



CHAPTER VIII
RESOLUTION OF NONCOMPLIANCE



TABLE OF CONTENTS

8A INTRODUCTION TO CHAPTER VIII626

8A00 CONTENTS626

8A01 APPLICABILITY626

8A02 REMEDIES (GENERAL)626

8A03 PREPARATION OF DOCUMENTS627

8A04 ORGANIZATION OF THIS CHAPTER627

8B FLOW-CHART OVERVIEW OF ENFORCEMENT PROCEDURES AND DOCUMENTS.....628

8B00 GENERAL628

8B01 USE OF SHOW-CAUSE NOTICE (SCN) AT DESK AUDIT (SUPPLY AND SERVICE COMPLIANCE
REVIEWS)629

8B02 USE OF SHOW-CAUSE NOTICE IN CC-257 REPORTING (CONSTRUCTION CONTRACTORS).....632

8B03 DOCUMENTS USED IN THE ONSITE/OFFSITE PHASE OF COMPLIANCE REVIEWS (SUPPLY
AND SERVICE AND CONSTRUCTION)634

8B04 DOCUMENTS USED IN COMPLAINT INVESTIGATIONS.....639

8B05 DOCUMENTS USED IN MONITORING LETTERS OF COMMITMENT (LOC).....641

8B06 DOCUMENTS USED IN MONITORING CONCILIATION AGREEMENTS (CA).....643

8C NOTICE TO LABOR UNION.....645

8C00 WHEN USED.....645

8C01 CONTENTS645

8C02 TO WHOM SENT.....647

8C03 SIGNATURE AUTHORITY647

8C04 UNION RESPONSE647

8D SHOW-CAUSE NOTICE.....648

8D00 PROGRAM APPLICABILITY.....648

8D01 WHEN USED.....648

8D02 SHOW CAUSE NOT ALWAYS A PREREQUISITE TO ENFORCEMENT:.....650

8D03 USE OF AMENDED SHOW-CAUSE NOTICE651

8D04 CONTENTS652

8D05 TO WHOM SENT.....652

8D06 SIGNATURE AUTHORITY653

8D07 CONTRACTOR RESPONSE653

8D08 RECISION OF SHOW-CAUSE NOTICE654

8E LETTERS OF COMMITMENT (LOC).....654



8E00	WHEN USED.....	655
8E01	CONTENTS	655
8E02	TERMINATION DATE.....	655
8E03	SIGNATURE AUTHORITY	655
8F	CONCILIATION AGREEMENT (CA).....	656
8F00	WHEN USED.....	656
8F01	CONTENTS	657
8F02	TERMINATION DATE.....	666
8F03	SIGNATURE AUTHORITY	666
8G	ACTIONS FOLLOWING EXECUTION OF A LOC OR CA	667
8G00	RETENTION OF EVIDENCE OF VIOLATIONS.....	667
8G01	EVALUATION OF PROGRESS REPORTS.....	667
8G02	VIOLATION OF A LOC OR CA	669
8H	15-DAY NOTICE.....	669
8H00	WHEN USED.....	670
8H01	CONTENTS (NO IRREPARABLE INJURY).....	670
8H02	PROCEDURE WHERE IRREPARABLE INJURY	670
8H03	TO WHOM SENT.....	671
8H05	CONTRACTOR RESPONSE	671
8I	ENFORCEMENT RECOMMENDATION.....	671
8I00	WHEN USED.....	671
8I01	CONTENTS (COMPLIANCE REVIEW)	672
8I02	CONTENTS (COMPLAINT INVESTIGATION).....	673
8I03	TO WHOM SENT.....	673
8I04	SIGNATURE AUTHORITY	673
8J	STOPPING ENFORCEMENT PROCEEDINGS.....	673
8J00	PRE-REFERRAL TO SOL	673
8J01	POST-REFERRAL TO SOL.....	674
8K	TYPES OF ENFORCEMENT PROCEEDINGS.....	674
8K00	ADMINISTRATIVE ENFORCEMENT PROCEEDINGS	674
8K01	JUDICIAL ENFORCEMENT PROCEEDINGS	675
8L	SANCTIONS AND PENALTIES	675
8M	REINSTATEMENT OF DEBARRED CONTRACTOR	676



