<u>Apparent/Adjusted Compliance</u>	<u>Apparent Noncompliance</u>	<u>Undertermined Compliance</u>															
1. ___ App Comp	2. ___ Nonexistent Records	5. ___ Records Elsewhere															
___ Adj Comp	3. ___ Incomplete Records	6. ___ No Advance Notice															
___ Comp by WN	4. ___ Other	7. ___ Suspect Documents															
		8. ___ Other															
II. OTHER APPARENT PROHIBITED ACTIONS																	
9. ___ Apparent Disparate Treatment 10. ___ Apparent Illegal Aliens Employed																	



III. WARNING NOTICE ISSUED/CENF 45.1 REPORTING

Date INV/INSP Completed: ___/___/___ Follow-up Inspection Date: ___/___/___

Case Predication: ___ Administrative Disposition: ___ [D] Warning Notice

Follow-up Disposition: [C]ompliance [A]djusted [I]NS Referral ___

Type of Follow-up: [V]isit [T]elephone [A]ttestations ___

NARRATIVE:



Figure 3-3: Federal Contractor Veterans Employment Report (VETS-100)

FEDERAL CONTRACTOR VETERANS EMPLOYMENT REPORT VETS-100					
OMB No. Expires --/--89					
Return Completed Report To: U.S. Department of Labor Office of Veterans' Employment and Training					
Company Identification (Omit if same as above)			Period Covered: _____ to _____		
Name of Parent Company:			Address Number and Street::		
City:	County:	State:	Zip Code:		
Name of Hiring Location:			Address Number and Street::		
City:	County:	State:	Zip Code:		
SIC:					
Information on Veterans					
Report all permanent full-time or Part-time employees and new hires who are veterans as defined on reverse. Also report total new hires. Blank spaces will be considered as zeros. Entries in Columns N through P, Lines 14 thru 22, and Columns L and M, Line 23 are optional.					
Job Categories	NUMBER OF EMPLOYEES		NEW HIRES (Previous 12 Months)		
	Special Disabled Veterans (L)	Vietnam Era Veterans (M)	Special Disabled Veterans (N)	Vietnam Era Veterans (O)	Total Both Veterans and Nonveterans (P)
Officials and Managers 14					



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Professionals 15					
Technicians 16					
Sales Workers 17					
Office and Clerical 18					
Craft Workers (Skilled) 19					
Operatives (Semi-skilled) 20					
Laborers (Unskilled) 21					
Service Workers 22					
TOTAL 23					

Federal Contractor Veterans' Employment Report VETS-100

This supplemental report is to be completed by all nonexempt contractors and subcontractors with contracts (or subcontracts) for the furnishing of supplies and services or the use of real or personal property (including construction) for \$10,000 or more. The report is to be completed for each "hiring location." Reports must be completed for establishments located in Hawaii.

All multi-establishment employers; i.e., those doing business at more than one hiring location, must file (1) a report covering the principal or headquarters office, (2) a separate report for each hiring location employing 50 or more persons, and (3) either, (I) a separate report for each hiring location employing fewer than 50 persons, or (ii) consolidated reports, by State,

covering the hiring locations within the State having fewer than 50 employees. Each consolidated report must also list the name and address of the hiring locations covered by the report.

How to Prepare Form

Company Identification

Parent Company. Please provide company name, receiving office, address, and employer identification number of the headquarters office of multi-hiring location company which owns the hiring location for which this report is filed.



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Hiring Location For Which This Report Is Filed. Please provide the name, address and employer identification number of each company's hiring location for which this report is filed.

been determined under Section 1506 of Title 38, U.S.C., to have a serious employment handicap or (B) a person who was discharged or released from active duty because of a service-connected disability.

Information on Veterans

Employment data must include all permanent full-time and part-time employees who were employed during the selected payroll period; except those employees specifically excluded as indicated at 41 CFR 61-250.2(b)(2). Employees must be counted by veteran status for each of the nine occupational categories (columns L and M). Entries in column L and M on line 23 are options.

“Veteran of the Vietnam-era” means a veteran, any part of whose active military, naval, or air service, was during the period August 5, 1964, through May 7, 1975, who-(i) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (ii) was discharged or released from active duty because of a service-connected disability. No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1991.

New Hires Data: Report on line 23, columns N through P, the total number of permanent full-time and part-time employees by veteran status (columns N and O) and total employees (column P) who were included in the payroll for the first time during the 12-month period ending either as of the end of the selected payroll period between January and March 1, or December 31, if approved. Entries in columns N through P, lines 14 through 22, are optional.

Legal Basis for Reporting Requirements

Title 38, United States Code, Section 2012(d), requires that Federal contractors report at least annually the numbers of special disabled and Vietnam-era veterans in their workforce by job category and hiring location and the total number of employees and the number of special disabled and Vietnam-era veterans hired during the reporting period. Implementing regulations are located at 41 CFR 61-250.

Definitions

“Hiring location” means an establishment as defined at 41 CFR 61-250.2(b)

“Special Disabled Veteran” means (A) a veteran 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 Veterans Administration for a disability (i) rated at 30 percent or more, or (ii) rated at 10 or 20 percent in the case of a veteran who has



(Intentionally left blank)



Figure 3-4: SAMPLE LINKAGE LETTER

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

Dear (Mr. or Ms. _____):

As has been discussed with you....

or

During a recent compliance review,

we recommended and (name and location of the establishment reviewed) has agreed to use your services to secure applicants to meet their affirmative action goals (*or "needs" for 503/4212*). The specific job titles and applicants needed are listed below:

<u>Job Title</u>	<u>Projected Number of Vacancies</u>
Clerk typing	7
Laborers	3

Although the company is particularly interested in (describe) candidates, all qualified applicants will be considered.

We request that you contact (name) at (phone number) to discuss filling their employment needs.

Sincerely,

(Compliance Officer)

cc: OFCCP Regional Linkage Coordinator Contractor



**Figure 3-5: NOTICE OF REVIEW COMPLETION FORMAT, NO DEFICIENCIES FOUND
(SUPPLY AND SERVICE)**

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

Dear (Mr. or Ms. _____):

Our recent compliance review of your equal employment opportunity policies and practices at (name and location of the establishment reviewed) was completed on (date).

We found no apparent deficiencies or 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 USC 4212). This determination may be modified by the Assistant Regional Administrator, or by the Director, Office of Federal Contract Compliance Programs, within 45 days of the issuance of this letter.

[Optional]

The OFCCP sincerely appreciated the cooperation and courtesies extended by you and your staff during the conduct of the compliance review.

Sincerely,

(DD/ADD)



***Figure 3-6: NOTICE OF REVIEW COMPLETION FORMAT, MINOR DEFICIENCIES
RESOLVED IN A LETTER OF COMMITMENT (SUPPLY AND SERVICE)***

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

Dear (Mr. or Ms. _____):

Our recent compliance review of your equal employment opportunity policies and practices at (name and location of the establishment reviewed) was completed on (date).

Subject to the implementation of commitments detailed in your Letter of Commitment 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 the Director, Office of Federal Contract Compliance Programs, within 45 days of the issuance of this letter.

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

Sincerely,

(DD/ADD)



**Figure 3-7: NOTICE OF REVIEW COMPLETION FORMAT, MAJOR DEFICIENCIES
RESOLVED IN A CONCILIATION AGREEMENT (SUPPLY AND SERVICE)**

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

Dear (Mr. or Ms. _____):

Our recent compliance review of your equal employment opportunity policies and practices at (name and location of the establishment reviewed) was completed on (date).

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 the Director, Office of Federal Contract Compliance Programs.* However, if neither the Regional Director nor the Director take action on it within 45 days of my signature of 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.

Sincerely,

(RD/DD/ADD)

* If this Notice is being signed by the RD, in this sentence delete the phrase "the Regional Director or" and, in the next sentence, delete the phrase "neither the Regional Director nor" and change "take" to "takes no."

RD Issuance 12/20/93



Figure 3-8: PREDETERMINATION NOTICE FORMAT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Dear (Mr. or Ms. _____):

The current compliance review reveals a finding that (*company name*) has failed to afford equal employment opportunity to (*name of covered group*) in (*type of employment activity and jobs*) because of their (*race, sex, etc.*).

(Present the evidence of discrimination.)

Please be advised that this is a preliminary finding based on available information. You now have the opportunity to explain or rebut our preliminary finding. This Notice is intended to address only an identified pattern or practice of discrimination. You will be notified of any other deficiencies at a later date.

Please respond to this Notice not later than (*date*). If you do not respond, the preliminary findings made in this Notice will be incorporated into a Notice of Violations which will be sent to you certified mail, return receipt requested. In addition, any preliminary findings not rebutted in your response will be included in a Notice of Violations.

If you have any questions, please contact (*name*) at (*phone number*).

Sincerely,

(DD/ADD)



Figure 3-9: NOTICE OF VIOLATIONS FORMAT

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Dear (Mr. or Ms. _____):

We have completed our review of (*name of contractor*)'s compliance with Executive Order 11246; Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 USC 4212); and the implementing regulations at 41 CFR Chapter 60.

The results of this review indicate that (*name of contractor*) is not in compliance with the requirements of (*name of Executive Order or Act*) and its implementing regulations. Consequently, we are issuing this Notice of Violations. The violations and corrective actions are set forth below:

(Violation)

(Corrective Action)

In order to come into compliance you must enter into a (*Letter of Commitment/ Conciliation Agreement*) which encompasses all corrective actions prescribed herein. It is our sincere desire to avoid enforcement proceedings. Therefore, it is suggested that you contact (*name*), Compliance Officer, within five (5) days of receiving this letter at (*phone number*) to begin conciliation and resolution of the above cited violations.

Sincerely,



(DD/AOD)





**APPENDIX B: STANDARD COMPLIANCE REVIEW REPORT (SCRR) -
 POTENTIAL DISCRIMINATION WORKSHEET (PDW) INSTRUCTIONS**

INTRODUCTION

As noted in the instructions for the SCRR in Appendix 2A-2, the review file must contain materials which support the summary of findings given in the SCRR on potential discrimination issues (SCRR p. 17). These materials may include any of the following Worksheets, which are designed to illustrate the processes normally necessary to prove or disprove particular types of discrimination. Their use, while strongly recommended, is optional. If you use them, use only those that pertain to the kind of problem you are investigating. If you do not use them, your investigation and report, at minimum, must address the KEY FACTORS given at the beginning of the instructions for each applicable Worksheet.

These Worksheets cover three major areas--data refinement, investigation, and remedy when discrimination is found.

- (a) Data Refinement: The first two Worksheets are for refining IRAs (p. 17-1) and for refining findings of concentration and underrepresentation (p. 17-2). These are used when desk audit data are not sufficient to identify precise problem areas for investigation.
- (b) Investigation: Assuming a problem remains after suitable refinement of data, the remaining Worksheets are:

<u>Type of Analysis</u>	<u>Page</u>	<u>Subject</u>
INDIVIDUAL	17-3	Comparative Evidence
PATTERN OR PRACTICE	17-4	Mapping, Data Analysis, Criteria Identification, and Direct Evidence/ Uniform Administration
		<u>Objective Selection Criteria</u> :
	17-5	Do Selectees Meet? (Criteria Verification)



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	17-6a	Criteria Uniformly Applied - Is there Impact? Treatment?
	<u>PATTERN OR PRACTICE (cont'd.)</u>	
	17-6b	Criteria with Adverse Impact <u>Subjective</u> Selection Criteria/ Processes:
	17-7	Worksheet on Safeguards
	17-8	Supporting Information
	<u>SPECIALIZED</u>	
	17-9	Compensation Analysis
	17-10	Other Discrimination Worksheet (Disabled/Veterans, Guidelines on Religion, National Origin, and Sex Discrimination)

(c) Discrimination Found: If the appropriate analysis above shows discrimination, the Worksheet on Discriminatees/Remedy (page 17-11) is applicable.

NOTE: To assist in determining statistical significance in pattern or practice cases, Statistical Worksheets are included as page 17-12. These Worksheets can be used in most situations where the issue is a difference in selection rates (Worksheet 17-12a) or, absent applicant/candidate data, a difference in availability vs. selections or incumbency (Worksheet 17-12b). However, an alternative statistical test is needed when dealing with small numbers. See Manual Section 3K00(e) for guidance on when a small numbers test should be used, the meaning of statistical significance, and the relationship between statistical results and other evidence of discrimination⁶.

⁶ For computer users, the computer program developed for IRAs (see page 5 of the SCRR Instructions in Appendix 2A-2) includes an automatic calculation of the number of standard deviations of a difference in selection rates. The formula used is similar to that in Worksheet 17-12a and the resulting print-out may be substituted for that Worksheet. For situations where a small numbers statistical test is appropriate, a computer program for Fisher's exact is being supplied to OFCCP offices. Also, computer users may convert any of the Potential Discrimination Worksheets into a format compatible with word processing (see example in Appendix 2A-2, page 5).



COMMENTS APPLICABLE TO WORKSHEETS AS A WHOLE

In investigating potential discrimination under the Executive order, OFCCP follows Title VII principles. The types of analysis and information these Worksheets call for generally parallel those principles.

As used in these instructions, minorities means the four minority groups for whom EEO-1 reporting is required; i.e., Blacks, Hispanics, Asians/Pacific Islanders, and American Indians/Alaskan Natives. At the data refinement stage of potential discrimination analyses, the particular minority group or groups who are potential victims are identified and subsequent analyses are focused on that group(s). (See instructions for Work-sheets 17-1 and 17-2 below.)

DATA REFINEMENT

WORKSHEET 17-1: REFINED IRAs



<p>KEY FACTORS</p> <p>Ensure that IRAs found adverse at desk audit reflect, as appropriate:</p> <ul style="list-style-type: none">- applicants vs. hires for jobs with similar qualification requirements;- promotions vs. persons in feeder jobs;- terminations vs. incumbents by reason (voluntary vs. involuntary, etc.), by organizational unit, or as appropriate. <p>Eliminate persons--both members of a minority group/women <u>and</u> others--who entered the candidate pool after the date of the last selection.</p> <p>If the IRA under investigation is for minorities in the aggregate, determine for which minority group(s) the IRA is adverse.</p>

DISCUSSION:

Desk audit employment activity data are rarely more detailed than job group, so an adverse IRA may reflect selections for different types of jobs from different candidate pools. Also, since data are normally for a full year, persons who applied/became eligible after the last opening was filled may be included.

