



**TRANSMITTAL**

**U.S. DEPARTMENT OF LABOR  
Employment Standards Administration  
Office of Federal Contract  
Compliance Programs  
Washington, D.C. 20210**

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Number: 227    Date: September 22, 1998    OFCCP Order No. FCCM Notice/CH 2

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1.    **SUBJECT**: Investigative procedures: compliance check
  
2.    **PURPOSE**: To revise the Federal Contract Compliance Manual (FCCM) to establish procedures for one of the compliance evaluation procedures authorized under 41 CFR 60-1.20(a).
  
3.    **BACKGROUND**: In recent amendments to Parts 60-1 and 60-60, OFCCP removed rigid requirements outlines the content and scope of compliance reviews from the regulations and adopted a new approach to developing compliance evaluation procedures. The new regulations provide at 41 CFR 60-1.20(a) that OFCCP may evaluate compliance through one or a combination of methods. However, OFCCP declined to establish detailed procedures for implementing the new compliance evaluation method in the regulations, reasoning that it is more appropriate for the agency to establish the procedures through amendments to the FCCM. 62 Fed. Reg. 44180 (August 19, 1997).

The FCCM amendments made through this transmittal are the first procedures established under the new compliance evaluation authority. They will be utilized to inspect certain records contractors are required to maintain under the record retention requirements at 41 CFR 60-1.12(a) and (b). The records contractors are required to maintain under this section include, among other things, records pertaining to requests for reasonable accommodation, job advertisements and postings, copies of their AAPs and documentation of good faith effort for the preceding AAP year. These procedures for inspection of records onsite are established under the "compliance check" compliance evaluation method authorized by Section 60-1.20(a)(3).

4. **GUIDELINES:**

- Scheduling:

All contractors selected for a compliance check will be sent a scheduling letter (Figure 2-4) which informs them of the laws enforced by OFCCP, and advises them of OFCCP's upcoming inspection of data. Contractors are asked to have available for inspection information identified in the letter. The enclosure to the letter is an informational summary highlighting important obligations of Federal supply and service contractors under the laws enforced by OFCCP.

- Scope of the Compliance Check:

The compliance check consists of an inspection of a limited number of records. The Compliance Officer is not reviewing data for reasonableness or acceptability, but is inspecting to ensure the contractor has maintained some of the required records in accordance with 41 CFR 60-1.12.

- Compliance Check Control Sheet:

When sending out the scheduling letter the Compliance Officer will begin to fill out the compliance check control sheet (Figure 2-7). An electronic version of this form will also be used for the case management tracking system.

- Compliance Check Closure:

All compliance checks will be closed with a closure letter (Figure 2-5). The letter specifies the finding of the compliance check, i.e. whether the contractor made available for inspection all the data requested in the scheduling letter. Contractors which fail to allow access to their facilities will be notified that they will be selected for another form of compliance evaluation.

5. **INSTRUCTIONS:** From Manual Chapter 2, remove and discard pages v, 2-65/2-66, 2-71, 2-72/2-73, 2-74/2-75 and 2-76 and insert in their place the attached pages v, 2-65/2-66, 2-66a/2-66b/2-66c, 2-71/2-72, 2-74/2-75, 2-76/2-77, 2-78/2-79, 2-80, 2C-1/2C-2, 2C-3/2C-4 and 2C-5/2C-6.

Note that pages 2-65 and 2-71 are unchanged, but are printed on the reverse side of pages which have been changed or which have included in the Manual for the first time. The current pages 2-72 through 2-76, which are being discarded, are the index to Chapter 2. Pages 2C-1 through 2C-6 are the replacement pages for the index, and they should be inserted in the FCCM at the end of Chapter 2. The index pages were replaced because it was necessary to assign new page numbers to the index pages. The replacement pages 2-71 through 2-80 should be inserted in Chapter 2 immediately following page 2-70b.

All changes made in this Notice are indicated by a vertical line.

6. **OBSOLETE DATA:** Pages v, 2-65/2-66, 2-71, 2-72/2-73, 2-74/2-75 and 2-76
  
7. **ATTACHMENT:** Revised pages v, 2-65/2-66, 2-66a/2-66b, 2-66c, 2-71/2-72, 2-74/2-75, 2-76/2-77, 2-78/2-79, 2-80, 2C-1/2C-2, 2C-3/2C-4 and 2C-5/2C-6.
  