FIGURES	677
FIGURE 8-1: SHOW-CAUSE NOTICE FORMAT (SUPPLY AND SERVICE) - FAILURE TO SUBMIT EXECUTIVE ORDER AAP AND/OR SECTION 503 AAP (AND, IF APPLICABLE, FAILURE ALSO TO SUBMIT 38 U.S.C. 4212 AAP)*	677
FIGURE 8-2: SHOW-CAUSE NOTICE FORMAT (SUPPLY AND SERVICE) - FAILURE TO SUBMIT A REASONABLE EXECUTIVE ORDER AAP (AND, IF APPLICABLE, FAILURE ALSO TO SUBMIT SECTION 503 AND/OR 38 U.S.C. 4212 AAP)*	679
FIGURE 8-2A: ENCLOSURE TO FIGURE 8-2	682
FIGURE 8-3: SHOW-CAUSE NOTICE FORMAT - (SUPPLY AND SERVICE) - FAILURE TO SUBMIT EMPLOYMENT ACTIVITY DATA FOR DESK AUDIT*	683
FIGURE 8-4: SHOW-CAUSE NOTICE FORMAT - (SUPPLY AND SERVICE) - FAILURE TO SUBMIT CORRECTED EMPLOYMENT ACTIVITY DATA	685
FIGURE 8-5: SHOW-CAUSE NOTICE FORMAT (COMPLIANCE REVIEWS) - UNRESOLVED VIOLATIONS - EXECUTIVE ORDER (INCLUDING ANY SECTION 503 AND/OR 38 U.S.C. 4212 VIOLATIONS)*	687
FIGURE 8-5A: ENCLOSURE TO FIGURE 8-5	689
FIGURE 8-6: SHOW-CAUSE NOTICE FORMAT (EXECUTIVE ORDER COMPLAINT) - UNRESOLVED VIOLATIONS	691
FIGURE 8-7: SHOW-CAUSE NOTICE FORMAT - VIOLATION OF LOC*	692
FIGURE 8-8: SHOW-CAUSE NOTICE FORMAT (CONSTRUCTION) - FAILURE TO SUBMIT CC-257 TWICE WITHIN A ONE-YEAR PERIOD*	695
FIGURE 8-9: SHOW-CAUSE NOTICE FORMAT (CONSTRUCTION) - FAILURE TO SUBMIT CORRECTED CC-257	696
FIGURE 8-10: SHOW-CAUSE NOTICE FORMAT (CONSTRUCTION) - FAILURE TO SUBMIT CORRECT CC-257 (AFTER BEING ADVISED OF AND CORRECTING A SIMILARLY ERRONEOUS CC-257 WITHIN A ONE-YEAR PERIOD)	699
FIGURE 8-11: AMENDED SHOW-CAUSE NOTICE FORMAT (COMPLIANCE REVIEWS) - UNRESOLVED VIOLATIONS - EXECUTIVE ORDER (INCLUDING ANY SECTION 503/38 U.S.C. 4212 VIOLATIONS)*	701
FIGURE 8-12: RESCISSION OF SHOW-CAUSE NOTICE FORMAT - ERRONEOUSLY ISSUED*	703
FIGURE 8-13: NOTICE OF REVIEW COMPLETION FORMAT - MAJOR DEFICIENCIES RESOLVED IN A CONCILIATION AGREEMENT* (INCLUDES RESCISSION OF A SHOW-CAUSE NOTICE)	704
FIGURE 8-14: NOTICE OF REVIEW COMPLETION FORMAT - MAJOR DEFICIENCIES RESOLVED IN A CONCILIATION AGREEMENT (NO SHOW-CAUSE NOTICE ISSUED)*	706
FIGURE 8-15: NOTICE OF REVIEW COMPLETION FORMAT - MINOR DEFICIENCIES RESOLVED IN A LETTER OF COMMITMENT*	707
FIGURE 8-16: 15-DAY NOTICE FORMAT - VIOLATION OF A CONCILIATION AGREEMENT*	709
FIGURE 8-17: RESCISSION OF 15-DAY NOTICE FORMAT*	711
APPENDICES.....	712
APPENDIX 8A: TRANSMITTAL MEMORANDUM FOR AN ENFORCEMENT RECOMMENDATION (COMPLIANCE REVIEWS)	712
APPENDIX 8B: NOVEL ISSUES	715



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

APPENDIX 8C: OFFICE OF FEDERAL CONTRACT COMPLIANCE - POLICY ALERT.....	717
APPENDIX D: RESOLUTION OF NONCOMPLIANCE INDEX.....	718



8A INTRODUCTION TO CHAPTER VIII

8A00 CONTENTS

This Chapter outlines the procedures and documents used to resolve violations found by the Office of Federal Contract Compliance Programs (OFCCP) during compliance reviews and complaint investigations. These procedures and documents cover both affirmative action and discrimination and apply to all three OFCCP programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212.

8A01 APPLICABILITY

This Chapter is to be consulted whenever noncompliance is found. Unless otherwise specified, the guidelines in this Chapter apply to both supply and service and construction contractors.

8A02 REMEDIES (GENERAL)

If violations are identified during a compliance review or complaint investigation, remedies (including make-whole relief where discrimination is found, see Section 7F) must be secured to bring the contractor into compliance.

(a) Distinction Between Remedies and Sanctions:

- (1) Remedies: Remedies are the means by which a "right is enforced or the violation of a right is prevented, redressed, or compensated" (Black's Law Dictionary, 4th Ed. 1968). Remedy is a term frequently applied to actions that are required to eliminate the effects of discrimination; e.g., back pay or reinstatement, or to rectify noncompliance with affirmative action (AA) standards. Remedies are corrective, not punitive. Remedies must be set forth in a Conciliation Agreement (CA) or a Letter of Commitment (LOC).
- (2) Sanctions: In contrast to remedies, sanctions; e.g., termination of a contract or debarment, are punitive. Sanctions are appropriate where a contractor fails to agree



and/or to implement acceptable remedies for non-compliance. Sanctions may also be appropriate, for example, where a violation is egregious and/or repetitive. Sanctions can only be imposed after a hearing (41 CFR 60-1.26(a)(2); 41 CFR 60-250.29(a); 41 CFR 60-741.65).

- (b) Voluntary Resolution of Violations: Violations may be voluntarily resolved where a contractor agrees, in writing, to implement acceptable remedies. Such voluntary resolution may occur at any time following the identification of a violation up until the issuance of an order by the Secretary or the Assistant Secretary for Employment Standards. (See Section 8K00(e) and, for resolution procedures pre- and post-referral to SOL, see Section 8J.) There may, however, be instances in which voluntary resolution is not appropriate unless it includes sanctions. (See Section 8A02(a)(2) above.) Further guidance will be issued on this subject.

8A03 PREPARATION OF DOCUMENTS

The CO conducting the compliance review or complaint investigation initiates the documents discussed in this Chapter by recommending to his or her supervisor that the document be issued or executed, and drafting it for signature by the appropriate OFCCP official (see this Chapter's SIGNATURE AUTHORITY Section for the particular document). The recommendation and draft document are then submitted to the supervisor for review and forwarding, through channels, to the signatory official.

8A04 ORGANIZATION OF THIS CHAPTER

- (a) The next Section of this Chapter contains flow charts showing the normal sequence of documents used in compliance reviews and complaint investigations. There is a chart for each of the following topics:
- (1) Use of a Show-Cause Notice at Desk Audit (Supply and Service Compliance Reviews);
 - (2) Use of a Show-Cause Notice in CC-257 Reporting (Construction Contractors);
 - (3) Documents Used in the Onsite/Offsite Phase of Compliance Reviews (Supply and Service and Construction);
 - (4) Documents Used in Complaint Investigations;



- (5) Documents Used in Monitoring Letters of Commitment (LOCs); and
 - (6) Documents Used in Monitoring Conciliation Agreements (CA).
- (b) The text accompanying these charts references the Section(s) of this Manual (whether in this Chapter or in another) where there is a detailed discussion of a particular type of violation and of the relevant notice or resolution document (including the location of the Figure which provides a sample of the notice or document). Note that regulatory citations are not given on these charts or their accompanying text, but rather in the referenced Manual Sections.
- (c) The remaining Sections of this Chapter each address a particular enforcement document or procedure; e.g., Show-Cause Notice (Section 8D), CA (Section 8F), etc.

