



TRANSMITTAL

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

Number: 265 Date: April 21, 2004 OFCCP Order No. ADM 04-1/Other

1. **SUBJECT:** Contractor data tracking responsibilities.

2. **PURPOSE:** To clarify OFCCP policy regarding contractor tracking of applicant data when applicants decline to self-identify their gender, race, or ethnicity, and the contractor cannot obtain this information through other acceptable methods.

3. **FILING INSTRUCTIONS:**

 Holders of ADM and LEG Binders only: File this Notice with the attachment behind the "Other" tab in your Administrative Practices Binder.

 District and Area Office EOSs and EOAs only: File this Notice with the attachment behind the tab for ADM Directives in your FCCM Binder.

4. **OBSOLETE DATA:** None.

5. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only).

6. **EXPIRATION DATE:** This directive remains in effect until superseded.

(signed) Charles James

April 21, 2004

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

DATE

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

OFCCP Order No. ADM 04-2/Other

1. **SUBJECT**: Contractor data tracking responsibilities.
2. **PURPOSE**: To clarify OFCCP policy regarding contractor tracking of applicant data when applicants decline to self-identify their gender, race, or ethnicity, and the contractor cannot obtain this information through other acceptable methods.
3. **BACKGROUND**: Several provisions in the regulations implementing Executive Order 11246, as amended, require Federal contractors to obtain data on the gender, race, and ethnicity of applicants. The Executive Order regulations prescribe minimum record retention periods for any personnel or employment records the contractor makes or keeps, including records pertaining to hiring, applications, and resumes. 41 CFR 60-1.12 (a). The record retention provisions further provide that, for any record the contractor maintains, the contractor must be able to identify, where possible, the gender, race, and ethnicity of each applicant. 41 CFR 60-1.12(c). In addition, as part of the affirmative action program prescribed under the Executive Order regulations, the contractor is required to evaluate personnel activity, which includes applicant flow, to determine whether there are selection disparities. 41 CFR 60-2.17(b)(2). In order to perform this analysis of personnel activity, contractors must collect data on the gender, race, and ethnicity of applicants, and track such data by job title or AAP job group. Further, the Uniform Guidelines on Employee Selection Procedures (UGESP)¹ obligate contractors to maintain and have available records and other information

¹ Both EEOC and OFCCP currently have pending proposed regulatory changes to the "applicant" definition. EEOC has issued a Notice under the Paperwork Reduction Act pertaining to proposed Questions and Answers: Definition of "Job Applicant" for Internet and Related Electronic Technologies. EEOC's Notice and 60-day comment period opened March 4, 2004, and closes May 3, 2004. OFCCP also issued a NPRM for the applicant definition. OFCCP's 60-day comment period opened March 29, 2004, and closes May 28, 2004.

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on applicants that will show whether their selection processes have an adverse impact on race, sex, or ethnic groups. 41 CFR 60-3.4 and 60-3.15. Finally, the Equal Opportunity Survey prescribed by the Executive Order regulations currently includes a request for data on applicants by gender, race, and ethnicity. 41-CFR 60-2.18.

A question that continues to arise with some frequency is "how-to" obtain information on the gender, race and ethnicity of applicants. Self-identification is the most reliable method and the preferred method for compiling information about a person's gender, race or ethnicity. Contractors are encouraged to use tear off sheets, post cards, or short forms to request demographic information from applicants. The contractor's invitation to an applicant to self-identify his or her gender, race, or ethnicity should always clearly state that the provision of such information is voluntary.

While self-identification is the preferred method, visual observation also can be an acceptable method for identifying the gender, race and ethnicity of applicants, although it may not be reliable in every instance. Visual observation may be used when the applicant appears in person and declines to self-identify his or her gender, race or ethnicity.

Where, in response to an invitation from the contractor, the applicant declines to self-identify his or her gender, race or ethnicity, and visual observation is not feasible, there is nothing more for the contractor to do. OFCCP would not hold a contractor responsible for applicant data when the applicant declines to self-identify and there are no other acceptable methods of obtaining this information.

Issues were recently raised by the contractor community regarding the accuracy of the race and gender information that contractors are required to collect and maintain. This directive clarifies procedures that are to be used in order to ensure that applicant information is accurate.

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4. **POLICY:** When contractors are unable to elicit or ascertain specific information regarding an applicant's gender, race or ethnicity, contractors should not guess or assume. Rather, if, after making reasonable efforts to identify applicant gender, race and ethnicity information, the contractor is unable to obtain such information, the contractor must record race or gender as "unknown" in its applicant flow log.

A contractor is not required to "guess" as to the gender, race or ethnicity of an applicant. Adverse impact determinations should be made based on the pool of applicants where gender, race and ethnicity are known. Any questions regarding this issue, raised in an OFCCP Regional or District Office, should be referred to the Director of Program Operations, OFCCP National Office, 200 Constitution Ave., N.W., Washington, D.C. 20210.

(signed) Charles James

April 21, 2004

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

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