8. **DISTRIBUTION:** A, B (both hard copy and electronically); C (hard copy only)
  
9. **EXPIRATION DATE:** This Notice expires when implemented and may be discarded or retained for reference, at your option.

(signed) Shirley Wilcher

September 10, 1998

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SHIRLEY J. WILCHER  
Deputy Assistant Secretary for  
Federal Contract Compliance

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A letter must be sent to the contractor confirming the phone notice of the onsite, the date and time the onsite will begin, and that an I-9 inspection will be conducted (to provide the required formal 3-day notice of such an inspection).

- (a) List of Materials: The onsite confirmation letter must include a list of the materials which the contractor should make available at the start of the onsite.
- (1) Materials Related to Specific Findings: Items which relate to specific preliminary findings noted during the desk audit should be requested. For example, where the EOS has identified adverse IRAs, a list of the employment actions involved or the contractor's adverse impact determinations for titles in the job group and type of activity involved should be requested; or, where the desk audit has indicated salary questions, the key to any salary codes should be requested. Also, the EOS should note that personnel files, applications, and resumes should be available for inspection.
- (2) Materials Not Included in Original Submission: Items which may not have been included in the original AAP and supporting data submission--such as copies of employment advertisements, purchase orders, employment applications, labor agreements, and policy manuals, should be requested. Where appropriate, the EOS may also ask that the contractor's adverse impact determinations be available for review or that the contractor identify those jobs where the results of its analysis showed adverse impact.
- (3) I-9's and VETS 100 Report: Because EOSs must review I-9 forms and verify that the contractor has filed the VETS 100 Report, the contractor must be informed of the need to have these available for inspection.
- (4) Additional Information: A request should also be made for the names of applicants and employees who have responded to the contractor's invitation to self-identification or who have otherwise become known to the contractor as individuals with disabilities, as special disabled veterans, and/or as veterans of the Vietnam era. Where special disabled veterans and/or individuals with disabilities have been identified, the contractor should also be asked to provide a description of any accommodations made.

(b) Mailing: The letter confirming the onsite, signed by the AOD/FOD, should be mailed to the contractor (by certified mail, return receipt requested) sufficiently in advance of the onsite date to ensure that the letter arrives at least 3 days before the EOS. In addition, should the contractor encounter unanticipated problems in obtaining the items requested, there should be sufficient lead time to allow for the substitution of alternate materials, where possible and appropriate.

2T COMPLIANCE EVALUATION PROCEDURES - COMPLIANCE CHECK TO ENSURE MAINTENANCE OF RECORDS CONSISTENT WITH 41 CFR 60-1.12

The OFCCP final rule revising 41 CFR Part 60-1 published August 19, 1997, effective September 18, 1997, authorizes OFCCP to use a range of methods to evaluate a contractor's compliance with the regulations. Specifically, paragraph (a) provides that a compliance evaluation may consist of any one or a combination of the following: (1) a compliance review, (2) an off-site review of records, (3) a compliance check, and (4) a focused review.

While the compliance review is the same comprehensive examination of the contractor's employment practices as it has always been, the other evaluation methods are intended to give the agency additional investigative techniques to determine the compliance status of contractors. Specifically, OFCCP is now authorized under 41 CFR 60-1.20(a) to use one or a combination of the four methods in evaluating a contractor's compliance status. This flexibility allows OFCCP to maximize the use of its resources.

The following instructions introduce one compliance check method of conducting evaluations of supply and service Federal contractors and subcontractors. This method will be used to conduct a limited inspection of certain records required under the record retention requirements at 41 CFR 60-1.12.

These procedures address only the portion of the compliance check definition which calls for maintenance of records consistent with 41 CFR 60-1.12. Future procedures may cover the other two functions of compliance checks or focus on the review of other records required by § 60-1.12.

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## 2T00 GUIDELINES

### (a) Scheduling:

All contractors selected for a compliance check will be sent a scheduling letter (Figure 2-4) which informs them of the laws enforced by OFCCP, and advises them of OFCCP's upcoming inspection of data. Contractors are asked to have available for inspection information identified in the letter. The enclosure to the letter is an informational summary highlighting important obligations of Federal supply and service contractors subject to the regulations enforced by OFCCP.

The date of the onsite inspection should be coordinated between the Compliance Officer and the contractor, but normally a contractor would be given 3 working days' notice for the inspection.