8B FLOW-CHART OVERVIEW OF ENFORCEMENT PROCEDURES AND DOCUMENTS

8B00 GENERAL

- (a) The following abbreviations are used on the charts in this Section:

CA.....Conciliation Agreement
 CC-257.....Monthly Employment Utilization Report
 CN.....Contractor
 EO.....Executive Order 11246, as amended
 ER.....Enforcement Recommendation
 H/V.....Handicap/Veterans' (Section 503/38 U.S.C. 4212)
 LOC.....Letter of Commitment
 NOV.....Notice of Violation
 NRC.....Notice of Review Completion
 NRL.....Notification of Results of Investigation
 No V.No Apparent Violations
 P or P.....Pattern or Practice of Discrimination
 SCN.....Show-Cause Notice

- (b) The following symbols appear on the charts:



- (1) A triangle (Δ) is used for a Show-Cause Notice (SCN)/Amended Show-Cause Notice (ASCN). If the triangle is made of dashes, it means the SCN/ASCN is optional.
 - (2) A diamond (\Diamond) is used for pre-Show Cause Documents, such as a Predetermination Notice of Notice of Violation (NOV).
 - (3) A circle (\bigcirc) is used for a closure document, such as a Notice of Review Completion (NRC) or an Enforcement Recommendation (ER).
- (c) As used in this Section, the term SCN includes, as appropriate, an ASCN;--i.e., if a contractor has already been issued a SCN and additional violations are found and remain unresolved, an ASCN (stating all violations, including the original one(s)) is used (see Section 8D03).

Also note that if a contractor's response to a SCN/ASCN (at any point in the process) shows that the Notice was erroneously issued; e.g., lack of OFCCP coverage, violation finding incorrect, etc., the SCN/ASCN is rescinded (see Section 8D08(a)).

8B01 USE OF SHOW-CAUSE NOTICE (SCN) AT DESK AUDIT (Supply and Service Compliance Reviews)

- (a) A SCN (see Section 8D) should be issued at desk audit if the contractor:
- (1) Fails to submit an Executive order AAP (see Sections 2C01, 8D01(a)(1) (a), and Figure 8-1; also see Section 8D02(a) on the RD's option of going directly to enforcement in this case);
 - (2) Submits an unreasonable Executive Order AAP (see Sections 2F, 8D01(a)(1)(b), and Figure 8-2);
 - (3) Fails to submit Executive order employment activity data (see Sections 2H01(a), 8D01(a)(1)(c), and Figure 8-3);
 - (4) Submits unacceptable Executive order employment activity data and fails to correct them (see Sections 2H01(c) and (d), 8D01(a)(1)(d), and Figure 8-4)).



- (b) Where a SCN is to be issued for any of the above Executive order violations and the contractor failed to submit a Section 503 and/or 38 U.S.C. 4212 AAP for desk audit, that 503/4212 violation will be included in the SCN (see Section 8D00(b)). However, if the only problem is failure to submit a Section 503 and/or 38 U.S.C. 4212 AAP, see Section 2C02(b).
- (c) The SCN allows the contractor thirty (30) calendar days from receipt of the Notice to resolve the violation.
- (d) Contractor Does Not Resolve Violation: If the violation(s) is not resolved within the 30-day show-cause period, or reasonable extensions thereof, enforcement should be recommended (see Section 8I).
- (e) Contractor Resolves Violation: If the contractor resolves the violation(s) within the 30-day show-cause period; e.g., by submitting a reasonable Executive order AAP, the review continues to the onsite phase (see chart on page 8-11). Upon completion of the review, the desk audit violation (along with any other violations identified onsite/off-site) and agreed upon remedy must be set forth in a CA (see Section 8D07(b)).



USE OF SHOW-CAUSE NOTICE AT DESK AUDIT
(Supply and Service Compliance Reviews)





8B02 USE OF SHOW-CAUSE NOTICE IN CC-257 REPORTING (Construction Contractors)

- (a) A SCN (see Section 8D) should be issued if a construction contractor who is required to submit a Monthly Employment Utilization Report, CC-257 (see Section 4C02 for application of this requirement):
- (1) Twice, within a one-year period, fails to submit a CC-257 (see Section 8D01(a)(2)(a));
 - (2) Submits an incorrect or incomplete CC-257 and fails to correct it (see Section 8D01(a)(2)(b)); and/or
 - (3) Having been advised of and having corrected errors in a previous CC-257, repeats the same type of errors in a subsequent submission within a one-year period (see Section 8D01(a)(2)(c)).
- (b) The SCN allows the contractor thirty (30) calendar days from receipt of the Notice to resolve the violation.
- (c) Contractor Does Not Resolve Violation: If the violation(s) is not resolved within the 30-day show-cause period, or reasonable extensions thereof, enforcement should be recommended (see Section 8I).
- (d) Contractor Resolves Violation: If the contractor resolves the violation(s) within the 30-day show-caused period; e.g., by submitting a complete and correct CC-257, an onsite review may or may not be conducted. If no review is conducted, the CC-257 violation is resolved in a CA. If a review is conducted, execution of the CA is postponed until review completion so that any additional violations identified onsite can be incorporated (see charts on pages 8-11 and 8-13).