Therefore, it is usually necessary to obtain a list of the employment actions involved and when they occurred. Based on the types of jobs and when they were filled, then determine the appropriate candidate pools and refine the IRA. For example:



-
- (a) An engineering job group with an adverse hiring IRA for women may contain both electrical and mechanical engineers. Refined IRAs based on type of engineer may show that the hires were mechanical, but the female candidates were electrical.
- (b) Or, in an adverse hiring IRA for Hispanics in a clerical job group, the hires may have been early in the year and the majority of Hispanic applicants later in the year. A refined IRA using only those persons who applied before the last opening was filled⁷, may show no problem.

Please note, however, that although the refined candidate pool may often be smaller than that in the original IRA, it may also be larger. For example, in an adverse promotion IRA, you may have assumed at desk audit that the candidate pool for Crafts II was Crafts I, but may find onsite that a substantial number of promotees also came from Operatives III. The refined IRA, therefore, would be based on the larger candidate pool of Crafts I plus Operatives III.

In contrast to IRAs for hiring and promotion, a termination IRA is usually refined by looking at the reasons for termination and the organizational units in which the terminations occurred. For example, it is useful to separate terminations into voluntary and involuntary and, where involuntary remain adverse, to focus first on them (particularly ones occurring during a probationary period). However, even if most were voluntary, it remains relevant to see if there was any clustering of terminations within particular organizational units.

Particular Minority Group: If the adverse IRA under investigation is for minorities in the aggregate, it should now be refined to determine for which minority group(s) selection is adverse, and subsequent analyses should be conducted for that group(s).

Lack of Data: If you are unable to appropriately refine an IRA because of the contractor's failure to maintain data on candidates/selections for jobs within the job group and/ or on particular minority groups, see Manual Section 3K03(a)(3).

INSTRUCTIONS:

Use this page if the SCRR page 17 problem you are now dealing with involves an IRA needing refinement. At the top of the sheet, enter the SCRR page 17 problem number and issue, and complete this page as follows:

Original IRA:

⁷ If the data are available, you may add in persons who were in the candidate pool at the beginning of the data period (but may have applied earlier).



- (a) Job Area/Type of Activity. Enter the name of the job area in which the IRA was adverse, and the type of employment activity involved. For example, "Engineering hires."
- (b) Min./Fem.: Indicate whether the adverse IRA was for minorities, members of a particular minority group, or women.
- (c) IRA: Enter the original IRA result; i.e., .21, .76, etc.

Refined IRAs:

- (a) Refined Job Areas: Enter the job area on which the refined IRA is based; e.g., mechanical engineers, electrical engineers, etc.
- (b) Data Analysis: Enter the selection rates (numbers and percent) for the groups you are comparing in the refined job area, then calculate and enter the IRA.

If the original IRA was for minorities in the aggregate, also refine it to identify the particular minority group(s) who are potential victims.

If the IRA is .8 or more, no further action is needed. If the IRA is less than .8, determine the number of persons potentially affected (see main IRA instructions in Appendix 2A-2).

If no person(s) was potentially affected, the refined IRA need not be pursued further (however, see Appendix 2A-2 on Interpreting IRA results).

- (c) Pursue: Check [] those refined IRAs you will investigate for potential discrimination.

WORKSHEET 17-2: CONCENTRATIONS/UNDERREPRESENTATIONS

KEY FACTORS



DISCUSSION:

If desk audit review of the contractor's workforce analysis showed areas of minority group or female concentration and underrepresentation in jobs that may have similar qualification requirements, this usually suggests a potential placement problem and/or some system or policy inhibiting movement from the concentrated to the underrepresented areas. Such patterns, however, may have arisen at any point in the past.

During the normal liability period:

Were there any openings in underrepresented job area(s) which have similar qualifications in which minorities/women are concentrated?

or

Was there a system or policy in effect that served to create or maintain the areas of concentration/underrepresentation?

To reach such patterns, you must show that a violation occurred during the normal liability period--which, for a compliance review, is the two year period preceding the contractor's receipt of the Scheduling Letter. This may be done either:

- (a) By showing that, during the liability period, members of a minority group/women were discriminated against in filling openings in the underrepresented area, or
- (b) By showing that a system or policy which extended into the liability period would have discriminated against members of a minority group/women had there been such openings⁸.

If neither showing can be made; i.e., whatever practice or policy caused the concentration/underrepresentation ceased before the liability period, the pattern need not be pursued further for potential discrimination (although affirmative action measures may be needed).

Note: If the workforce pattern under investigation is for minorities in the aggregate, it should now be refined to identify the particular minority group(s) that is concentrated/ underrepresented in the area, and subsequent analyses focused on that group(s).

⁸ Either showing may establish a continuing violation, which would make remedy available not only to victims during the liability period, but also to earlier victims of the same practice or policy. See Chapter 7 for a discussion of continuing violation (Section 7B01) and remedy when a continuing violation is found (Section 7F08(c)).



INSTRUCTIONS:

At the top of the sheet, enter the SCRR page 17 problem number and issue. Then enter the dates of the normal liability period and the dates of the employment activity data you will use below, and complete this sheet as follows:

PART I

- (a) Concentrated Job Area: Enter the name of the concentrated job area, its total number of incumbents and number of incumbents who are women or members of the minority group being investigated.
- (b) Comparator Underrepresented Job Area: List each similar underrepresented job area, its total number of incumbents, and number of incumbents who are women or members of the minority group being investigated.
- (c) New Entries During Liability Period:
- Type of Activity: For each comparator underrepresented area, enter the type of movement into the area; i.e., hires, promotions, transfers, etc., that you will analyze in the next column.
 - Data: If, during the liability period, there was no activity in the type of movement involved, enter "No Activity," and go on to the next type of movement into the area. If there was activity, enter the total number of placements and the number of placements of members of the minority group/women, as appropriate.

If the contractor does not have the necessary activity data, ask if there are data runs that show date of entry into jobs. If so, identify persons with a "job entry" date into the underrepresented area during the liability period and work "backwards" to whether they came by hire, transfer, etc. You may also wish to check termination lists to pick up any persons who entered the area during the liability period but subsequently terminated.

If there have been some nonminority/male placements into the underrepresented area during the liability period, examine the process by which those placements were made (Worksheet 17-4) and determine if there were members of a minority group/women (whether in the concentrated area or outside applicants) who were discriminated against in filling those jobs. Such discrimination may have occurred through a "steer-ing" of candidates toward particular jobs based on stereotypes, or may have resulted from a system or policy (below).



PART II

- (a) System or Policy: Describe any system or policy, maintained into the liability period, which served to create or maintain the areas of concentration and underrepresentation.

The disproportionate effect on members of a minority group or women of such a system or policy may be because of a present illegality--such as an invalid "weight-lifting" test or an invalid high school degree requirement for entry into the area (whether by hire, promotion or transfer). It may also result from past discrimination--such as past discrimination in placement.

If there have not been any new entries to the underrepresented area(s) during the liability period, but there is a system or policy which--had there been open-ings--would have disproportionately affected members of a minority group or women, you must show that effect and identify its cause. This usually involves either identifying a criterion for movement which would have adverse impact and/ or showing the effect is due to discriminatory placement whether at time of initial

hire or later. Once you have determined at what point and by what selection process discrimination potentially occurred, pursue it using Worksheet 17-3 (individual analysis) or Worksheet 17-4 (pattern or practice analysis).

If the system or policy involved is part of a bona fide seniority system, while the system itself cannot be altered, there can be individualized relief--including con-structive seniority--for victims of the contractor's post Executive order discrimination. Such persons may have been excluded because of a non-job related criterion and/or because of discriminatory placement. In the latter area, it is generally necessary to demonstrate that the person was qualified for a job in the underrepresented area, and either applied for but was denied it, or would have done so had such an application not been perceived as futile; i.e., perceived as certain to be rejected.

If there have not been any new entries to the underrepresented area(s) during the liability period, and there is no potentially discriminatory system or policy that was maintained into the liability period, the concentration involved need not be investigated further.

NOTE: This Worksheet also may be used for areas of underrepresentation not associated with a concentration. An underrepresented area, standing alone, is normally a potential discrimination problem only if:

- (a) There were openings in the area during the liability period, and the selection rate of members of a minority group or women for those openings was adverse; or



-
- (b) There was an illegal system or policy (such as a discriminatory maternity leave policy) which extended into the liability period and caused or contributed to the underrepresentation.

Therefore, for an underrepresentation standing alone, under "CONCENTRATED JOB AREA" enter N/A. Then, as above, enter the name of the underrepresented area; its total incumbents and incumbents who are women or members of the minority group being investigated; and the number of new entries into the area during the liability period by type of activity, minority group, and/or sex. For each type of activity conduct an IRA.

If the IRA is adverse, proceed to investigate for potential discrimination using an individual or pattern or practice approach, as appropriate (see below). If there was no activity or the activity was not adverse to the underrepresented group, further investigation need not⁹ be conducted unless, as noted above, you identify a discriminatory system or policy that caused or contributed to the underrepresentation (if so, describe the system or policy in Part II).

INVESTIGATION:

INDIVIDUAL vs. PATTERN OR PRACTICE

Individual cases are those which are based upon what happened to an identified individual. The most common way to develop an individual case is to reconstruct the selection decision and make one-on-one comparisons of candidates (cohort analysis).

⁹ OFCCP, however, always has the discretion to pursue any IRA result. See the discussion of Interpreting IRA Results in Appendix 2A-2.



In a pattern or practice case, the difference in selection rates between members of a minority group or women, as a group (rather than as individual members of a group), and others is extreme enough to, in itself, suggest discrimination. Extreme enough in this context usually means statistically significant.¹⁰

Please note the difference in methodology here; i.e., a pattern or practice case is not the same as a series of cohorts. There are also differences between individual and pattern or practice cases in terms of what the contractor must do to rebut and what remedy is required. More specifically:

- (a) In an individual case, the contractor may rebut by showing that the particular person was not selected for a legitimate nondiscriminatory reason (that cannot be shown to be a pretext for discrimination--see instructions for Worksheet 17-3).
- (b) By contrast, in a pattern or practice case the contractor cannot rebut merely by presenting evidence about particular individuals. Since proof of discrimination is based on the treatment or impact on a class rather than on an individual, the contractor must present evidence about the class. For example, in a treatment case, the contractor must show a legitimate nondiscriminatory reason for the difference in selection rates and demonstrate that the reason accounts for the difference¹¹.

Additionally, individual and pattern or practice cases differ at the remedy stage. In an individual type of case, once discrimination is proven for a series of cohorts, the specific minorities or women involved are entitled to relief. There is not, however, an automatic presumption that any other minorities or women are also due relief.

However, when discrimination is proven in a pattern or practice case, there is such an automatic presumption that each minority or female class member is entitled to relief. It is up to the contractor to prove that a particular class member is not entitled to relief--by demonstrating, for example, that there was no job opening at the time the individual applied, that a better qualified person was selected, or any other legitimate nondiscriminatory reason which establishes that the person would not have been selected even absent discrimination.

¹⁰ See cautions in Manual Section 3K00(e).

¹¹ If the contractor is able to do so, it essentially has identified a criterion with adverse impact and should be prepared to demonstrate that the criterion is in fact job related or required by business necessity (see instructions for page 17-6b).



A pattern or practice case, therefore, always has the potential of securing more relief than a series of individual cases, and is the preferred approach. Normally, if a properly refined IRA shows a statistically significant difference in selection rates using a statistical test appropriate to the numbers involved [see Manual Section 3K00(e)], a pattern or practice approach should be attempted¹².

However, whether to proceed on an individual or a pattern or practice basis is also a matter of practical judgement. Where the number of selections/persons in the pool is relatively small, the most efficient use of review time may be an individual analysis. Where, however, the number of selections/persons in the pool is large, a pattern or practice analysis is normally more efficient than going through the files/other data to reconstruct each selection decision on a case-by-case basis.

¹² Please note, however, that some cases are inherently pattern or practice regardless of any statistics or the number of persons affected--such as a case based on a specific policy; e.g., a discriminatory maternity leave policy).



WORKSHEET 17-3: INDIVIDUAL ANALYSIS - COMPARATIVE EVIDENCE

PART I

Obtain the Contractor's criteria for the job(s) involved from the EEO Coordinator and/ or main selecting official. You should obtain both the minimum objective criteria a person must meet to be considered, what factors are most important in selecting among those who meet minimum standards.

Before reviewing records, **KEY FACTORS** contractor: (a) the minimum ob a person must meet to be considered, and if applicable (b) what factors are most important among those who meet the minimum standards.

Consider whether any of the contractor's stated objective criteria have adverse impact.

Identify minorities/women who were equally or better qualified in terms of contractor's legitimate objective criteria than the nonminorities/men selected.

Obtain, investigate, and analyze the contractor's explanation for selection of nonminorities/men.

For example, a contractor may indicate that the minimum requirement for an entry-level engineer is a Bachelor of Science (B.S.) in Electrical Engineering (B.S.E.E). In choosing among those with a B.S.E.E., however, the contractor may consider the candidates' relative qualifications on factors it considers most important for the job. For example, the contractor may state that it prefers those with the most engineering work experience, or the contractor may care more about additional education; i.e., a Masters or Ph.D., than about work experience. Where, as in this example, more than one factor is considered in choosing among those who meet minimum standards, try to get the contractor to be as specific as possible in estimating the relative importance of each factor.

There will, however, be some kinds of selection decisions where only minimum objective criteria are relevant. Chief among them are jobs in a LOP where a person is supposed to advance as he or she meets a given time in grade and/or performance standard, rather than competing with others for a job opening. Similarly, many termination decisions are based on a person individually failing to meet a minimum standard (no more than 3 warnings in a given time period, etc.). Where, as in these examples, the contractor considers only minimum objective criteria in making an employment decision, you need only consider those criteria in your analysis.