### (b) Scope of the Compliance Check:

This compliance check is an inspection of records to ensure that they have been maintained by the contractor in accordance with 41 CFR 60-1.12. The documents to be inspected are: a report of results under the contractor's prior Affirmative Action Program (41 CFR 60-1.12(b)); examples of job advertisements, including listings with state employment services (41 CFR 60-1.12(a)); and examples of accommodations made for persons with disabilities (41 CFR 60-1.12(a)). If a contractor was not covered during the prior AAP year, a prior year report on the AAP will not be expected to be available for inspection.

### (c) Onsite Process:

The CO will have an entrance conference with the company representative, explaining, as necessary, the mission of OFCCP and the contractor's regulatory requirements, and the concept of the compliance check.

The CO will then inspect the categories of documents requested in the scheduling letter.

The Compliance Officer is only inspecting data to see whether the contractor has maintained some records required by 41 CFR 60-1.12.

There may be occasions when a contractor states in writing that there was no underutilization identified in the prior AAP and there were no goals as a result. This information should be noted on the Compliance Check Control Sheet under "additional pertinent information." However, it is not necessary for the contractor to provide additional information on the prior year AAP.

If, during the course of conducting a compliance check a CO observes any obvious violations, those violations should also be noted on the Compliance Check Control Sheet under "additional pertinent information." The CO should also discuss the violation with the contractor, and inform his/her ADD/DD of the violation. Future compliance evaluations of the contractor will address any such violation.

If the contractor does not have all data available for inspection, the CO will review the regulatory requirement(s) with the contractor which pertains to the missing data. Once it is clear to the CO that the contractor understands the particular recordkeeping requirement(s) in question, the contractor will be informed that the appropriate corrective actions will be confirmed in the compliance check closure letter (Figure 2-5, option (b)). These items will be noted on the Compliance Check Control Sheet (Figure 2-7, item number 9).

Additionally, the CO will ensure that I-9 requirements are discussed with the contractor and a copy of the IRCA Handbook for Employers is provided, but the I-9 forms themselves will not be inspected.

Inspection of the VETS-100 and EEO-1 reports will not be conducted during the compliance check.

The CO will complete the Compliance Check Control Sheet. An electronic version of this form will also be used for the case management tracking system.

The CO will explain the closure process to the contractor representative.

Note: Also please be aware that Compliance Checks allow an excellent opportunity for providing contractors with technical assistance, so assistance may be given at any point in the Compliance Check process or at a later date. A contractor's need for technical assistance should be indicated on the Compliance Check Control Sheet (Figure 2-7, #13), for appropriate follow-up.



2T01            CLOSURE - COMPLIANCE CHECK

- (a) Maintenance of Data: Figure 2-6 specifies the materials to be maintained in the Compliance Check folder.
- (b) A hard copy of the Compliance Check Control Sheet (Figure 2-7) will be retained in the compliance check folder, and the electronic version will be completed as well.
- (c) All compliance checks will be closed with a closure letter (Figure 2-5). The letter specifies the finding of the compliance check, i.e. whether the contractor made available for inspection all the data requested in the scheduling letter. Contractors that fail to allow access will be selected for another form of compliance evaluation, with written notification. Their failure to respond to future requests for data pertaining to the Affirmative Action Program will normally result in enforcement proceedings. However, the compliance check will be closed. (Reference the scheduling letter Figure 2-4, and the closure letter, Figure 2-5).

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Figure 2-4: COMPLIANCE CHECK SCHEDULING LETTER

VIA CERTIFIED MAIL  
(NUMBER)  
RETURN RECEIPT REQUESTED

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

Dear (Name of CEO):

Your establishment located at \_\_\_\_\_ has been selected by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) for a compliance evaluation in accordance with 41 CFR 60-1.20. The OFCCP enforces Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212). These laws require Federal contractors and subcontractors not to discriminate and to take affirmative action to ensure equal employment opportunity for all individuals, including women, minorities, persons with disabilities, and Vietnam Era and disabled veterans.

As specified in OFCCP regulations at 41 CFR 60-1.40, 41 CFR 60-741.40 and 41 CFR 60-250.5, Federal contractors and subcontractors employing at least 50 people and having a contract which totals \$50,000 or more are required to develop written affirmative action programs (AAPs) for each of their establishments. In addition, 41 CFR 60-1.12, 41 CFR 60-741.80 and 41 CFR 60-250.52 impose upon Federal contractors and subcontractors certain record retention obligations. Contractors must maintain all records relating to personnel or employment activities. Such records provide support data for a contractor's AAP, and enable the contractor to document and demonstrate non-discrimination and affirmative action compliance.