**U.S. Department of Labor
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**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

USE OF SHOW-CAUSE NOTICE IN CC-257 REPORTING
(Construction Contractors)



***8B03 DOCUMENTS USED IN THE ONSITE/OFFSITE PHASE OF COMPLIANCE REVIEWS
(Supply and Service and Construction)***

- (a) Denial of Access or Harassment: If a contractor denies access to its premises for an onsite review or to records or other information necessary to conduct that review, or harasses an agent of OFCCP, OFCCP may either issue a SCN or proceed directly to enforcement (see Section 8D02(a)(1) and (3)).
- (b) If during the onsite or offsite phase of the review, a possible violation of any of OFCCP's three programs is identified, the type of initial written notice to the contractor depends on the nature of the violation(s).
 - (1) Pattern or Practice of Employment Discrimination: If a potential pattern or practice of employment discrimination (see Chapters 3 and 7) is identified:
 - (i) Predetermination Notice (PN): The contractor is issued a PN which describes the pattern or practice issue and offers the contractor the opportunity to respond (see Section 3P and Figure 3-8).
 - (ii) Notice of Violation NOV: If the contractor does not adequately respond to the preliminary pattern or practice finding (see Sections 3P and 3Q), a NOV is issued (see Section 3T and Figure 3-7). This Notice incorporates both the pattern or practice finding and any other violations.
 - (2) No Pattern or Practice Issue: If all the violations identified are non-pattern or practice (such as those involving AA or individual instances of discrimination), a PN is not used. Rather, the contractor is given initial written notice of the findings in a NOV.
- (c) Notice to Labor Union: If a proposed remedy for a violation included in a NOV would require a change in or otherwise affect a provision of a Collective Bargain-ing Agreement (CBA) between the contractor and a labor union or require the award of retroactive seniority where seniority is governed by the CBA, the union must be notified of the violation and invited to participate in its conciliation (see Section 8C).

**U.S. Department of Labor
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**Federal Contract Compliance Manual (FCCM)
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PAGE VII - 635



**U.S. Department of Labor
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**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

**ONSITE/OFFSITE COMPLIANCE REVIEWS
(Supply and Service and Construction)**

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PAGE VII - 636



- (d) Show-Cause Notice (SCN): If, following issuance of a NOV, reasonable conciliation efforts fail to resolve the violation(s), a SCN is issued for unresolved Executive order violations (see Section 8D01(b)). Any unresolved Section 503 and/or 38 U.S.C. 4212 violations are included in this Notice (see Section 8D00). If, however, the only unresolved violations are of Section 503 and/or 38 U.S.C. 4212, the standard SCN text is modified as indicated in Figure 8-5 (or 8-11, as applicable).
- (e) The SCN allows the contractor thirty (30) calendar days from receipt of the Notice to resolve the violation(s).
- (f) Contractor Does Not Resolve Violation: If the violation(s) is not resolved within the 30-day show-cause period, or reasonable extensions thereof, enforcement should be recommended (see Section 8I).
- (g) Contractor Resolves Violation: The resolution document used depends on the nature of the violation:
- (1) Conciliation Agreement (CA): Resolution of a material (major, substantive) violation(s) of any of OFCCP's three programs must be contained in a CA (see Section 8F). Where a CA has been executed, the closure letter used is a Notice of Review Completion (NRC) - Major Deficiencies Resolved in a CA. If a SCN was issued, use Figure 8-13 which includes rescission of that Notice. If no SCN was issued, use Figure 8-14.
 - (2) Letter of Commitment (LOC): A LOC is used for minor technical violations of any of OFCCP's three programs (see Section 8E). Where a LOC has been executed, the closure letter used is a NRC - Minor Deficiencies Resolved in a LOC, Figure 8-15.



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

**ONSITE/OFFSITE COMPLIANCE REVIEWS
(Supply and Service and Construction)
(Continued)**



8B04 DOCUMENTS USED IN COMPLAINT INVESTIGATIONS

- (a) Denial of Access or Harassment: If a contractor denies access to its premises for onsite investigation of a complaint or to records or other information necessary to conduct that investigation, or harasses an agent of OFCCP, OFCCP may either issue a SCN or proceed directly to enforcement (see Section 8D02(a)(1) and (3)).
- (b) Notification of Results of Investigation (NRI) - Violation: Where a complaint investigation results in a finding of violation and the complaint has not been resolved (see 6H00), the contractor is issued a NRI Violation (see Figure 6-17). This Notice offers to meet with the contractor to attempt to resolve the violation through conciliation.
- (c) Notice to Labor Union: If make-whole relief for the complainant(s) requires a change in or otherwise affects a provision of a CBA between the contractor and a labor union; e.g., an award of retroactive seniority, the union will be notified of the violation and will be invited to participate in its conciliation (see Section 8C).
- (d) Conciliation Successful - Conciliation Agreement (CA): A finding of violation in a complaint investigation (whether individual or class) under any of the three OFCCP programs must be resolved in a CA (see Sections 6I01(b) and 8F00).
- (e) Conciliation Unsuccessful: If after reasonable time and effort OFCCP and the contractor cannot agree on settlement of a complaint, the following action should be taken:
 - (1) Executive Order Complaint:
 - (i) Show-Cause Notice: A SCN should be issued (see Section 8D01(b)).
 - (ii) Enforcement Recommendation: If settlement is not reached within the 30-day show-cause period, or reasonable extensions thereof, enforcement should be recommended (see Section 8I).
 - (2) 38 U.S.C. 4212 - Enforcement Recommendation: When settlement negotiations fail to resolve the violation(s) specified in the NRI, enforcement should be recommended (Section 8I).



COMPLAINT INVESTIGATION



B805 DOCUMENTS USED IN MONITORING LETTERS OF COMMITMENT (LOC)

- (a) Show-Cause Notice: Where a contractor fails to submit a report due under a LOC or where review of such a report shows violation of the LOC; e.g., a failure to take actions specified in the LOC, a failure to include all specified information in the report, a SCN is issued if the LOC items involved include one(s) pertaining to the Executive order (see Section 8G02(a) and Figure 8-7). If only Section 503 and/or 38 U.S.C. 4212 items are involved, the standard SCN text is modified as indicated in Figure 8-7.
- (b) Conciliation Agreement: Violation of a LOC must be resolved in a CA, which is then monitored as described in Section 8B06 below.
- (c) Enforcement Recommendation: If the contractor does not resolve the violation in a CA within the 30-day show-cause period, or reasonable extensions thereof, enforcement should be recommended (see Section 8I).