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- (a) Evaluation for Individual Disparate Impact: Before beginning your analysis, examine the stated criteria. In an individual analysis, a criterion may have been applied to only one or a few persons and, thus, the contractor's data may not show any significant adverse impact. The criterion, however, may have a foreseeable adverse impact on members of a minority group or women based on wider societal data.

For example, given national statistics on height, a minimum height requirement of 6 feet would have foreseeable adverse impact on women, Hispanics, and Asians. Or, if the percentage of high school graduates in the labor area who are members of a minority group is substantially lower than the percentage of others, a high school degree requirement would have foreseeable adverse impact on the minority group.

In completing the rest of your analysis (below), if you find that a minority/woman was rejected because of a criterion with such foreseeable impact, you have an individual disparate impact case. The minority or woman is due relief unless the contractor can show evidence of validation or business necessity. Even if you find that no minority or woman was rejected because of the criterion; i.e., they were rejected for other reasons, since its impact remains foreseeable, the contractor must either eliminate the criterion or justify it based on validation or business necessity.

- (b) Records: Obtain the records you will need for your analysis (usually the applications/files of nonminorities/males selected and of members of a minority group/ women rejected). If selections occurred on more than one date, this Worksheet will normally be clearest if persons are recorded chronologically--with minority group members/women in date of application order, and nonminorities/men inserted based on their date of selection.

INSTRUCTIONS:

At the top of the sheet, enter the SCRR page 17 problem number and issue being investigated, then complete this page as follows:

- (a) #: Assign a number to each person.
- (b) Name: Enter the person's name.
- (c) R/S: Enter an abbreviation for the person's race¹³ and sex.

¹³ Race is used as a shorthand term for Whites and those minority groups for whom EEO-1 reporting is required.



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- (d) Date App. or Entered Pool: Enter the date the person applied for the job, or, if application is not a part of the selection process, the date he/she became eligible for the job. For example, if the contractor indicates that persons do not apply for Teller jobs but are selected from the ranks of Assistant Tellers, enter the date the person became an Assistant Teller.
- (e) Date Selected: If the person was selected, enter the date of selection. If the person was not selected, leave this column blank.
- (f) Contractor's Objective Selection Criteria: Draw a column in this space for each objectively measurable criterion the contractor states is necessary for selection, and enter the minimum acceptable level of the criterion in the column heading. If the contractor states that in selecting among those who meet minimum standards, better performance on a particular criterion is preferred, so indicate in a parenthesis following the criterion. For example, one column may be high school graduate; another, Type 60 WPM (faster preferred); another 1 year clerical experience.

In the appropriate column, enter the level of the person's qualification for each criterion; i.e., "h.s. grad., 1 yr. business school"; "65 WPM"; "2 years (1 file clerk, 1 clerk-typist)."
Subjective criteria need not be addressed here. They may, however, come up as part of the contractor's explanation for nonselection (see PART II below).

(CO Notes): If desired, clearly label any space remaining in the above area "NOTES," and record any additional information that may be relevant or helpful

in later evaluating obvious contractor rebuttals (see PART II below). For example, in a hiring situation, any restrictions a person indicated; i.e., could only work certain shifts, minimum salary requirements, etc.

- (g) MG/F = or + Qualified? (g): Complete this column when you have finished recording information on all persons. For each minority group member or woman, compare his or her qualifications on the contractor's objective criteria with those of nonminorities/males selected when he or she was in the candidate pool¹⁴.

¹⁴ *When only minimum objective qualification standards are relevant to the selection decision, you can compare the minority group/female candidates to others selected during the entire period the standard was in effect, not just to others selected when the minority or woman was eligible for selection. For example, in a line of progression situation, where persons are supposed to be promoted when they meet a certain standard, it is legitimate to compare the minority group members/women not promoted to nonminorities/men promoted during the entire period the standard was in effect (not just ones promoted after the minority/woman became eligible). Another example would be if a person was supposed to be terminated if he or she exceeded 5 unexcused absences in a year,



If the minority or woman was better qualified (particularly on a criterion where the contractor indicated a preference for higher performance) than one or more of those selected when he/she was in the pool, enter a "+" in this column; if he/she was equally qualified, enter an "=" Leave this column blank if he/she was less qualified (also leave it blank for nonminorities/males).

Where there is more than one selection criterion involved in choosing among those who meet minimum standards, this determination of "equally or better qualified" can only be as precise as the contractor's description of how it weights each criterion. If that description is not precise, any doubts here about who is equally or better qualified should be resolved in favor of the minority/woman; i.e., as discussed further below, the CO should go on to obtain the contractor's explanation for selecting the nonminority or male¹⁵.

- (h) Compared to NonMin/Male # (h): For each minority or woman with a "+" or "=" in the preceding column, enter the column (a) number assigned to the nonminority/ male selectee(s) you identified to reach your determination in column (g) above; i.e. the nonminority/male selectee(s) in comparison to whom the minority/woman was equally or better qualified.

PART II

For each minority or woman who was equally or better qualified (a "+" or "=" in PART I) than the nonminority/male selected, ask the contractor for the reason the nonminority/ male was selected.

INSTRUCTIONS:

At the top of this sheet enter the same SCRR page 17 problem number and issue you entered in PART I above, then complete this sheet as follows:

you could compare the minority group members/ women terminated with nonminorities/men with similar records who were not terminated during the entire time the rule was in effect.

¹⁵ As also discussed further below, where that explanation is that the selectee was better on a particular factor, the CO can then determine whether the importance given to that factor was consistently applied in other selection decisions.



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- (a) From PART I, Minority/Female "=" or "+": Enter the name of the minority or woman, and, from PART I, the number assigned to him/her in column (a) and whether he/she was "+" or "=" in column (g).
- (b) From PART I, Comparator Nonminority/Male: Also from PART I (column h), enter the name of the nonminority(ies)/male(s) to whom you are comparing this minority or women. Also enter the column (a) number assigned to the comparator(s).
- (c) Contractor Explanation for Selection of Nonminority/Male: Give the contractor's stated reason for selecting the nonminority or male, and describe any evidence the contractor has provided in support of its reason.
- (d) Evaluation of Contractor Explanation: Evaluate the reason the contractor has given for selecting the nonminority or male. Does the reason appear to be the real one or a pretext for discrimination?

DISCUSSION:

There are many ways to show pretext, but the two most common, where objective criteria are involved, are:

- (a) The person rejected was objectively better qualified than the one(s) selected at the time he/she was in the pool.

If the person is a "+," this method is met. Evaluate the contractor's explanation, but apart from a successful challenge to the facts gathered; i.e., your notes are in error; her resume says Ph.D, but her transcript shows she never finished, etc., this is normally sufficient for a finding of discrimination.

- (b) In other selection decisions for the same job(s), the contractor has not preferred the objective characteristic which it is now using to explain why the nonminority/ male was selected.

For example, in choosing between an apparently equally qualified minority and nonminority, the contractor explains that it often hires on a "walkin" basis, and the nonminority came in closer to the date of the job opening. If you find an instance in which an earlier nonminority applicant was chosen over a comparable later applicant (whether nonminority or minority), you can conclude that the contractor's explanation is a pretext for discrimination.



Similarly, a contractor may say it requires a Bachelor of Art (BA) and 1 year experience and prefers more of both (but cannot give weights). If the contractor's explanation for hiring a man with a BA and 2 years experience over a woman with a Master of Art (MA) and 1 year experience is that experience is more important, if you find an instance in which the contractor selected a man with more education over a person (male or female) with more experience, you can conclude that the contractor's explanation is a pretext for discrimination.

If neither of the above methods is applicable to the objective criterion involved-- or where the contractor's explanation is subjective (such as "poor appearance," "weak interview," "not articulate," etc.)--there are a number of other ways that surrounding circumstances can suggest discrimination. For example:

- (a) There may be direct evidence of discriminatory intent; i.e., an "M" or "F" on job requisitions; contractor statements, "Our customers wouldn't be comfortable with a Black," "A woman couldn't do that job," etc.
- (b) There may be evidence of less favorable treatment of members of a minority group/women in the selection process; i.e., the contractor offers to retest Whites but not Hispanic, asks women different and less favorable interview questions than men, etc.
- (c) The explanation given may be inherently implausible and/or contradicted by the facts. For example:
 - (1) The contractor says a man was selected because he had computer sales experience, but a review of his records shows that he didn't.
 - (2) The contractor says that a nonminority was selected because he had an MBA, but a review of records shows that the minority rejected also had an MBA.
 - (3) The contractor says that a man was selected over a woman because she didn't give her phone number, but her application form contains her address and a friend's phone number through which she could be reached.
 - (4) The contractor says the reason for selecting a nonminority was better references, but the selection decision was made before the references were received.
- (d) The selecting official may have a pattern of decision making--in the same or in other jobs--that while not statistically significant, is repetitively disadvantageous to the group involved; i.e., when the calls are close, they are heavily against members of the minority group or women.



NOTE: If the selecting official rejected objectively better qualified (a "+" in PART I) members of a minority group/women, it strongly suggests that his/her rejection of equally qualified members of the minority group/women was similarly biased.

- (e) There may be few safeguards against discrimination in a subjective decision making process (consider the safeguards discussed for subjective criteria in pattern or practice cases in Worksheet 17-7). Without such safeguards, there is considerable room for subjective criteria to be applied differently to members of a minority group/women than to others.
- (f) Where the contractor's explanation is subjective, there may occasionally be some file information which tends to suggest that the person may have the characteristic involved. For example, a "non-articulate" applicant's application may show debating awards; a candidate alleged to have "insufficient leadership ability," may hold elected office in his/her professional associations; etc.
- (g) Or, if the person was a rejected applicant and you are able to contact him/her, he/ she may presently be performing successfully in a similar job at another company.
- (h) Where the contractor's explanation is that the nonminority/male was selected because of facially neutral uniformly applied criterion (such as a high school diploma), determine whether the criterion was, in fact, uniformly applied and, if so, whether it has foreseeable adverse impact (see earlier discussion of individual adverse impact).
- (i) While gross underutilization in the job involved is not sufficient, in itself, to show discrimination in an individual selection decision, it is very important supporting evidence where other factors suggest pretext.

These comments are not intended to be exhaustive. Evaluation of the contractor's explanation for pretext will always depend on the facts of the particular situation.

As noted earlier, if the minority or woman was objectively better qualified than the person selected (a "+" in PART I), unless the contractor's explanation is highly persuasive, the finding should normally be discrimination.

If, however, after examining all the above (and/or any other relevant) factors, the only evidence you have is that the minority or woman was objectively equally qualified (a "=" in PART I), while there may be an affirmative action problem, there is not proof of discrimination¹⁶.

¹⁶ An exception here is when only minimum objective qualifications are relevant; i.e., LOP promotions, terminations based on a set standard. In such a case, discrimination is proven if nonminorities/males were promoted when they met the standard, but equally qualified members of a minority group/women were not; or,



It may be useful to think of an evaluation of pretext as a balancing process; i.e., similar to recording the factors that suggest discrimination on one half of a piece of paper and those that don't on the other half, and then seeing which predominate.

It is important to remember that the standard in an individual treatment case is that the facts show that it "is more likely than not" that the person was a victim of discrimination. Absolute proof is not required. This evaluation will almost always be a judgement call, and will always depend on the facts of the particular case.

DISCUSSION OF PATTERN OR PRACTICE

A pattern or practice case looks at the effect of the contractor's policies and practices on members of a minority group or women as a group (rather than as individuals), and is usually statistical. It often begins with an unexplained difference in the selection rate of members of a minority group or women vs. others. There are two major possible causes for this difference:

- (a) Selection criteria are disproportionately screening out members of a minority group/women; and/or
- (b) Members of a minority group/women are meeting the criteria, but are simply not being selected.

Because objective selection criteria (such as education and experience requirements) normally come earlier in a selection process and are easier to analyze than subjective criteria (such as an interview) it is usually best to analyze objective criteria first.

- (a) To determine if objective selection criteria are causing the problem, the comparison is between the total number of applicants/candidates from each group and the number of them who met the criteria. For example, if the criterion was a B.S. in Engineering, the comparison would be:

<u>Women</u>	<u>Men</u>
<u># with B.S. Engineering</u> vs. # of Applicants	<u># with B.S. Engineering</u> vs. # of Applicants

similarly, if members of a minority group/women were terminated when they fell below a standard, but nonminorities/men were not.



If this selection rate for women is less than 80% (.8)¹⁷ of the rate for men, the B.S. Engineering requirement is having an adverse impact and is causing or contributing to the overall problem.

NOTE: Whether this represents disparate impact discrimination depends on whether the contractor can demonstrate that the requirement is job related or required by business necessity (see Worksheet 17-6b). If so, the difference in selection rates has been explained on legitimate grounds and, as long as there is no problem in (b) (below)¹⁸, the investigation can cease. If not, the finding would be discrimination based on the disparate impact of the criterion.

- (b) If the criteria are not having adverse impact, the remaining possibility is that in choosing among persons who met objective criteria, the contractor disproportionately rejected members of a minority group/women. To determine if this was the case, the comparison is between the number from each group who met the criteria and the number who were selected. In the example:

<u>Women</u>	<u>Men</u>
<u># Selected</u>	vs. <u># Selected</u>
# with B.S. Engineering	# with B.S. Engineering

If the difference between this selection rate for women and for men is statistically significant¹⁹, what is causing the problem is disparate treatment in the act of selection itself.

Note that since, at the start of a pattern or practice analysis, you normally have data on the number of applicants/candidates and the number selected, the only additional information needed to do both above analyses is the number who met the contractor's minimum objective criteria.

The Worksheets that follow are designed to:

- (a) Identify:

¹⁷ You should also go on to test the statistical significance of the difference in these selection rates since statistical significance is usually needed and always strengthens a case (refer to Manual Section 3K00(e) and 7E06). Also, with very large numbers, the selection rate for members of a minority group or women may not be less than 80% of that for others but may nonetheless be statistically significant.