OFCCP evaluates compliance through a variety of investigative procedures: compliance check, off-site review of records, focused review, or compliance review. Under the Executive Order 11246 program, a contractor's compliance may be evaluated under any one or any combination of these procedures.

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Figure 2-4: COMPLIANCE CHECK SCHEDULING LETTER (continued)

At this time your establishment is scheduled for a compliance check under 41 CFR 60-1.20(a)(3) and 60-1.12. This compliance check will focus on whether certain employment records are being maintained by the establishment in accordance with the requirements of the regulations at 41 CFR 60-1.12.

In order to facilitate OFCCP's compliance check, please have the following information available: a report of results under your prior year's Affirmative Action Program (41 CFR 60-1.12(b)); examples of job advertisements, including listings with state employment services (41 CFR 60-1.12(a)); and examples of accommodations made for persons with disabilities (41 CFR 60-1.12(a)). This office will review the requested records to ensure they have been maintained as required by 41 CFR 60-1.12. A Compliance Officer will contact you shortly to establish the date and time so that your records may be inspected expeditiously.

While the compliance check consists only of this limited inspection of data, please note that as a Federal contractor/ subcontractor you are required to comply with all the regulations enforced by OFCCP. We are enclosing a summary list which highlights the regulatory requirements enforced by OFCCP. More information regarding obligations as a federal contractor may be found on our website (<http://www.dol.gov/dol/esa>), or you may request a copy of the regulations from this office.

Failure to allow access to your establishment will result in the selection of your establishment for another, more in-depth form of compliance evaluation. Should this occur, you will be notified in writing.

If you have any questions concerning this matter please feel free to contact (OFCCP contact person's name and telephone number).

Sincerely,

(Name of District Director)  
District Director

*Enclosure: Highlights of the Regulatory Requirements for Federal Contractors (Figure 2-4a)*

NOTE: It is estimated that it will average approximately 24 minutes to make the requested information available. The collection of information has been approved under OMB number 1215-0072, expiration date January 31, 1999. Send any comments concerning this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

PERSONS ARE NOT REQUIRED TO RESPOND TO THIS INFORMATION COLLECTION UNLESS IT DISPLAYS A CURRENTLY VALID OMB NUMBER.

Figure 2-4a:

**HIGHLIGHTS OF THE REGULATORY  
REQUIREMENTS FOR FEDERAL CONTRACTORS**

1. Develop and maintain Affirmative Action Programs (AAPs) and documentation of good faith efforts for the current and preceding AAP years (41 CFR 60-1.12(b)).
  - A. Executive Order 11246 (41 CFR 60-1.40) - gender, race, religion, national origin
  - B. Section 503 (41 CFR 60-741.40) - disability status
  - C. 38 U.S.C. 4212 (41 CFR 60-250.5) - Vietnam Era and special disabled veteran status
2. Maintain personnel activity data and support documentation (Applicant Flow, Hires, Promotions from and into job groups, Transfers, Terminations) by race and gender for a minimum of two years if your corporation has at least 150 employees and \$150,000 in contracts; if you have under 150 employees or less than \$150,000 in contracts, data must be maintained for a minimum of one year (41 CFR 60-1.12(a); 60-2.12).
3. Conduct annual Adverse Impact Analyses if your workforce has 100 or more employees (41 CFR 60-3.4).
4. Preserve all personnel records relevant to complaints, compliance evaluations or enforcement actions until final disposition (41 CFR 60-1.12(a)).
5. List specified employment openings with the state employment service (41 CFR 60-250.4(b)) and maintain records to document this activity.
6. File EEO-1 reports with the Joint Reporting Committee (41 CFR 60-1.7) and retain evidence that the reports have been filed.
7. File VETS-100 reports with the U.S. Department of Labor, Office of Veterans' Employment and Training Service (41 CFR 61-250.10), and maintain records of this activity.
8. Maintain Employment Eligibility Verification Forms (Forms I-9) (8 CFR 274a.2). Reference "Handbook for Employers" (M-274) for assistance.
9. Maintain evidence that employees have been notified of Family and Medical Leave Act of 1993.
  - A. Poster (29 CFR 825.300)
  - B. Handbook or other written guidance (29 CFR 825.301)

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Figure 2-5:

**CLOSURE LETTER FOR COMPLAINEE CHECK**

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

Dear (Name of CEO):

Our recent compliance check of (Name and Location of the Establishment reviewed) has been completed. This compliance check has been an inspection of some of the records you are required to maintain in accordance with OFCCP's recordkeeping requirements.