LETTER OF COMMITMENT (LOC)
MONITORING



8B06 DOCUMENTS USED IN MONITORING CONCILIATION AGREEMENTS (CA)

- (a) 15-Day Notice: Where a contractor fails to submit a report due under a CA or where review of such a report shows violation of the CA, a 15-Day Notice is issued (see item 8B06(c) below and Section 8H). Once such a Notice has been issued, it will not be rescinded until the report due under the CA is received, evaluated, and determined to demonstrate fulfillment of CA commitments and/or the issues involved are otherwise resolved with the contractor.
- (b) Enforcement Recommendation: Unless the contractor can show that OFCCP's finding of CA violation is incorrect, if the matter is not resolved within the 15-day period, or reasonable extensions thereof, enforcement should be recommended.
- (c) Irreparable Injury: Note, however, that where irreparable injury as a result of a CA violation is alleged, a 15-Day Notice is not issued. Rather, the contractor is verbally informed of OFCCP's intent to proceed immediately to enforcement. This verbal notice is then followed by a written confirmation (see Section 8H02).
- (d) Consent Decree. Where enforcement is recommended and SOL concurs and files an Administrative Complaint, resolution of the violation(s) of the CA is incorporated in a consent decree (in which the Administrative Law Judge (ALJ) retains jurisdiction over enforcement) or other order of the court.



CONCILIATION AGREEMENT (CA)
MONITORING



8C NOTICE TO LABOR UNION

8C00 WHEN USED

- (a) Remedy Affecting a Collective Bargaining Agreement (CBA): When a proposed remedy for a violation identified in the course of a compliance review or complaint investigation under any of OFCCP's three programs would require a change in or otherwise affect a CBA between the contractor and a labor union, the union local will be notified in writing. A change affecting a CBA may be a modification, deletion, or temporary waiver of an existing CBA provision, or may be the addition of a new CBA provision. This would include, for example, a situation in which an appropriate make-whole remedy is determined to include:
- (1) Retroactive seniority and seniority is governed by the CBA;
 - (2) Temporary suspension of a promotion and/or transfer provision of the CBA; and/or
 - (3) Job posting changes (or the institution of job posting) in the workforce area covered by the CBA.
- (b) When Sent:
- (1) Compliance Review: In a compliance review, notice is sent to the union at the same time the NOV is sent to the contractor.
 - (2) Complaint Investigation: In a complaint investigation, notice is sent to the union at the same time the NRI is sent to the contractor. Where a NRI is not issued and a remedy affects a CBA, the union is included in any settlement negotiations on the CBA issue.

8C01 CONTENTS

When the proposed remedy would affect a CBA (see 8C00(a) immediately above), the written notice sent to the union will:

- (a) State the violation,



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

- (b) Describe the portion(s) of the proposed remedy which may affect the CBA, and
- (c) Invite the union to participate in negotiation of the portion(s) of the proposed remedy affecting the CBA.



8C02 TO WHOM SENT

The notice will be sent to the top official of the union local by certified mail, return receipt requested, and a copy of the notice will be sent to the contractor.

8C03 SIGNATURE AUTHORITY

Signature authority for the notice to the union is the same as for, as applicable, the NOV or NRI informing the contractor of the violation.

8C04 UNION RESPONSE

- (a) Union Participation in Conciliation: Where the union agrees to participate in conciliation, its role may be limited to the issues which affect the CBA. If such conciliation is successful, the top official of the union local should be asked to sign the CA (see 8F03(a)(2)).
- (b) Union Refuses to Participate or Refuses to Sign CA:
 - (1) Where the union refuses to participate in conciliation, or participates but will not agree to the proposed relief affecting the CBA by signing the CA, the nonadmissions clause (paragraph 3 of standard CA text, see Section 8F01(e)) will not be included in the CA. Under such circumstances, paragraph 1 of the standard CA text (see Section 8F01(e)) shall be amended to reference the invitation extended to the union and, as applicable, its refusal to participate or to sign.
 - (2) If the contractor refuses to sign the CA without inclusion of the non-admissions clause, an enforcement recommendation will be prepared. This situation is currently designated as a novel issue (see Section 8I03(b) and Appendix 8B). Therefore, until a Notice is issued rescinding its "novel issue" designation, such enforcement recommendations will be sent to the National Office (NO), Division of Program Operations, for forwarding to the National Office Solicitor of Labor (NSOL).



- (c) See Section 7F06(f) for further background and guidance on union involvement in conciliation. Although Section 7F06(f) deals specifically with retroactive seniority as a remedy affecting a CBA, the procedures given there are equally applicable to other remedies affecting a CBA.

8D SHOW-CAUSE NOTICE

8D00 PROGRAM APPLICABILITY

- (a) Regulatory references to a SCN pertain to violations of the Executive order (see 41 CFR 60-1.28, 60-2.2(c) and 60-4.8). There are no comparable provisions for a SCN in the regulations implementing Section 503 and/or 38 U.S.C. 4212 (41 CFR Parts 60-741 and 60-250, respectively).
- (b) However, as a matter of consistency in OFCCP policy, whenever a SCN (or ASCN) is issued for an Executive order violation, all Section 503 and/or 38 U.S.C. 4212 violations will be included in order to offer the contractor a concurrent 30-day period to resolve the listed Section 503 and/or 38 U.S.C. 4212 violations (see Figures 8-1, 8-5, and 8-11).
- (c) When there are only Section 503 and/or 38 U.S.C. 4212 violations, a standard SCN/ASCN is not used. Instead:
- (1) When the contractor fails to submit a Section 503 and/or 38 U.S.C. 4212 AAP (only) for desk audit, see Section 2C02(b);
 - (2) When, following a compliance review, the only unresolved violations are of Section 503 and/or 38 U.S.C. 4212, see the modifications to be made to Figure 8-5 or 8-11;
 - (3) When, in a Section 503 and/or 38 U.S.C. 4212 complaint investigation, conciliation efforts fail to resolve a NRI-Violation, enforcement should be recommended (see Section 8I).