¹⁸ It is necessary to go on to #2 because there may be an additional problem with selections among those who did meet the criteria.

¹⁹ See Manual Section 3K00(e).



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- (1) The steps in the selection process,
 - (2) At what step(s) members of a minority group or women were disproportionately screened out, and
 - (3) The selection criteria used at that step(s). (See Worksheet 17-4.);
- (b) Test whether objective selection criteria explain the overall problem (Worksheets 17-5 and 17-6a-I); and/or
- (c) Whether the problem is selections made from among those who met the objective criteria (Worksheet 17-6a-II)-- but may have been ruled out based on remaining subjective factors (Worksheet 17-7)²⁰.

²⁰ Where remaining subjective factors--such as an interview--are causing the problem, the analysis may be either impact or treatment (see the instructions for Worksheet 17-7).



WORKSHEET 17-4: MAPPING, DATA ANALYSIS, CRITERIA IDENTIFICATION, AND DIRECT EVIDENCE/UNIFORM ADMINISTRATION

KEY FACTORS

DISCUSSION:

From your main contact person obtain information on the basic steps in the selection process and the name(s) of contractor personnel (specifically decision makers) involved at each step.

(a) Information on Components - Contractors Employing 100 or more Persons²¹: Where the contractor employs 100 or more persons, ask for:

(1) The contractor's determination of what component(s) of the selection process (what step, what criterion) caused the adverse impact in the total process, and

(2) The data upon which that determination was based (see 41 CFR 60-3.4, 3.15).

If the contractor supplies the requested information on the component(s) causing the impact, go through as many of the steps discussed below (and in subsequent applicable Worksheets) as necessary to confirm the accuracy of the information and to determine whether the impact caused by the identified component(s) was due to discrimination.

	<p>Identify each <u>step</u> in the selection process.</p> <p>For each step, identify the <u>decision makers</u> and the <u>records</u> maintained.</p> <p>To the degree possible, determine at what step(s) members of a minority group/women are being <u>disproportionately screened out</u>.</p> <p>IMPORTANT: If you cannot do so because of the contractor's failure to maintain records, follow the instructions below on "Information on Components..." and, for column (g) of the Worksheet, Sections 2O04(c)(1) and 3M01(d).</p> <p>For the step(s) at which members of a minority group/women are being screened out:</p> <ul style="list-style-type: none"> - Identify the <u>selection criteria</u> and how they are used. - Describe any <u>direct evidence</u> of discrimination and/or evidence that the selection process was <u>not uniformly administered</u> for members of a minority group/women.
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²¹ For requirements of contractors employing less than 100 persons see 41 CFR 60-3.4 and 3.15A(1) and Manual Section 2G14(d).



If the contractor indicates either that it has not identified the component(s) causing the impact or that it will not make its determinations available to OFCCCP, cite the contractor for a violation of 41 CFR 60-3.4 and 60-3.15A(2)²² and proceed as indicated immediately below.

- (b) Records on Components: Ask the main contact person what, if any, records are centrally maintained of what happened at each step in the process. Then, to the degree possible, "walk through" the process, interviewing those involved to determine selection criteria, how the criteria are used, and the types of records they maintain. Then complete this sheet as indicated below.

INSTRUCTIONS:

At the top of the sheet, enter the SCRR page 17 problem number and issue you are examining. Then enter the result of the total selection process for the job(s) involved for the groups you are comparing. More specifically, enter the selection rate for each group, the impact ratio and the results of your analysis for statistical significance (see Worksheet 17-12 and Manual Section 3K00(e)). Then complete this sheet as follows:

- (a) #: Number the steps in the selection process in the order in which they occur.
- (b) Steps: Describe each step in the selection process.
- (c) Contractor Personnel Involved: For each step, give the contractor personnel involved, underlining those who are decision makers. Identify persons by name and title if only one or a few; by function if many; e.g., "All production supervisors can nominate candidates."

If there are only one or a few decision makers and they have changed during the normal liability period, indicate the dates covered by each.

- (d) Pass/fail Step?: If some persons are screened out at this step, enter "Y" for yes. If no one is screened out at this step, enter "N" for no.

For example, the selection process may consist of being interviewed by a personnel representative and then by the hiring manager. If only those who are successful in the personnel interview are referred to the hiring manager, the personnel interview is a "pass/fail" step since some persons are eliminated from further consideration. However, if all persons are interviewed

²² Also see Manual Sections 3M01(d) and 2O04(c)(1).



both by personnel and the hiring manager (who then confer on the selection decision), the personnel interview is not, in itself, a "pass/fail" step.

- (e) Records Maintained: For each "pass/fail" step, describe what records are maintained of decisions made at that step.

Such records may be maintained centrally; i.e., by a personnel office, by an EEO Coordinator, may be maintained by the particular selecting official(s) or their support staff, or may be discernable from contractor documents; i.e., applications, interview lists. In any case, it is usually best to talk with the person who actually maintains the records and have him/her show them to you.

What you are looking for here are the kinds of data that will permit you to make an early determination of which step(s) is causing the problem; i.e., at what stage are members of a minority group/women being disproportionately screened out. If you can make this determination early, further analysis can be limited to ONLY the step(s) that is causing the problem.

To make this determination, for each "screen-out" (pass/fail) step you will need at least an approximation of the number of persons (by minority group or sex, as appropriate) who made it to the step, and the number who made it through the step.

For example, the contractor may describe the selection process for sales representative as:

- (1) Personnel screens sales applications to identify applicants with an MBA;
- (2) Personnel gives those with an MBA a sales aptitude test;
- (3) Those that pass the test are interviewed by the sales manager who makes the hiring decision. For this process, you would need the following data--by minority group or sex, as appropriate:
 - (i) At step (1), the number of all sales applicants and the number who had an MBA.

You would normally have the applicant data at the outset and, assuming the contractor retained the applications, you could review them to identify applicants with an MBA.



-
- (ii) At step (2), the number tested²³ and the number who passed the test.

Test data may be maintained by the person who administers the test or his/her support staff, or may be attached to or annotated on applications, etc.

- (iii) At step (3), the number interviewed²⁴ and the number hired.

You would normally have the data on those hired at the outset. With respect to those interviewed, personnel or the interviewer may have a list of those interviewed, or applications may show interview notes, etc.

- (f) #: Enter the same number assigned to this step in column (a).
- (g) Data Analysis: To the degree permitted by the contractor's data, determine which step(s) is causing the overall problem; i.e., at what stage are members of a minority group or women being disproportionately screened out.

²³ *If the contractor's process works as described, those tested should be all with an MBA and, in the absence of other data, you could carry this over as "the number tested." If you have other data, however, compare them to check for uniform administration (per item "k" below); i.e., the contractor says it tests all with an MBA, but records may show that several women with an MBA were eliminated before being tested.

²⁴ Similarly, the number interviewed should be all those who passed the test, and this could be carried over absent other data that would permit a check for uniform administration (as above; i.e., Were all women who passed the test really interviewed?).



Lack of Data: If you cannot conduct this analysis because the contractor not only failed to identify the component(s) causing the impact and the data upon which the determination was based, but also failed to maintain the data from which you could reconstruct what happened at each pass/fail step in the selection process, you will not be able to proceed further on data analysis. Enter "No Data" here, cite the contractor for a violation of 41 CFR 60-3.4 and 3.15,²⁵ and proceed based on the impact of the total selection process. However, gather as much information as possible about each step/criterion as described below and in subsequent applicable Worksheets.

Adequate Data: If records are adequate to reconstruct the data, compare the percent of members of the minority group/women vs. others who made it through the step. As noted above, to do so, for each "pass/fail" step, do an IRA (highly refined) using as your candidate pool persons--by minority group or sex, as

applicable--who made it to the step, and as your selections those who made it through the step, and computing the IRA.

EXAMPLE: There were 20 male and 20 female candidates. Ten men and ten women passed a screening interview by personnel and were referred to the hiring supervisor, who selected 7 men and 1 woman. The potential problem is clearly not the personnel interview ($10/20 = 50\%$ selection rate for both), but the hiring supervisor interview ($7/10 = 70\%$ selection rate for men vs. $1/10 = 10\%$ for women, for an IRA of .14). Remaining investigation would be restricted to the hiring supervisor step.

- (h) **Adverse?:** If the highly refined IRA for this step is adverse (less than .8) to the minority group/women, enter "Y" for yes. If it is .8 or more, enter "N" for no²⁶.
- (i) **Selection Criteria:** For each step in which selections were adverse for the minority group/women, enter the selection criteria stated by the decision maker(s) at that step. Try to get the decision maker to be as specific as possible.

Also ask the decision maker to describe how the criteria are used. For example: Are the criteria a minimum standard? Must a person meet each criterion individually or are alternative combinations acceptable; i.e., a B.A. and 4 years experience or an M.A. and 2 years?

²⁵ Also see Manual Section 3M01(d).

²⁶ Where you are dealing with very large numbers, even if the highly refined IRA is not adverse it may be statistically significant. Use Worksheet 17-12a or a small numbers test, as appropriate, and if the result is statistically significant [see Manual Section 3K00(e)], note that here.



- (j) Obj/Subj?: If the criterion/process is objective, enter "OBJ." If it is subjective, enter "SUBJ." A criterion is objective if it is fixed and measurable. Because there is no element of judgement involved, two persons could readily agree on whether a candidate has it; e.g., a height requirement, an Associates degree in Art, etc. Any criterion or process--such as an interview--that doesn't meet this test is considered subjective.

If the criterion(ia) is objective, analyze it using the guidance given for Worksheets 17-5 and 17-6. Hold aside any subjective criteria--such as "leadership ability," undefined "related experience," etc.--until you have analyzed all objective criteria.

When you have finished analyzing objective factors, evaluate any remaining subjective criteria/processes using the guidance given for Worksheet 17-7.

- (k) Direct Evidence/Non-uniform Administration: Describe any direct evidence of discrimination and/or any evidence that the step is not being administered in a uniform manner for minorities or women as compared to others.

Direct evidence is evidence that on its face shows an intent to discriminate. For example, sex specified job requisitions; a manager's statement that "Women couldn't do that job," or that "A Black would not be accepted by that work crew;" etc.

Information on whether a step is uniformly administered is most likely to come from interviews of persons who experienced the process; e.g., asking women but not men about plans for a family, asking Blacks but not others about academic rank in class, etc. It may also, however, come directly from the records; i.e., the earlier example where the contractor says it tests all MBAs but records show that some female MBAs were rejected before being tested.



**WORKSHEET 17-5: OBJECTIVE SELECTION CRITERIA - DO SELECTEES MEET? -
(CRITERIA VERIFICATION)**

KEY FACTORS

Do selectees meet the contractor's stated minimum ob

DISCUSSION:

Conduct this analysis in whatever way is most efficient given the criteria involved and/ or the volume of selections. All you are trying to determine is if all selectees (both members of a minority group/women and others) met the stated criteria.

For example, if there is a test and the contractor maintains a list of those tested, their score and whether they passed, a copy of it annotated for minority group/sex will readily show whether a stated pass score was uniformly required of all. Or, where there is only one criterion, a simple review of the files may quickly show if it was required of all.

Where, however, there are several objective criteria critical to a selection decision, this type of sheet can be used to record and tally information extracted from files. Where there is more than one criterion, apply them in the same way as described by the decision maker (see instructions for Worksheet 17-4 column (e) above).

INSTRUCTIONS:

At the top of the sheet, enter the SCRR page 17 problem number and issue you are investigating, then complete this sheet as follows:

- (a) **#:** Assign a number to each selectee.
- (b) **Name:** Enter the selectee's name.
- (c) **R/S:** Enter an abbreviation for the selectee's race^{27*} and sex. This Worksheet is generally clearest if all of one group are listed first, then all of the others.

²⁷ Race is used as a shorthand term for Whites and those minority groups for whom EEO-1 reporting is required.



- (d) Objective Selection Criteria: Draw a column in this space for each objectively measurable criterion the contractor states is necessary for selection, and enter the criterion in the column heading. Number each criterion. For example, the first column may be "1. BS-Business Administration;" the second, "2. three years computer sales experience."

In the appropriate column, enter the level of the selectee's qualification on each criterion; i.e., "MBA;" "four years sales, ABC Computer, Inc."

(CO Notes): If desired, clearly label any space remaining in the above area "NOTES," and record any additional information that may be relevant to the selection decision involved and/or that may be helpful in later evaluating contractor explanations.

- (e) #: Enter the same number assigned to the selectee in column (a).
- (f) Criteria Met?: Indicate whether the person met the criterion stated by the contractor by entering "Y" for yes, "N" for no, or "X" for no information.

In the example used above in which column 1 was "BS Business Administration," and column 2 was "3 years computer sales experience," the individual with the MBA and four years of such experience would be a "Y" in both 1 and 2.

INTERPRETING THE RESULTS OF CRITERIA VERIFICATION

When you have completed the review of persons selected, review "Criteria Met" to see if all nonminorities/males met the required criteria.

- (a) If all nonminorities/males met the criteria, go on to the following Worksheet on OBJECTIVE CRITERIA THAT ARE UNIFORMLY APPLIED.
- (b) If not all of the nonminorities/males selected met the criteria, check to see if any minority group members/women selected also did not meet the criteria. If the criteria were not uniformly applied in both groups, they are essentially "non- criteria" and need not be considered further.

For example, if the contractor stated it required a high school degree, but hired both Blacks and Whites without one, when you form the pool of qualified persons (to compare with selections) in a statistical disparate treatment case, the degree "requirement" should be ignored since the contractor, in practice, ignored it for both groups.



Your review of those selected, however, may suggest (for the above example) that rather than not considering educational level at all, the contractor actually used a lower educational level than high school degree; i.e., 8th grade, 10th grade, as a standard for "qualified." Where this appears to be the case, you could test the impact of the lower standard and/or in a treatment analysis use the lowest educational level actually used by the contractor in forming the pool of "qualified" candidates.