**[Select from the following choices (a), (b) or (c)]**

**(a) (for closures with no records missing)**

During this compliance check of your establishment we determined that you have made available for inspection the documents specified in the scheduling letter for the compliance check. Therefore, based on this limited inspection of the recordkeeping requirements under 60-1.12, the compliance check of your establishment is closed.

This has been a limited documents review and does not represent a comprehensive evaluation of your employment practices and policies to determine compliance with the requirements of the Executive Order and regulations.

**[Optional]**

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

OR

**(b) (for closures with data missing)**

During this compliance check OFCCP determined the [prior year report, job advertisements including required listings of employment openings with the State Employment Service, and/or the examples of information on accommodations provided to persons with disabilities] has/have not been maintained. You are advised that this/these document(s) must be maintained as required under 41 CFR 60-1.12.

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Figure 2-5:

CLOSURE LETTER FOR COMPLAINEE CHECK (continued)

Your representative, [*name of company representative and title*], agreed to future preparation and maintenance of this documentation on [*date of verbal agreement with company representative*]. It is expected that this/these failure(s) to maintain required documents will not be repeated. Based on these assurances from your representative and this limited inspection of the recordkeeping requirements under 60-1.12, the compliance check of your establishment is closed.

You may be selected for another compliance evaluation based on your failure to have available for inspection the requested items. If you are selected you will be notified in writing.

This has been a limited documents review and does not represent a comprehensive evaluation of your employment practices and policies to determine compliance with the requirements of the Executive Order and regulations.

*or*

(c) (failure to allow access):

You failed to allow access to your establishment for inspection of the requested materials. Your failure to allow access will result in the selection of your establishment for another form of compliance evaluation. When you are selected for another evaluation you will be notified in writing. Failure to respond to future requests for data relevant to your compliance with the laws enforced by OFCCP will normally result in enforcement proceedings. At this time the compliance check of your establishment is closed.

Sincerely,

(Name of District Director)  
District Director

cc: (as appropriate)

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Figure 2-6:

MAINTENANCE OF DATA/COMPLIANCE CHECK FOLDER

Following is a list of materials to be maintained in the case file for all Compliance Checks:

Folder #1:	Left Side of Folder:	Right Side of Folder:
	(A) Selection Information	(A) Copy of Scheduling Information Letter
	(B) Compliance Check Control Sheet	(B) Copy of Closure Letter

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Figure 2-7: COMPLIANCE CHECK CONTROL SHEET

General Information

CRIS Number:                      Module ID:                      CO Number:  
 Contractor:                                      Telephone #:  
 Contact Name and Title:

Address:

Review Type (1): \_\_\_ Initial or \_\_\_ Follow-Up  
 Review Type (2): Non-Construction

Review Reason: Compliance Check                      Last Review Date:

DUNS Number:                                      EEO-1 Number

EIN Number:                      SIC Code:                      MSA Code

Total Employees:                      Total Minority:                      Total Female:

Multiple Facility: \_\_\_ Yes \_\_\_ No

Date Scheduling Letter Mailed to Contractor:

Date of telephone contact with contractor informing of scheduling compliance check:

Date of Onsite:

Findings

Data inspected:	YES	NO	N/A
◆ information on prior year report	_____	_____	_____
◆ job advertisements including evidence of job listings with State Employment Service/Americas Job Bank	_____	_____	_____
◆ accommodations for individuals with disabilities	_____	_____	_____



Figure 2-7: COMPLIANCE CHECK CONTROL SHEET (continued)

CO Recommendation for Closure:

If no items missing, leave blank.

If prior year report missing (unless contractor was not covered in prior year), check under Executive Order column.

If job listings information missing, check under 4212 column.

If accommodations information missing, check under Section 503 column.

If contractor refuses to grant access, check appropriate space.

	E.O. 11246 (Sex/Race)	4212	Section 503
Recordkeeping			

(Checking one of the above spaces will place the contractor into a pool for further evaluation.)

Failure to Grant Access	
-------------------------	--

(Checking the space above will indicate the contractor will be selected for another compliance evaluation method.)

Need for Technical Assistance indicated:  Yes  No

Additional Pertinent Information:

Date Closure Letter Issued to Contractor:

Hours

Onsite:                      Travel Time:                      Offsite:                      Total:

## CHAPTER 2 - DESK AUDIT

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