8D01 WHEN USED

The references below to a Manual Section indicate where the violation is discussed; the references to a Figure indicate where a sample format is provided.



(a) Pre-Onsite:

- (1) Supply and Service Contractors (Desk Audit): A SCN is normally issued to a supply and service contractor at Desk Audit because the contractor:
 - (i) Fails to submit an Executive order (EO) for desk audit (see Section 2C01 and Figure 8-1);
 - (ii) Submits an unreasonable EO AAP (see Section 2F and Figure 8-2);
 - (iii) Fails to submit EO employment activity data for desk audit (see Section 2H01(a) and Figure 8-3); and
 - (iv) Submits unacceptable EO employment activity data and, after a request to submit corrected data, fails to do so (see Section 2H01(c) and (d) and Figure 8-4).
- (2) Construction Contractors (Reporting): A SCN is normally issued to a construction contractor who is required to submit a Monthly Employment Utilization Report, CC-257 (see Section 4C02 for application of this requirement) because the contractor:
 - (i) Twice, within a one-year period, fails to submit a CC-257 (see Sections 4C02 and Figure 8-8);
 - (ii) Submits an incorrect or incomplete CC-257 and, following written notice of the corrections needed and the date they are required (normally ten (10) calendar days from the date the contractor was so notified), fails to submit the corrections (see Figure 8-9); and/or
 - (iii) Having been advised of and corrected errors in a previous CC-257, repeats the same type of errors in a subsequent submission within a one-year period (see Figure 8-10).

Note that five (5) days should normally be allowed after the due date of the second missed monthly report or after the due date of the corrections before issuing the SCN.

- (b) Onsite/Offsite (All Contractors): A SCN is normally issued to a contractor who, following conciliation efforts, fails to resolve Executive order discrimination and/or AA violations.



- (c) Post Onsite/Offsite (All Contractors): A SCN is normally issued to a contractor who violates a term(s) of a LOC (see Section 8G02(a) and Figure 8-7).

8D02 SHOW CAUSE NOT ALWAYS A PREREQUISITE TO ENFORCEMENT:

- (a) A SCN is not always a prerequisite to enforcement under the Executive Order (EO) and Section 503. More specifically, OFCCP may proceed directly to enforcement without issuing a SCN where:
- (1) Under the provisions of 41 CFR 60-1.26(a)(2):
 - (i) A supply and service contractor refuses to submit a requested EO AAP and support data;
 - (ii) Any contractor refuses to provide access to its premises for an onsite review;
 - (iii) Any contractor refuses to provide access to necessary information; and/or
 - (iv) An enforcement recommendation against any contractor is being referred to the Department of Justice (DOJ) for judicial enforcement (see Section 8I01).
 - (2) Under the provisions of 41 CFR 60-1.34(a)(3), any contractor violates a CA; or
 - (3) Any contractor harasses an agent of OFCCP (an OFCCP or SOL employee acting on behalf of the agency, generally a CO, DD, or manager).
- (b) Whether to issue a SCN under the circumstances immediately above is a matter of administrative discretion on the part of the Regional Director (RD) for OFCCP, based on the facts of the situation. However, OFCCP will normally proceed directly to enforcement, without issuing a SCN, where, for example, a contractor is harassing an agent of OFCCP; a contractor violates a CA (see Section 8G02); a contractor repeats one of these violations (e.g., a contractor who, under a prior expired CA, resolved a refusal to submit an AAP, again fails to submit an AAP); or other appropriate circumstances. By contrast, for example, OFCCP will normally issue a SCN before proceeding to enforcement where a contractor's initial refusal to submit an AAP is based on a coverage dispute.



8D03 USE OF AMENDED SHOW-CAUSE NOTICE

- (a) Where a SCN has already been issued, and additional violations are subsequently identified, an ASCN will be issued incorporating all violations, including the original one(s). More than one ASCN may be issued. For example:
- (1) Supply and Service Contractors: If a SCN was issued at desk audit for failure to submit an EO AAP, and the EO AAP is then submitted but is unreasonable, an ASCN may be issued citing both the initial failure to submit and the subsequent unreasonable submission. If the contractor then submits a reasonable AAP, but additional violations are identified during the onsite review, a second ASCN may be issued (after issuing, as applicable, a PN and/or a NOV; see Sections 3P and 3T) citing all violations to date.
 - (2) Construction Contractors: If a SCN was issued for reporting violations (see Section 8D01(a)(2)) and, during an onsite review conducted shortly thereafter, additional violations are identified, an ASCN may be issued citing both the reporting and the other violations identified onsite.
 - (3) Note: Just as an ASCN includes all violations (including those cited in the original SCN), a single CA (see Section 8F) is used to resolve all violations (regardless of when in the review a particular violation was identified).



- (b) A sample ASCN is given in Figure 8-11. An ASCN:
- (1) Is sent to the same persons as a SCN (see Section 8D05);
 - (2) Has the same signature authority (see Section 8D06), unless the RD for OFCCP delegates otherwise; and
 - (3) Has the same procedures concerning contractor responses (see Section 8D07).

8D04 CONTENTS

- (a) A SCN (including an ASCN) may have two parts:
- (1) Notice: The Notice itself which states the consequences, under the regulations, of not coming into compliance; and
 - (2) Enclosure: An enclosure which states the violations and required remedies. The statement of violations should include appropriate regulatory citations. Note, however, that if a particular violation is not specifically named in the regulations; e.g., racial harassment, it is sufficient to clearly describe the violation and cite, as applicable, the nondiscrimination and/or AA provisions of the appropriate EEO/AA clauses.
- (b) The format to use for a SCN will depend on the particular situation. Section 8D01 (above), which lists violations for which a SCN should be issued, includes references to the Figures that provide the format for each type of violation.