- (c) If very few of the nonminorities/males selected failed to meet the criteria, but all the minority group members/women selected met them, seek an explanation from the contractor for these exceptions and analyze the explanation to determine if it is a pretext for discrimination (see instructions for Worksheet 17-3b). If you conclude that the explanation is not a pretext, consider the criteria as uniformly applied and go on to the OBJECTIVE CRITERIA THAT ARE UNIFORMLY APPLIED (Worksheet 17-6a).

Among contractor explanations which investigation may reveal are not a pretext are: an isolated act of nepotism (son of Chairman of the Board) or particularly noteworthy substitute qualifications (a Pulitzer prize winning reporter hired as a Journalism professor without a college degree).

- (d) If all minority group members/women met the criteria, but exceptions were made for nonminorities/males which do not fall within "c" immediately above, the contractor has probably discriminated by requiring a higher standard of minority group members/women than of others. Under such circumstances, all members of the minority group/women disqualified on the basis of the non-uniformly applied criteria are potential victims. You should be aware, however, that in this type of case as in other pattern or practice treatment cases:

- (1) The strength of the pattern is relevant; i.e., 10% minority/male "exceptions" is more convincing than 1%, etc.--although there is no "magic" number here;
- (2) Supporting information is relevant (complete Worksheet 17-8). Also, because at the remedy stage the contractor can eliminate a potential victim by proving that there was a legitimate nondiscriminatory reason for the selection decision; e.g., that a better qualified person was selected, if your numbers are fairly small, it may be more efficient to pursue this type of nonuniform application case on an individual basis (see Worksheet 17-3).

DID ANY PERSONS REJECTED MEET THE MINIMUM OBJECTIVE CRITERIA?



Once you have determined that the minimum objective criteria were uniformly applied to those selected, you need to look at those not selected to see how many of them, by race²⁸/sex as appropriate, also met the criteria. This will give you the data needed for both an impact and treatment analysis; i.e.:

- (a) For impact, you will be comparing the total number of candidates from each group with the number who met the criteria, and
- (b) For treatment, the number who met the criteria with the number selected.

Again, use the most efficient method of collecting this information. Where there is only one criterion, you may wish to simply sort the applications of rejectees (by race²³/sex) into those who met and those who didn't meet the criterion and tally the results²⁴. Or, where there is information on several criteria to be extracted from applications/files, you can use another copy of Worksheet 17-5, with its title changed to "Rejectees" but keeping the same column headings used for selectees.

Once you have determined the number of rejectees from each group who met the criteria, add them to the number of selectees from each group (who, per earlier analysis, met the criteria), and record the results on the top of the next Worksheet.

²⁸ *Race is used as a shorthand term to indicate Whites and those minority groups for whom EEO-1 reporting is required.

²⁴ Note that if discrimination is found, you will need copies of the applications to support the tally. The contractor may provide copies or permit you to use its equipment to make copies, but is not required to do so. However, the contractor is, at minimum, required to loan the originals for offsite OFCCP copying.



WORKSHEET 17-6a: OBJECTIVE SELECTION CRITERIA UNIFORMLY APPLIED

Is there impact? Treatment?

At the top of the sheet, enter the SCRR page 17 problem number and issue you are investigating, then enter the data you will use in this analysis; i.e., for the minority group members/women and for others: (a) the number of candidates; (b) the number who met the contractor's minimum objective criteria; and (c) the number selected.

PART I: ARE MINIMUM OBJECTIVE SELECTION CRITERIA DISPROPORTIONATELY SCREENING OUT MEMBERS OF A MINORITY GROUP/ WOMEN? (Adverse Impact)

- (a) Criterion(ia) being analyzed: Indicate the criterion(ia) being analyzed.
- (b) "Pass Rates": Compare the rate at which the minority group/female candidates met the criteria with the rate for others. The rate for each group will be the number who met the criteria divided by the number of candidates. Where the rate for members of the minority group/women is lower, conduct an adverse

impact analysis and test for statistical significance (see Worksheet 17-12 or use a small numbers test, as appropriate)²⁵.

- (c) Conclusion: If there is adverse impact, and the analysis in "b" above includes only one criterion, go to Worksheet 17-6b to discuss and evaluate the contractor's position on that criterion.

KEY FACTORS	
	Are minimum objective selection criteria disproportionate for minority group or women?
-	Is the impact statistically significant?
-	Where there are several objective criteria, can you identify any problem with selection among those with the lowest objective criteria?
-	Is it statistically significant?
-	Are there remaining subjective criteria/processes?

²⁵ See Manual Section 3K00(e).



If the analysis in "b" above includes more than one objective criterion which individually must be met; e.g., a h.s. degree and type 80 wpm and take shorthand at 120 wpm, try to determine which one(s) is causing the impact. To do so, attach another copy of PART I of this sheet or plain bond and calculate the impact of each such criterion separately. Then here and at the top of Worksheet 17-6b identify the criterion(ia) which individually has adverse impact.

If, however, because of limitations in the contractor's data, you cannot determine which individual criterion(ia) has impact, cite the contractor for failure to maintain adequate records (as described in the instructions for Worksheet 17-4) and proceed to Worksheet 17-6b based on the impact of the combination of criteria.

PART II: IS THERE ANY PROBLEM WITH SELECTION AMONG THOSE WHO MET THE CONTRACTOR'S MINIMUM OBJECTIVE CRITERIA? (Disparate Treatment)

- (a) Selection Rates: Compare the selection rate of members of the minority group/ women who met the minimum objective criteria with that for others who did so. This rate for each group will be the number selected divided by the number who met the minimum objective criteria. Where the minority group or female rate is lower, determine the statistical significance of the difference in selection rates (see Worksheet 17-12 or use a small numbers test, as appropriate)²⁵.
- (b) Remaining Subjective Criteria/Processes: Indicate whether there are remaining subjective criteria/processes.
- (1) If there are no remaining subjective criteria/processes; i.e., decisions were allegedly based solely on objective criteria--go to Worksheet 17-8 to describe any supporting evidence.

Where this is the case, the data suggests that there is an unspoken discriminatory preference for nonminorities/men when choosing among candidates who meet minimum standards. It may also, however, reflect nonuniform application of the objective criteria; i.e., the contractor may be requiring members of a minority group or women to meet a higher standard than others for selection; e.g., members of a minority group or women, but not others, may have to exceed the minimum standard to be selected).

- (2) If there are remaining subjective criteria/processes, such as an interview, you have already essentially shown that they result in adverse impact. More specifically, since here you looked only at those who met objective criteria, you have accounted for all



objective factors. Therefore, the remaining difference in selection rates is directly attributable to the remaining subjective factors.

What remains is to gather enough information on the subjective factors to permit the Solicitor's Office to make an informed judgement, if enforcement is necessary, on whether to proceed based on disparate treatment, disparate impact or both. This area of Title VII law is currently in flux. The type of information needed is described on Worksheet 17-7, which primarily concerns safeguards on subjective factors. Worksheets 17-6b on Criteria with Adverse Impact and 17-8 on Supporting Information should also be completed (see NOTE on page 42 of these instructions for further discussion).

NOTE APPLICABLE TO BOTH PARTS I and II: If you do not find statistically significant differences in selections (but see Manual Section 3K00(e)) in either Part, a pattern or practice case is unlikely unless there is other supporting evidence of discrimination (see, for example, Worksheet 17-4 discussion of direct evidence and nonuniform administration, and Worksheet 17-8). If there are relatively few people in the pool/selections, you may wish to investigate further on an individual basis (Worksheet 17-3). Whether to do so, however, is a matter of judgement, based on surrounding review factors.



WORKSHEET 17-6b: SELECTION CRITERIA WITH ADVERSE IMPACT

KEY FACTORS

Can the contractor show that the criterion business necessity?

INSTRUCTIONS:

At the top of this sheet enter the SCRR page 17 problem number and issue involved, then enter the selection criterion(ia) that you have determined is having an adverse impact on members of a minority group or women.

Ask the contractor for any evidence it has showing that the criterion(ia) is job related or required by business necessity. Contractors normally respond to this request by asserting that the criterion has been validated, is required by business necessity or is otherwise job related.

- (a) Validated?: Indicate whether the contractor states that the criterion(ia) has been validated.

If the contractor states that the criterion(ia) has been validated, obtain a copy of the validation study for inclusion in the case file. Also obtain a copy of any written materials pertaining to the criterion(ia). For example, in the case of a

written test, include a copy of the test and of any score sheet, the test manual and instructions provided by the test developer.

Review the Documentation of Validity Evidence Section of Part 60-3 (41 CFR 60-3.15) to determine whether there are obvious omissions in the required documentation of validity and, if so, describe under Evaluation of Contractor's Position below.

- (b) Justified by Business Necessity?: Indicate whether the contractor claims that use of the criterion(ia) is justified by business necessity.



Business necessity means that the criterion is essential to the safe and efficient performance of the job; i.e., the normal operation of the contractor's business depends on use of the criterion and there is no other way that such operation could be assured without unreasonable burden.

For example, in a Title VII case, an airline's requirement that a pilot be at least 5'7" was shown to adversely impact women. The airline successfully rebutted by showing that a pilot had to be at least that tall to reach the cockpit controls, and that it would be an unreasonable burden to have to modify all its planes to make it possible for shorter persons to safely perform the job.

- (c) Other Showing of Job Relatedness: Indicate whether the contractor states that the criterion is otherwise justified by job relatedness. Ask the contractor for as much detail as possible. For example: What is the factual basis for the contractor's belief that the criterion is job related? Has the contractor compared the performance of those who possess the criterion and those who do not? What measures of job performance exist at the establishment?

DESCRIBE/EVALUATE CONTRACTOR'S POSITION

Describe: Describe the contractor's position. For example, if the contractor has a validation study, briefly describe it. If the contractor contends the criterion, although not validated, is justified by business necessity, present the contractor's reasons for so concluding.

Indicate whether the contractor states that it has considered alternate criteria that would serve its legitimate interest in efficient and trustworthy workmanship and which have substantially equal validity but less impact. If so, describe the alternatives the contractor has considered. Also indicate if OFCCP is aware of any alternatives which have substantially equal validity but less adverse impact (in examining alternatives, the assistance of an industrial psychologist should be sought (through the NO Division of Policy, Planning and Review, if needed).

Make sure you indicate to what job(s) the criterion(ia) applies and include a copy of any written position descriptions/qualification standards for those jobs in the case file.

Evaluate: Evaluate whether the contractor has demonstrated that the criterion(ia) is job related or required by business necessity.

A determination of whether a contractor's claim of job relatedness (particularly if based on a validation study), meets the requirements of 41 CFR Part 60-3 often involves technical issues that require consultation with an industrial psychologist (through the NO Division of Policy, Planning and Review, if needed). Where such technical issues are involved, the CO is unlikely to be able to independently



determine that the criterion is job related. He/she, however, can gather and evaluate a number of factors that may suggest the criterion is not job related. For example:

- (a) Do current incumbents in the jobs possess the criterion? If they do, that does not necessarily mean the criterion is job related, but if some don't it casts doubt on whether the criterion is really needed to perform the job.

Make sure to ask the contractor when it began using the criterion. If there are incumbents who entered the job before the criterion was introduced, they may not meet it, yet nonetheless be satisfactory or better performers.

Performance evaluation records and/or records of promotion of such incumbents can shed considerable light on the criterion's job relatedness or lack of same.

- (b) What are your observations from your plant inspection and/or from interviews? Watching the jobs as they are actually performed and/or interviewing some incumbents can be helpful in assessing job relatedness.

For example, the contractor may have a "strength test" that is adversely impacting women, and which it claims is justified by business necessity because of the heavy lifting requirements of the job. However, during your plant inspection you may note that there are hoists available for moving heavy objects, and/or during interviews with incumbents, they may indicate that when heavy objects need to be moved, workers routinely assist each other.

Or, in a white collar setting, a contractor may have a manual math test for accounting clerks or tellers that is adversely impacting Blacks and Hispanics. You may find through observation and interviews that calculators, rather than manual math, are used for all transactions.

There, of course, will be cases where the above factors are not present or where they are not be helpful. In assessing such cases, a degree of caution is in order. Remember that the standard for job relatedness is not the literal one of whether the criterion has some "rational relationship" to the job, but rather whether it is predictive of or measures job performance.

For example, in an OFCCP enforcement case involving a lumber mill, the contractor had a requirement that entry level mill workers have prior experience either in a lumber mill or as a heavy laborer. This requirement had an adverse impact on women seeking mill jobs.

While this requirement appeared "rationally related" to the mill job, it turned out to have absolutely no correlation with job performance; i.e., among the mill's current workers, a person without such experience was just as likely to be a high performer as one with such experience. Since the requirement, therefore, was not predictive of job performance, it was invalid and had illegally excluded women.



There also will be instances where the contractor does have a formal validation study. Any surrounding information is helpful in such cases. While, as noted earlier, a preliminary evaluation of the study for obvious omissions can be made, the study should normally be forwarded to the NO Division of Policy, Planning and Review, for technical evaluation.

Under certain circumstances, even if the contractor has not fully complied with the Uniform Guidelines, OFCCP may choose not to assert a violation. This judgement is a matter of administrative discretion and, where the circumstances (type of job, type of criteria, surrounding evidence) raise questions on the appropriateness of asserting a violation, the CO should consult with his or her supervisor (who, in turn, should consult with RSOL and/or seek the assistance of an industrial psychologist through the NO Division of Policy, Planning and Review, if needed).

CONCLUSION:

If, after appropriate technical evaluation, the conclusion is that the contractor has demonstrated that the criterion is job related or required by business necessity and there are no alternative criteria with substantially equal validity but lesser adverse impact, the difference in selection rates has been explained on legitimate nondiscriminatory grounds. As long as there is no further problem with selections among those who did meet the criterion (complete PART II of the preceding Worksheet 17-6a), the investigation can cease.

If the conclusion is that the contractor has not demonstrated that the criterion is job related or required by business necessity, you have a pattern or practice disparate impact case based on the criterion which is screening out members of a minority group or women. As noted earlier, however, also complete PART II of Worksheet 17-6a to be sure there is no further problem in selection among those who did meet the criterion.



WORKSHEET 17-7: SUBJECTIVE SELECTION CRITERIA/PROCESSES

Worksheet on Safeguards

DISCUSSION:

Once you have tested all objective criteria, if there is a remaining subjective part(s) of the selection process, evaluate it using this Worksheet. A subjective part of a selection process can be a number of things, such as:

- (a) A step in the selection or evaluation process such as an interview.
- (b) Those steps in a selection process or a whole process in which there are no pass/fail points but instead a person goes through the entire process and the selection decision is based on simultaneous--but unquantifiable--consideration of his/her performance on the process as a whole. For example, in filling top management positions, a candidate may be interviewed by several persons who then get together to discuss results and reach a decision.
- (c) A criterion such as "mechanical aptitude" that the contractor either cannot or will not define in a way that permits you to make a reliable judgement of whether a candidate met the criterion; i.e., two people would not necessarily agree on whether a candidate had it.
- (d) A criterion such as "appearance" which even if the contractor can define it, may be impossible to objectively evaluate.

KEY FACTORS	
	Does the subjective criterion/process result in adverse impact on group/women vs. others? Is the impact statistically significant?
	Has the contractor established any safeguards against differential application of the subjective criterion/process?
-	Are selecting officials given written guidelines? Trained?
-	Is the process uniform? Documented? Reviewed?

As noted earlier, the information you will gather on this sheet concerns the degree and type of safeguards the contractor may have established to protect against differential application of the subjective criterion/process. This type of information will assist the Solicitor's Office, if enforcement is necessary, in determining whether the case should be based on disparate treatment, disparate impact or both.

NOTE: The following discussion is for information only (in your Predetermination Notice you need only allege a pattern or practice of discrimination due to the subjective factor involved; it is not necessary to specifically allege treatment or impact).



-
- (a) Generally speaking, as with objective criteria, the starting point is whether the subjective criterion/process was uniformly applied. Since it is usually impossible to directly determine this when the criterion or process is subjective, one looks at whether there are any safeguards designed to ensure uniform application. More specifically:
- (b) Where the subjective criterion/process has relatively few safeguards and is poor-ly documented, there is considerable room for differential treatment to occur in how members of a minority group/women vs. others are assessed; i.e., the subjective criterion/process may not have been uniformly applied. In such circumstances, SOL may choose to pursue the case as a pattern or practice of disparate treatment, and thus will also need any available supporting information (Worksheet 17-8).
- (c) Where there are many safeguards and the system is well documented, this suggests that members of a minority group/women may be treated similarly to others; i.e., the subjective criterion/process may be uniformly applied. The subjective criterion or process, however, is nonetheless having an adverse impact on members of a minority group or women in much the same way that a neutral, uniformly applied objective criterion can. In such circumstances, as with objective criteria which have an adverse impact, SOL will need to know whether the contractor claims that the subjective criterion/process is job related or justified by business necessity (see instructions for Worksheet 17-6b).

The distinction between few safeguards--which suggests a treatment approach--and many safeguards--which suggests an impact approach--is not a precise one. There-fore, it is best to gather the type of information (as above) that would support either type of case.

INSTRUCTIONS:

At the top of the sheet, enter the SCRR page 17 problem number and issue being investigated, then complete this sheet as follows:

- (a) Subjective Criterion/Process being Analyzed: Indicate the subjective criterion/ process being analyzed.
- (b) Selection Rates: Enter the selection rates for members of the minority group/ women vs. others as a result of the subjective criterion/process. Then calculate the adverse impact and test for statistical significance (see Worksheet 17-12 or use a small numbers test, as appropriate)²⁶.

²⁶ See Manual Section 3K00(e).



For example, if the subjective process were an interview, the selection rate for each group would be the number who "passed" the interview divided by the number who were interviewed.

Note that since the difference in selection rates you calculated on Worksheet 17-6a, PART II, accounted for objective criteria, it also reflects the difference caused by all remaining subjective factors. Where there is only one remaining subjective factor, the math here is identical to that on Worksheet 17-6a.

Where, however, there are several remaining subjective criteria/processes that are "pass/fail" points (such as a series of managerial interviews where each must be "passed" to remain under consideration), if the contractor has not maintained records of the result of each, cite the contractor for the same record keeping violations as discussed in the instructions for Worksheet 17-4 and proceed based on the overall impact of the subjective factors (gathering as much of the following information on those factors as possible).

Similarly, if there are several remaining subjective criteria/processes that are not individually "pass/fail" points (such as where the results of a series of managerial interviews are considered together in reaching a selection decision), but the contractor will not or cannot describe how the results of each are weighted in the final decision, cite the same record keeping violations as above and proceed based on the overall impact of the subjective factors (again, gathering as much information as possible on those factors).

DESCRIPTION:

- (a) Describe the subjective part of the selection/evaluation process and the role that it plays in that process. How important is it in the total process? In answering this question, be sure to indicate whether it is a "pass/fail" point; i.e., persons are screened out by it) or whether it is one of several factors considered in a final selection decision. For example:

"Mr. Jones' interview is the last step in the selection process for Sales Representatives. His interview determines who gets hired; i.e., it is a pass/fail step."

- (b) What characteristics is the contractor looking for in candidates in the subjective part of the process? For example:

"In the interview, Mr. Jones says he looks for persons who have good problem solving skills, like a challenge, can work independently, and have a high level of interest in Sales."



-
- (c) How does the contractor determine whether the candidate possesses the desired characteristics?
For example:

"Mr. Jones says that he determines a person's level of problem solving skills by asking them to describe difficult situations they have been in and how they resolved them."

CONSISTENCY:

Does the evaluation device have a fixed content; e.g., same interview questions, same performance appraisal items, etc., for all people? Is it scored? Does it measure behavior or perceived traits?

Note: An evaluation of behavior is based on what a person has done; an evaluation of perceived traits is based on how a person is viewed. For example, a performance evaluation may measure behavior such as widgets produced, widgets rejected by quality control, dollar volume of sales, project results when serving as a project leader, etc., or may primarily be based on such perceived traits as growth potential, leadership ability, etc. Similarly, in a hiring situation, the contractor may measure "leadership ability" by the person's past performance in leadership posts or primarily by a perception of such ability during an interview.

To continue the example:

"Mr. Jones has a list of general questions he says he uses as a guide (attached), but he states that most questions are follow-ups that depend on a person's response. The interview is not scored. Interviews of both men and women who have been interviewed by Mr. Jones showed that he asked different and less favorable questions of the women. More specifically, the women said that he stressed the long working hours and frequent travel involved in the job, and specifically asked about any potential conflicts with family obligations. The men said he presented the travel involved as an opportunity, and told them that Sales was the prime route to management at the Company. None of the men could recall any questions about family obligations."

GUIDELINES:

Are decision makers provided with written guidelines on assessing candidates? Are they trained?

In the example:

"The Company has not provided Mr. Jones with any guidelines on what to ask and/or what to look for in his interview. He has not received training on interviewing/EEO matters."



DOCUMENTATION AND REVIEW:

Do decision makers document their determinations? Are their determinations reviewed?

In the example:

"Mr. Jones states that he makes notes for himself during an interview, but discards them as soon as he has reached a decision to hire/not hire. His decisions are not reviewed."

DECISION MAKER(S):

How familiar is the decision maker(s) with the job? With the candidates? Where there is more than one decision maker, what is their race/sex composition?

In the example:

"Mr. Jones, who is the contractor's top Sales Manager, came up through the ranks of the sales workforce and is very familiar with the sales job. Since almost all entry-level sales jobs are filled by hiring, Mr. Jones' first exposure to candidates is normally in his interview."

CANDIDATES:

Are they informed of opportunities? May they apply? May they review their evaluations? May they comment on them? Do they sign them? May they appeal them?

These questions are applicable primarily to a promotion, transfer or performance appraisal situation.

EVALUATION:

Evaluate the degree to which the contractor has provided safeguards against differential application of the subjective criterion/process.

For example:

"There are very few safeguards against the possibility of differential treatment in Mr. Jones' interview. The issue is whether he interprets the criteria used in his interview similarly for



women vs. men. His presentation of different and less favorable information and questions to women than to men, strongly suggests an intent to discriminate. The lack of documentation and the total absence of external controls (guidelines, training, review) allowed any such intent to be freely exercised to the disadvantage of female candidates for the Sales job.



WORKSHEET 17-8: SUPPORTING INFORMATION

Supporting evidence; i.e., information on particular individuals or on the background of a case, is important in some cases and helpful in others. The instructions below note the types of cases to which particular items most often apply.

At the top of the page, enter the SCRR page 17 problem number and issue you are examining, then complete this sheet as follows:

KEY FACTORS
Are there any individual <u>examples</u> that illustrate an overall pattern or
Are there any potential <u>witnesses</u> who could testify on their experience
Is there evidence the problem may be <u>longstanding</u> ?
Has the selection process changed?
What is the overall <u>EEO atmosphere</u> at the establishment?

- (a) Are There Witnesses/Individuals Examples?: In a pattern or practice case based on disparate treatment (members of a minority group/women met criteria but were nonetheless screened out), it is normally OFCCP policy to require some examples of persons affected by the discrimination in order to bring any statistics to life. Where this is not possible because of the contractor's failure to keep records (for example, rejectees' applications were destroyed), or where there is strong nonstatistical evidence (such as the direct evidence discussed in Worksheet 17-4), such examples, however, may not be needed.

It is not necessary for the person(s) who is a potential witness/example to have perceived the selection decisions involved as discriminatory. While a person may perceive discrimination in situations where he/she has knowledge of the selectee's qualifications or treatment--most commonly internal decisions such as promotion or termination--such a perception will be less common in hiring situations or in salary/evaluation ones where the process is confidential.

At minimum, however, identify persons who could testify to their experiences with the selection process involved; e.g., the women and men who were interviewed by Sales Manager Jones in the instructions for Worksheet 17-7 on Subjective Criteria/Processes. There may also be nonminorities/men who could be witnesses to other forms of discrimination--such as witnesses to biased statements or treatment of members of a minority group or women.



There may also be some minority group members or women who would meet the standard for an individual discrimination case--ideally some who had better objective qualifications than some nonminorities/men selected at the time they were in the candidate pool (see Worksheet 17-3).

Individual examples are not required in a pattern or practice case based on disparate impact--such as a test or a high school degree requirement--or in an individual case. In the former, however, you may wish to identify here some minority group members/women who appear particularly well qualified for the job(s) involved, apart from the criterion that screened them out, or who although rejected for the job were later hired in similar jobs elsewhere and are performing well. In an individual case, the case itself will illustrate the discrimination.

- (b) Is the Problem Longstanding?: While a problem need not be longstanding in order to be discriminatory, both an individual and a pattern or practice case are strengthened if it can be shown that the problem involved has probably existed for some time.

In an individual case, if the job for which the person was rejected is seriously underutilized for the person's minority/sex group, it further supports the inference of discrimination against him/her individually.

Similarly, in a pattern or practice case, serious underutilization in the job(s) involved further supports that the problem represents a regular contractor way of operating²⁷. While discrimination prior to the normal liability period cannot be reached for back pay purposes, if data on activity prior to that period are available and show the same trend, they can be used here to buttress the finding during the liability period.

- (c) Has the Selection Process Changed?: This is applicable to pattern or practice cases based on either disparate impact or disparate treatment. In both types of cases, it is necessary to know what the selection process was during the entire liability period and, if it changed, what the change was and the reason for it. Also, in each case, changes (or the lack of same) may shed light on other issues. More specifically:

In an impact case, for example, you may have identified an Associates degree requirement that is adversely impacting the promotion of Blacks from Jr. to Sr. Technician. The contractor contends the requirement is clearly job related. You find that 80% of the Sr. Tech. incumbents have no Associates degree and are successfully performing the job. You additionally find that the

²⁷ Where this is the case, however, there is a strong possibility of a continuing violation which would require remedy (other than back pay) for violations earlier than the normal liability period. See Manual Chapter 7, Section 7B01.



Associates requirement was introduced in 1985, shortly after the contractor began hiring Blacks at the Jr. Tech. level.

While an adverse impact case is established on the impact alone, information such as the above on whether incumbents have the criterion and the timing of its introduction can be relevant to the issue of job relatedness.

In a treatment case, for example, you may have found direct evidence of an intent to discriminate in the form of sex specified job requisitions. The contractor contends that the requisitions were discontinued before the liability period. You find that at the time the explicitly sex designated requisitions were allegedly discontinued, there were no changes in the selection process, no efforts to counteract the sex-typing of jobs through training of personnel and hiring officials and little difference in referral or hiring patterns.

- (d) What Is the Overall EEO Atmosphere at the Establishment?: While a good EEO atmosphere/history does not protect a contractor from an otherwise sound finding of either individual or pattern or practice discrimination, a poor EEO atmosphere/history can lend support to a sound case.

SPECIALIZED ANALYSIS

WORKSHEET 17-9: COMPENSATION ANALYSIS

Identify any job titles in which members of a minority group or women are clustered towards the bottom (or below) the pay range for the job. Are the reasons for this legitimate; e.g., a bona fide seniority system; or are they discriminatory; e.g., a non-uniformly applied merit pay system?

Identify any job in which people appear to be performing similar work, but the titles where members of a minority group or women predominate are paid less. Give your analysis of this situation. This could be an equal pay type case.

Further guidance will be provided on compensation analysis in the future. (See Manual Section 3R.)

WORKSHEET 17-10: OTHER DISCRIMINATION WORKSHEET



(Disabled, Veterans, Guidelines on Religion and National Origin and on Sex Discrimination)

This Worksheet applies to specific types of potential violations covered by the listed requirements. These are violations, which may not fit the previous Worksheets, such as a failure to grant maternity leave. In addition, specific issues of accommodation which do not fit under other Worksheets may be at issue in Section 503 cases and in 38 U.S.C. 4212 cases involving special disabled veterans.

DISCRIMINATION FOUND:

WORKSHEET 17-11: DISCRIMINATEES/REMEDY

PART I

In an individual-type case, under A, list the victim(s) and under B, the remedy you are proposing to make each victim whole. If the contractor disputes the proposed remedy, describe and evaluate the contractor's position, and give your recommended action.