8D05 TO WHOM SENT

- (a) A SCN (including an ASCN) is addressed to the top official at the establishment with a copy to the chief executive officer (CEO) of the corporation (unless the establishment and corporate office are the same). If the contractor has requested in writing that an outside representative; e.g., an outside counsel or consultant, be provided a copy of the review/investigation correspondence, the designated representative will also be sent a copy (see Section 2B02(b)). Where copies are provided to a corporate CEO, other contractor official, and/or a designated representative, a "cc:" line will be included on all copies indicating the persons to whom the Notice was sent.



- (b) A SCN or ASCN (including copies thereof) is always sent certified mail, return receipt requested.

8D06 SIGNATURE AUTHORITY

Signature authority for a SCN (including an ASCN) rests with the RD for OFCCP. The RD, however, may delegate that authority to a DD for some or for all types of these Notices.

8D07 CONTRACTOR RESPONSE

- (a) Period for Response: The contractor has thirty (30) calendar days from the date of its receipt of the SCN (or ASCN) to either adequately respond to or resolve the violation(s) specified in the Notice.
- (b) Resolution in CA: Because violations which generate a SCN/ASCN are normally considered major, resolution must be through a CA (see Section 8F) unless the contractor is able to demonstrate that it is exempt from OFCCP's requirements or that OFCCP's allegations are incorrect. The contractor may, therefore, take any of the following actions in response to a SCN:
- (1) Contractor Resolves Violation: The contractor may resolve a violation by:
 - (i) Entering into a written CA that remedies the violation, including the provision of make-whole relief for any victims of discrimination (see Sections 7F and 8A02(b));
 - (ii) Demonstrating that it is exempt from OFCCP's requirements; and/or
 - (iii) Demonstrating that OFCCP's allegations are incorrect.
 - (2) Contractor Does Not Resolve Violation: If the contractor does not resolve all of the violations identified in the SCN/ASCN, OFCCP will normally recommend the initiation of enforcement proceedings (see Section 8I). Under these circumstances, a decision not to refer for enforcement must be made at the RD level and the reason for the decision documented in the case file.



8D08 RECISION OF SHOW-CAUSE NOTICE

- (a) When Used: A SCN/ASCN may be rescinded only where:
- (1) the SCN/ASCN was erroneously issued; for example:
 - (i) The contractor demonstrates that it is exempt from OFCCP's requirements;
 - (ii) The contractor demonstrates that each of OFCCP's allegations is incorrect;
 - (2) The contractor has agreed in a CA (or in a consent decree, see Sections 8H05(c)(1) and 8I) to implement remedies for all violations.
 - (3) A SCN will not normally be rescinded merely because the contractor agrees to comply in the future. A contractor must also implement remedies which rectify past noncompliance. See 41 CFR 60-1.20 (b), 60-4.8 and Castillo v. Usery, 14 FEP Cases 1240 (N.D.Cal. 1976).
- (b) Contents
- (1) Erroneously Issued: Figure 8-12 provides a sample format for rescinding a SCN that was erroneously issued (see Section 8D08(a)(1) above).
 - (2) Violations Resolved in a CA: Where the violation(s) that generated the SCN has been resolved in a CA, Figure 8-13 ("NRC - Major Deficiencies Resolved in a CA") includes rescision of the SCN.
- (c) To Whom Sent: A letter rescinding a SCN is sent to the same persons who received the Notice being rescinded (see Section 8D05).
- (d) Signature Authority: A letter rescinding a SCN is signed by the RD unless the RD delegates that signature authority to a DD for some or all types of SCN rescisions.

8E LETTERS OF COMMITMENT (LOC)



8E00 WHEN USED

A LOC is normally used, where a SCN has not been issued, to resolve minor technical violations of any of OFCCP's three programs, such as minor modifications to an AAP(s) (see 41 CFR 60-1.33(b)). Note, however, that if a CA (see Section 8F below) is required for a major violation, any minor violations (that would otherwise warrant only a LOC) are included in the CA.

8E01 CONTENTS

- (a) A LOC describes each violation, the action to be taken to correct it and the date the corrective action was or will be completed. If a violation concerns an AAP change, the corrective action will include a commitment that the change will also apply to future AAPs.
- (b) A LOC will normally include reporting on corrective action involving future commitments or obligations. Reporting is not required for corrective action that has already been taken when the LOC is prepared. A reporting requirement will specify the content of the report(s), the period(s) to be covered and the date(s) it is due. It will also indicate that the contractor will retain the underlying data or information on which the report(s) is based until the expiration date of the LOC (see Section 8G01(d)).
- (c) Without the express prior approval of the OFCCP Deputy Assistant Secretary (DAS), no LOC will include any provision that precludes OFCCP from issuing a press release or otherwise publicizing the results of compliance actions.

8E02 TERMINATION DATE

The termination date of a LOC shall be based upon the minimum time necessary for the contractor to correct all violations and for OFCCP to confirm that the corrections have been made. Minor technical changes to a current AAP are normally correctable onsite or shortly thereafter, and commitments not to repeat the violations should extend until they can be verified in the next AAP. On the other hand, a LOC commitment to linkage (see Section 3J, particularly 3J00(d)(5)) that specifies the listing of certain open jobs may take substantially longer to implement and verify. However, in most but not all cases, the duration of a LOC will not exceed one year.

8E03 SIGNATURE AUTHORITY



- (a) The LOC is addressed to the DD/AO-ADD and dated and signed by the top establishment official. However, if the establishment is a Corporate or intermediate headquarters, the LOC may be signed by the top official's designee.
- (b) Upon receipt of the LOC, the DD/AO-ADD will review the LOC and file and, if the LOC is acceptable, will sign and issue the contractor a "NRC - Minor Deficiencies Resolved in a LOC" (Figure 8-15).

8F CONCILIATION AGREEMENT (CA)

A CA is used to resolve material (major, substantive) violations of any of OFCCP's three programs. For the Executive order program, the use of a CA for such violations is a regulatory requirement (see 41 CFR 60-1.33). For procedural consistency, a CA is also used to resolve material violations of Section 503 and/or 38 U.S.C. 4212 and its implementing regulations.