In a pattern or practice case:

- (a) Under A, give the scope of the class in terms of the affected group, the type of employment action, the type of job(s) and the time frame. For example, "All Hispanic applicants rejected for Technician III jobs since April 10, 1986," or "All women placed in Assembly C positions since May 1, 1985," etc.
- (b) Under B, describe the type of relief (job offers, back pay, etc.) and, where relevant, the time period involved; e.g., back pay from date of application to date of settlement.

KEY FACTORS
In an individual case(s), identify the victim(s) and describe the mal remedy.
In a pattern or practice case: define the scope of the class; determi use an individual-by-individual or a formula approach to relief; descr in a formula approach, indicate how you propose relief be allocated
In both an individual and pattern or practice case, describe the remedy/corrective action needed to ensure that the violation is not



Indicate whether relief is being proposed on an individual-by-individual or on a formula basis, and the reason for doing so.

- Where individual-by-individual relief is proposed, identify each individual and his/her remedy.
- Where formula relief is proposed, indicate how you recommend that the relief (job offers, back pay, etc.) be allocated among the class members and describe the rationale for the allocation.

If the contractor disputes class remedy, describe and evaluate the contractor's position and give your recommended action.

For a full discussion of remedy, see Manual Chapter 7, Section 7F.

PART II

Describe the remedy/corrective action you propose to ensure that the violation involved will not be repeated (see Manual Section 7F02). Where the contractor disputes this proposed remedy/corrective action, describe and evaluate the contractor's position and give your recommended action.

STATISTICAL ANALYSIS - GENERAL

The following Worksheets may be used to find the statistical significance of a difference in selection rates (Worksheet 17-12a) or, in the absence of applicant/ candidate data, to find the statistical significance of the difference between avail-ability and selections or incumbents (Worksheet 17-12b). For guidance on when to use a small numbers test rather than these Worksheets, see Manual Section 3K00(e). That Section also discusses the meaning of statistical significance and its relationship to other evidence in a pattern or practice case.

A statistical table is included following the instructions for Worksheet 17-12b. This table may be used to translate the result of Worksheet 17-12a or b or the result of a small numbers test (Fisher's exact) into how often it would occur by chance.



WORKSHEET 17-12a: STATISTICAL ANALYSIS

(Based on Selection Rates)

This Worksheet may be used to find the statistical significance of a difference in selection rates.

At the top of the sheet, enter the SCRR page 17 problem number and, beside "Issue," enter the names of the particular groups whose selection rates you are

comparing, the type of selection decision and for what job(s); i.e., Female vs. Male Hires for Management Trainee. Then complete this page as follows:

(a) Step #1: Find the difference in selection rates by subtracting the lower rate from the higher.

(b) Step #2: For the value of one Standard Deviation (S.D.):

(1) Multiply the total selection rate by 1 minus the total selection rate.

NOTE: "1 minus the total selection rate" is just a shortcut for the total non-selection rate; i.e., if the total selection rate is .25, then $1 - .25$ or .75 is the total non-selection rate.

(2) Then find the value of 1 divided by the number of one group in the pool (of applicants, of candidates) and add it to the value of 1 divided by the number of the other group in the pool.

Multiply the result of (a) by the result of (b) and find the square root. This is one Standard Deviation.

(c) Step #3: For the number of Standard Deviations of the difference in selection rates shown in Step #1, divide the result of Step #1 by the result of Step #2.

Generally speaking, a result of 2 or more Standard Deviations is considered statistically significant.



WORKSHEET 17-12b: STATISTICAL ANALYSIS

(Based on Availability)

This Worksheet can be used to compare availability with selections where it is impossible to reconstruct selection rates (and therefore to use Worksheet 17-12a above) because the contractor has not kept applicant flow or other data needed to calculate such rates. It can also be used to compare availability with incumbency where you want to demonstrate the degree of underutilization of members of a minority group/women (however, you do not need to do this for any of the types of cases discussed in these Worksheets). If you use it for this latter purpose, where the word "selections" occurs below, substitute "incumbents."

At the top of the sheet, enter the SCRR page 17 problem number and, beside "Issue," enter the name of the group whose selections you are comparing with availability, the type of selection decision, for what job(s) and the name of the comparator group; i.e., Female Hires for Management Trainee (Others = Males). Then complete this page as follows:

- (a) Step #1: Find the difference between expected and actual selections by:
 - (1) Multiplying the number of total selections by the availability of the minority group/women. This is the expected number of selections of members of the minority group/women.
 - (2) Subtract the actual number of selections of the minority group/ women from the expected number.
- (b) Step #2: For the value of one Standard Deviation (S.D.):
 - (1) Multiply the number of total selections by the availability of the minority group/women, then by the availability of others.
 - (2) Take the square root of the result immediately above. This is the value of one Standard Deviation.
- (c) Step #3: For the number of Standard Deviations of the difference between expected and actual selections shown in Step #1, divide the result of Step #1 by the result of Step #2.

Generally speaking, a result of 2 or more Standard Deviations is considered statistically significant.



IMPORTANT: For selections, this is a "fall back" formula only. Where you have the information to calculate selection rates, always use the formula in Worksheet 17-12a instead.

STATISTICAL TABLE

The following table is provided to permit you to express the number of Standard Deviations or the Fisher's result found in terms of how often it would have occurred by chance. Expressing your result this way can sometimes be clearer to a nonstatistician. For example, in this table, a result of 3.3 Standard Deviations (column a) or a Fisher's result of .001 (column b) would occur by chance only once in 1,000 drawings (column d).

Number of Standard Deviations (a)	Fisher's Result (Confidence or Signif. Level) (b)	% of Time Occurs by Chance (c)	How Many Times in How Many Drawings? (d)
0.00	N/A	100%	N/A
0.25	.80	80%	8 in 10
0.50	.62	62%	6.2 in 10
0.75	.45	45%	4.5 in 10
1.00	.32	32%	3.2 in 10
1.25	.21	21%	2.1 in 10
1.50	.13	13%	1.3 in 10
1.75	.08	8%	8 in 100
2.00 ¹	.05	5%	5 in 100
2.10	.036	3.6%	3.6 in 100

¹ Generally accepted as statistically significant (refers to whole row).



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Number of Standard Deviations (a)	Fisher's Result (Confidence or Signif. Level) (b)	% of Time Occurs by Chance (c)	How Many Times in How Many Drawings? (d)
2.20	.028	2.8%	2.8 in 100
2.30	.021	2.1%	2.1 in 100
2.40	.016	1.6%	1.6 in 100
2.50	.012	1.2%	1.2 in 100
2.60	.009	0.9%	less than 1 in 100 9 in 1,000
2.70	.007	0.7%	7 in 1,000
2.80	.005	0.5%	5 in 1,999
2.90	.004	0.4%	4 in 1,000
3.00	.003	0.3%	3 in 1,000
3.10	.002	0.2%	2 in 1,000
3.20	.0014	0.14%	1.4 in 1,000
3.30	.001	0.1%	1 in 1,000
3.40	.0006	0.06%	less than 1 in 1,000 6 in 10,000
3.50	.0004	0.04%	4 in 10,000
3.60	.0004	0.04%	4 in 10,000
3.70	.0002	0.02%	2 in 10,000
3.80	.00014	0.014%	1.4 in 10,000
3.90	.0001	0.01%	1 in 10,000



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Number of Standard Deviations (a)	Fisher's Result (Confidence or Signif. Level) (b)	% of Time Occurs by Chance (c)	How Many Times in How Many Drawings? (d)
4.00	.00006	0.006%	less than 1 in 10,000 6 in 100,000
4.10	.00004	0.004%	4 in 100,000
4.20	.00003	0.003%	3 in 100,000
4.30	.000016	0.0016%	1.6 in 100,000
4.40	.000011	0.0011%	1.1 in 100,000
4.50	.000007	0.0007%	less than 1 in 100,000 7 in a million
4.60	.000004	0.0004%	4 in a million
4.70	.000003	0.0003%	3 in a million
4.80	.0000016	0.00016%	1.6 in a million
4.90	.000001	0.0001%	1 in a million
5.00	.0000006	0.00006%	less than 1 in a million 6 in 10 million
6.00	.000000002	0.0000002%	less than 1 in 100 million 2 in a billion



NOTES:



-
- (1) Columns b, c, and d are all the same number--expressed in b as a decimal, in c as a percent, and in d as how often it would occur by chance in a given number of drawings.
 - (2) This chart is based on a “two-tail” test. For “one-tail” values, divide column b, c, or the “how many times” figure in d by 2.



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**APPENDIX C: STANDARD COMPLIANCE REVIEW REPORT (SCRR) - POTENTIAL
DISCRIMINATION WORKSHEET (PDW) FORMS**



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Worksheet 17-1: REFINED IRAs

Problem: _____ Issue: _____

DATA REFINEMENT: REFINED IRAs					
FOR JOB AREAS WITH AN ADVERSE ira, CONDUCT REFINED IRAs TO REFLECT, FOR EXAMPLE: APPLICANTS VS. HIRES FOR JOB(S) WITH SIMILAR QUALIFICATION REQUIREMENTS; PROMOTIONS VS. PERSONS IN FEEDER JOB(S); TERMINATIONS VS. INCUMBENTS BY REASON (VOLUNTARY, INVOLUNTARY, ETC.), BY ORGANIZATIONAL UNIT OR AS APPROPRIATE. REMEMBER TO ELIMINATE PERSONS--BOTH MEMBERS OF A MINORITY GROUP/WOMEN <u>AND</u> OTHERS--WHO ENTERED THE CANDIDATE POOL AFTER THE DATE OF THE LAST SELECTION. IF AN ADVERSE ira IS FOR MINORITIES IN THE AGGREGATE, ALSO REFINED IT TO IDENTIFY THE PARTICULAR MINORITY GROUP(S) AFFECTED.					
ORIGINAL IRA			REFINED IRA(s)		
Job Area (State Type of Activity)	Min./ Fem.	IRA	Refined Job Areas (State Bases)	Data Analysis	Pur- sue (✓)



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Worksheet 17-2: CONCENTRATIONS/UNDERREPRESENTATIONS

Problem: _____ Issue: _____

DATA REFINEMENT: CONCENTRATIONS/UNDERREPRESENTATIONS			
Normal Liability Period: From: _____ To: _____		Dates of Activity Data: From: _____ To: _____	
CONCENTRATED JOB AREA		COMPARITOR UNDERREPRESENTED JOB AREA	
NAME OF AREA (# Tot-# Min Grp/Fem)	NAME OF AREA (# Tot-# Min Grp/Fem)	New Entries During Liability Period	
		Type of Activity	Data
<input type="checkbox"/>			<input type="checkbox"/>
Was there any system or policy, in effect into the liability period, that served to create or maintain the areas of concentration/ underrepresentation? If			



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so, describe.

(REPRODUCED 11/25/98) = Continued



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Worksheet 17-3a: INDIVIDUAL ANALYSIS: COMPARATIVE EVIDENCE (Part I)

Problem: _____ Issue: _____

#	NAME	R/S	Date App./ Entered Pool	Date Selected	Contractor's Objective Selection Criteria	MG/F = or + Qualified?	Compared to NonMin/Mal e #
a	b	c	d	e	f	g	h



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(REPRODUCED 11/25/98) Page ____ of ____



Worksheet 17-3b: INDIVIDUAL ANALYSIS: COMPARATIVE EVIDENCE (Part II)

Problem: _____ Issue: _____

From Part I, Minority/Female “=” or “+.” # _____ NAME _____ R/S _____ “=” or “+” _____		
From Part I, Comparator Nonminority/Male: # _____ NAME _____ R/S _____ # _____ NAME _____ R/S _____	<input type="checkbox"/>	
<u>CONTRACTOR EXPLANATION FOR SELECTION OF NONMINORITY/MALE:</u> 		<input type="checkbox"/>
<u>EVALUATION OF CONTRACTOR EXPLANATION:</u> 		



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	<input type="checkbox"/>
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Worksheet 17-3b (Contd)



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Worksheet 17-4a: MAPPING, DATA ANALYSIS, CRITERIA IDENTIFICATION, AND DIRECT EVIDENCE/UNIFORM ADMINISTRATION

Problem #: _____ Issue: _____

Result of Total Selection Process: Rate for: Rate for: Impact Statistical Result
 # S.D. _____
 or
 Fisher's _____

#	DESCRIBE EACH STEP IN THE SELECTION PROCESS (LIST CHRONOLOGICALLY)	CONTRACTOR PERSONNEL INVOLVED (UNDERLINE DECISION MAKERS)	PASS FAIL STEP? (Y/N)	RECORDS MAINTAINED
a	b	c	d	e



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	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
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Worksheet 17-4b: MAPPING, DATA ANALYSIS, CRITERIA IDENTIFICATION, AND DIRECT EVIDENCE/UNIFORM ADMINISTRATION (Continued)

Problem: _____ Issue: _____

#	DATA ANALYSIS (Are members of a minority group/women disproportionately screened out at this step?)	Adverse? (Y/N)	SELECTION CRITERIA (and how they are used)	SUBJ/ OBJ?	Describe Any Direct Evidence of Discrimination And/or Any Evidence That this Step Is Not Uniformly Administered.
f	g	h	i	j	k
	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>



= Continued



Worksheet 17-5a: OBJECTIVE SELECTION CRITERIA: DO SELECTEES MEET? (CRITERIA VERIFICATION)

Problem #: _____ Issue: _____

#	NAME	R/S	OBJECTIVE SELECTION CRITERIA (# THE CRITERIA)
a	b	c	d
	<input type="checkbox"/>		<input type="checkbox"/>

= Continued





Worksheet 17-5b: OBJECTIVE SELECTION CRITERIA: DO SELECTEES MEET? (CRITERIA VERIFICATION)

Problem #: _____ Issue: _____

	OBJECTIVE SELECTION CRITERIA - Continued (# the criteria)	f/				
		Criteria Met?				
#		(Y/N/X)				
e	d (continued)	1	2	3	4	5
	<input type="checkbox"/>					



= Continued



Worksheet 17-6a: Objective Selection Criteria Uniformly Applied: Is There Impact? Treatment?

Problem #: _____ Issue: _____

OBJECTIVE SELECTION CRITERIA UNIFORMLY APPLIED IS THERE IMPACT? TREATMENT?		
<u>Data Needed:</u>	<u>Min. Grp./Fem.</u>	<u>Others</u>
# of candidates	_____	_____
# who met criteria	_____	_____
# selected	_____	_____

I. ARE MINIMUM OBJECTIVE SELECTION CRITERIA DISPROPORTIONATELY SCREENING OUT MEMBERS OF A MINORITY GROUP/WOMEN? (Adverse Impact)									
<p>a. Criterion(ia) being analyzed: _____</p> <p>b. "Pass Rates:"</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 35%;"></td> <td style="width: 30%; text-align: center;"><u>Min. Grp./ Fem.</u></td> <td style="width: 35%; text-align: center;"><u>Others</u></td> </tr> <tr> <td style="padding-left: 20px;"><u># who met criteria</u></td> <td style="text-align: center;">_____ =</td> <td style="text-align: center;">vs. _____</td> </tr> <tr> <td style="padding-left: 20px;"><u># of candidates</u></td> <td></td> <td></td> </tr> </table> <p>Impact: _____ Statistical Result: # S.D. _____ or Fisher's _____</p> <p>c. Conclusion. If there is adverse impact and this analysis involves only one _____ criterion, go on to Worksheet 17-6b and describe and evaluate the contractor's _____ position on the criterion.</p> <p>If this analysis involves several criteria which individually must be met, can you _____ determine which one(s) is causing the impact? If so, identify it here _____</p> <p>_____ and analyze it on Worksheet 17-6b. If not, proceed to Worksheet 17-6b based on _____ the impact of the combination of criteria.</p>		<u>Min. Grp./ Fem.</u>	<u>Others</u>	<u># who met criteria</u>	_____ =	vs. _____	<u># of candidates</u>		
	<u>Min. Grp./ Fem.</u>	<u>Others</u>							
<u># who met criteria</u>	_____ =	vs. _____							
<u># of candidates</u>									

(Page 1 of 2) _____ and/or _____



Worksheet 17-6a (Cont.d)

II. IS THERE ANY PROBLEM WITH SELECTION FROM AMONG THOSE WHO <u>MET</u> THE CONTRACTOR'S MINIMUM OBJECTIVE CRITERIA? (DISPARATE TREATMENT)		
a. Selection Rates:	<u>Min. Grp./Fem.</u>	<u>Others</u>
<u># selected</u>	_____ = vs.	_____
<u># who met criteria</u>		
Statistical Result: #S.D. _____ or Fischer's _____		
b. Are there any remaining SUBJECTIVE criteria or proceses? _____		
· If not, describe Supporting Information (Worksheet 17-8).		
· If so, examine Safeguards on subjective factorfs (Worksheet 17-7). Also describe Supportitng Information (Worksheet 17-8) and ask the contractor for evidence that the subjective factorfs are job related or justified by business necessity (Worksheet 17-6b)		

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Worksheet 17-7a: SUBJECTIVE CRITERIA/PROCESSES - WORKSHEET ON SAFEGUARDS

Problem # _____ Issue: _____

SELECTION RESULTING FROM A SUBJECTIVE CRITERION(IA) OR PROCESS(ES)																	
a. Subjective criterion/process being analyzed: _____																	
b. Selection Rates:	<table style="width: 100%; border: none;"> <tr> <td style="text-align: center;"><u>Rate for:</u></td> <td style="text-align: center;"><u>Rate for:</u></td> <td style="text-align: center;"><u>Impact</u></td> <td style="text-align: center;"><u>Statistical Result</u></td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: center;"># S.D. _____</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: center;">or</td> </tr> <tr> <td></td> <td></td> <td></td> <td style="text-align: center;">Fisher's _____</td> </tr> </table>	<u>Rate for:</u>	<u>Rate for:</u>	<u>Impact</u>	<u>Statistical Result</u>				# S.D. _____				or				Fisher's _____
<u>Rate for:</u>	<u>Rate for:</u>	<u>Impact</u>	<u>Statistical Result</u>														
			# S.D. _____														
			or														
			Fisher's _____														
1. <u>Description</u> : Describe the Subjective Criterion/ Process and the Role it Plays in the Final Selection or Evaluation Decision. Is it a "Pass/fail" Factor or Is it Considered along with Other Factors in the Final Decision? If it Is Considered along with Other Factors, How Much Weight Is it Given? How Does the Contractor Determine Whether the Candidate Possesses These Characteristics?	<input type="checkbox"/>																
2. <u>Consistency</u> : Does the Evaluation Device Have a Fixed Content (E.g., Same Interview Questions, Same Performance Evaluation Items, Etc.)? Is it Scored? Does it Measure Behavior or Perceived Traits?	<input type="checkbox"/>																
3. <u>Guidelines</u> : Are Evaluators Provided Written Guidelines on Applying the Subjective Criterion or Process? Are They Trained?	<input type="checkbox"/>																



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Worksheet 17-7b: SUBJECTIVE CRITERIA/PROCESSES - WORKSHEET ON SAFEGUARDS

Problem # _____ Issue: _____

4. Documentation and Review: Do Evaluators Document Their Determinations? In How Much Detail? Are Their Determinations Reviewed?

5. Decision Maker(s): How Familiar Is the Decision Maker(s) with the Job? With the Candidates? If There Is More than One Decision Maker, What Is Their Race/sex Composition?

6. Candidates (Promotion/transfer, Performance Evaluation): Are They Informed of Job Openings? May They Apply? May They Review Their Evaluations? May They Comment on Them? May They Appeal Them?

EVALUATION

Evaluate the Degree to Which the Contractor Has Provided Safeguards Against Differential Application of the Subjective Criterion/process:



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	<input type="checkbox"/>
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Worksheet 17-8a: SUPPORTING INFORMATION

Problem # _____ Issue: _____

1. Are There Witnesses/individual Examples? Are There Members of a Minority Group/women (And Others, as Applicable) Who: (A) Can Describe Their Personal Experience with the Selection Process Involved? (B) Perceived the Process as Discriminatory? (C) Are Particularly Good Examples of the Impact of the Process on Members of a Minority Group/women as a Whole [I.e., Who Appear Particularly Well-qualified Apart from the Factor That Screened Them Out, Etc.]? (D) Perceived the Atmosphere on the Job(s) Involved as Unreceptive to Members of a Minority group/women?



2. Is the Problem Longstanding? (A) How Seriously Underutilized Is the Job(s)? (B) Is There Any Indication Utilization Levels Were Better in the past? (C) How Many opportunities Has the Contractor Had to Select Persons for the Job(s) During the Liability Period?



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Worksheet 17-8b: SUPPORTING INFORMATION (Cont.d)

Problem # _____ Issue: _____

<p>3. <u>Is the Problem Longstanding?</u> (Continued)</p> <p style="text-align: right;"><input type="checkbox"/></p>
<p>4. <u>Has the Selection Process Changed?</u> (A) When Did the Contractor Begin Using the Criterion or Process That Is adversely Affecting Members of a Minority Group or Women? (b) Does the Timing of Introducing the Criterion/process Have Any Relationship to an Increase of Members of a Minority Group or Women in the Potential Candidate Pool? (C) What Reason Does the Contractor Give for Introducing the Criterion/process? (D) Are There current Nonminority or Male Incumbents in the Job(s) who Do Not Meet the Criteria That Are Now Screening out Members of a Minority Group or Women? If So, Are Their performance Evaluations Satisfactory or Better?</p> <p style="text-align: right;"><input type="checkbox"/></p>
<p>5. <u>What Is the Overall EEO Atmosphere at the Establishment?</u> (A) What Is the Contractor's General Reputation in the Minority/ Female Community? (B) Has the Contractor Been the subject of EEO Complaints? If So, Has Cause Been Found? (C) If the Contractor Has Been Previously Reviewed by OFCCP, Have Problems Been Found? (D) in this Review, Are There Any Findings of Discrimination in Other Job(s) in the Workforce? Against Other Groups? (E) Is There Any Indication That the General Atmosphere at the Establishment Is or Is Not Receptive to Members of a Minority Group/women?</p> <p style="text-align: right;"><input type="checkbox"/></p>

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Worksheet 17-10: OTHER DISCRIMINATION WORKSHEET

Problem # _____ Issue: _____

OTHER DISCRIMINATION WORKSHEET		
Use this worksheet for problems which relate to the following areas (Check the applicable area.):		
<input type="checkbox"/> Handicap	<input type="checkbox"/> Veterans	<input type="checkbox"/> Sex Discrimination Guidelines
<input type="checkbox"/> Guidelines on Religion and National Origin		
(1) Describe and analyze the problem; (2) state the contractor's position, and (3) evaluate the contractor's position. If you conclude that there is discrimination, use Worksheet 17-11 to describe discriminatees and remedy.		
<input type="checkbox"/>		



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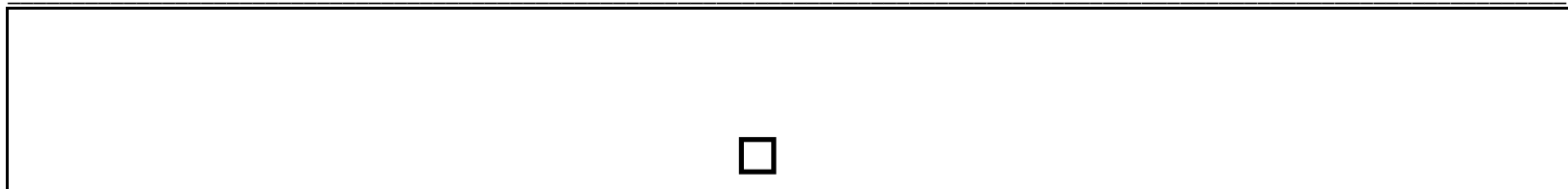
Worksheet 17-11: DISCRIMINATEES/REMEDY

DISCRIMINATEES/REMEDY	
I. <u>INDIVIDUAL CASE(S)</u> : Identify the Victim(s) and Describe Make-whole Relief. <u>PATTERN OR PRACTICE CASE</u> : Indicate the scope of the class; whether an individual-by-individual or formula approach to relief will be used; the type of make-whole relief; and in a formula approach, the method proposed to allocate relief among class members.	
A. DISCRIMINATEES	B. REMEDY
<input type="checkbox"/>	<input type="checkbox"/>
II. Describe the remedy/corrective action proposed to ensure that the violation involved will not be repeated:	



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Worksheet 17-12a: STATISTICAL WORKSHEET (BASED ON SELECTION RATES)

Problem # _____ Issue: _____

1. Find the difference in selection rates: $\frac{\text{_____}}{\text{(Selection Rate: Others)}} - \frac{\text{_____}}{\text{(Selection Rate: MinGrp/Fem)}} = \text{-----} \rightarrow$	②
2. For the value of one Standard Deviation (S.D.): <ul style="list-style-type: none"> • $\frac{\text{_____}}{\text{(Total Selection Rate)}} \times \frac{\text{_____}}{\text{(1 - Tot. Selection Rate)*}} = \text{_____}$ (2a) • $\frac{1}{\text{\# Others in Pool}} = \frac{1}{\text{\# MinGrp/Fem in Pool}}$: <li style="padding-left: 20px;">$\text{_____} + \text{_____} = \text{_____} = \text{_____} = \text{_____}$ (2b) • Multiply (2a) by (2b): _____ and take the square root -----> 	①
3. For the number of Standard Deviations of the difference shown in ①, _____ divide ① by ② - _____> ----->	(# S.D.)

* This is simply a shortcut for the total nonselection rate; i.e. if the total selection rate is .75, 1 - .75 or .25 is the total nonselection rate.

NOTE: This test, which is called a "Pooled Two-Sample Z-Score," is expressed mathematically as follows, where M is for members of a minority group (or women) and O is for others:

$$\frac{\# \text{ Selected}}{\# \text{ In Pool}} - \frac{\# \text{ Selected}}{\# \text{ In Pool}}$$

$$\frac{\$ \text{ Total Selected}}{\# \text{ Total Selected}} - \frac{\$ \text{ Total Selected}}{\# \text{ Total Selected}}$$



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__ (# Total in Pool) (1 --- # Total in Pool) (# In Pool + # in Pool)
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Worksheet 17-12b: STATISTICAL WORKSHEET (BASED ON AVAILABILITY)

Problem # _____ Issue: _____

1. Find the difference between expected and actual selections:* $\frac{\text{_____}}{\text{(# Total Selections)}} \times \frac{\text{_____}}{\text{(% MinGrp/Fem Availability)}} = \text{_____} - \text{_____} \rightarrow$ <p style="text-align: center;">(Expected) (Actual)</p>	①
2. For the value of one Standard Deviation (S.D.): <ul style="list-style-type: none"> • $\frac{\text{_____}}{\text{(# Total Selections)}} \times \frac{\text{_____}}{\text{(% Min/Grp/Fem Availability)}} \times \frac{\text{_____}}{\text{(% Others Availability)}} = \text{_____}$ (2a) • Square root of (2a) = -----> 	②
3. For the number of Standard Deviations of the difference shown in ①, divide ① by ② -----> ----->	(# S.D.)

* If you want to compare incumbency with availability, substitute “# of Total Incumbents” for “# of Total Selections.”

Note: This test is expressed mathematically as:

$$\frac{\left[\left(\frac{\text{# Min.Grp. in Pool}}{\text{(# Total Selections)}} \right) \left(\frac{\text{# Min.Grp. in Pool}}{\text{(# Total in Pool)}} \right) \right] - \text{# Min.Grp. Selections}}{\left(\frac{\text{# Min.Grp. in Pool}}{\text{(# Total Selections)}} \right) \left(\frac{\text{# Min.Grp. in Pool}}{\text{(# Total in Pool)}} \right) \left(\frac{\text{# Others in Pool}}{\text{(# Total in Pool)}} \right)}$$