8F00 WHEN USED

A CA is normally required whenever a SCN has been properly issued (see Section 8D08(a)(1)). However, the following circumstances require resolution in a CA irrespective of whether a SCN has been issued:

- (a) In a compliance review or complaint investigation, OFCCP has found that the contractor discriminated--whether on an individual or pattern or practice basis--under any of OFCCP's three programs;
- (b) A supply and service contractor did not submit an EO AAP and/or employment activity data requested for desk audit or the EO AAP submitted did not reflect a reasonable effort (see Sections 2C01 and 2F);
- (c) Any contractor has failed to demonstrate good-faith effort (this includes situations where a supply and service contractor deviates substantially from its EO AAP (see 41 CFR 60-2.2(c)(1)), or where a construction contractor fails to document adequately its implementation of its AA obligations (see Sections 4I, 4K, and 4L) and refuses to remedy those violations);



- (d) Any contractor has failed to comply with the terms of a LOC and has failed to show good cause for that failure.

8F01 CONTENTS

- (a) The format described in this Section is used for all CAs. It consists of a Heading followed by three parts:
- (1) Part I contains General Provisions (including a Mandatory Enforcement Clause);
 - (2) Part II contains Specific Provisions; i.e., a description of those violations and remedies involved in the particular review or investigation; and
 - (3) Part III contains Reporting requirements (on the implementation of remedies specified in Part II).
- (b) Modifications to CA Format - General Provisions:
- (1) Mandatory Enforcement Clause: The Mandatory Enforcement Clause (see paragraph 9 of CA standard text in Section 8F01(e) below) cannot be modified in any way without the express prior approval of the DAS, OFCCP.
 - (2) Nonadmissions Clause: This clause (see paragraph 3 of standard CA text, Section 8F01(e) below) must be omitted if a remedy specified in Part II of the CA affects a CBA between a contractor and a labor union and the union does not sign the CA. Where this is the case, at the end of paragraph 1 of the standard CA text add, as applicable:
 - (i) Union Refuses to Participate in Conciliation of the CBA Issue: On [date], Local [number] of the [name of union] was invited to participate in conciliation of remedy item(s) [number(s)] which affect(s) its collective bargaining agreement with [name of contractor], but on [date] declined to do so.
 - (ii) Union Participates but Does Not Sign the CA: On [date] Local [number] of the [name of union] participated in conciliation of remedy item(s) [number(s)] which affect(s) its CBA with [name of contractor], but on [date] declined to become a signatory to this Agreement.



- (3) Other General Provisions:
- (i) RDs are authorized to modify the General Provisions of a CA, other than the Mandatory Enforcement Clause, where necessary to fit the particular situation. No such modification, however, may have the effect of changing the meaning or intent of the Mandatory Enforcement Clause.
 - (ii) The RD will consult with the Regional Solicitor of Labor (RSOL) on any such modifications (except those noted in Section 8F01(b)(2) immediately above) and, if RSOL does not concur, the modification must be approved by the DAS, OFCCP, before the CA is signed by the RD.
- (c) Modifications to CA Format - Specific Provisions and Reporting: These two sections are intrinsically unique to the particular review or investigation and should be so tailored by the CO preparing the CA.
- (d) No Restrictions on Publicizing: - No provision of a CA may preclude OFCCP from issuing a press release or otherwise publicizing the results of compliance actions, without the express prior approval of the DAS, OFCCP.
- (e) Standard CA Language: The material on the next four pages provides in the right column the standard text of a CA, and in the left column, comments on that text.



Comments

Standard Text

Heading: Each CA will be headed:

**If a union is a party to the CA, add its full name to the heading.*

Conciliation Agreement
 Between the U.S. Department of Labor
 Office of Federal Contract Compliance Programs
 and
 [Name of Contractor]
 [Name and address of establishment
 covered by the Agreement]*

Part I – General Provisions: This will be the first section of each CA and will specify:

PART I: General Provisions

This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and [name and address of contractor] (hereinafter [abbreviation, if desired, of contractor's name]).**

***If a union is a party to the CA, add its full name and in parentheses, if desired, an abbreviation of its name for use in the rest of the CA. If, per the note immediately below, a union was invited to be a party, but refused, see 8F01(b)(2) for language to be added to paragraph 1.*

The violations identified in this Agreement were found during a [as applicable, compliance review/complaint investigation] of [name of contractor] which began on [date] [add as applicable: and they were specified in a Notice of Violation/Show Cause Notice/Amended Show Cause Notice issued (date)]. OFCCP alleges that [name of contractor] has violated [as applicable, Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212)] and implementing regulations at 41 CFR Chapter 60 due to the specific violations cited in Part II below.

****Paragraph 3 is called a NON-ADMISSIONS CLAUSE. It may be*

3.*** This Agreement does not constitute an admission by [name of contractor] of any violation of [as applicable, Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (38 U.S.C. 4212)] and



used when the contractor refuses to admit to the violations set forth in Part II of the CA UNLESS the CA requires a change in a collective bargaining agreement (CBA) between the contractor and a labor union or requires the award of retroactive seniority where seniority is governed by a CBA and the union declines to sign the CA (see Sections 7F06(f) and 8C04(b)).

implementing regulations.

4. The provisions of this Agreement will become part of [name of contractor]'s AAP. Subject to the performance by [name of contractor] of all promises and representations contained herein and in its AAP, all named violations in regard to the compliance of [name of contractor] with all OFCCP programs will be deemed resolved. However, [name of contractor] is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

**For employee interviews, "normal business hours" means the hours during which the employees to be interviewed are at work (e.g., evening hours if the employees work on an evening shift).*

- 5.5. [Name of contractor] agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to [name of contractor]'s compliance. [Name of contractor] shall permit access to its premises during normal business hours* for these purposes.
6. Nothing herein is intended to relieve [name of contractor] from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and implementing regulations, or any other equal employment statute or executive order or its implementing regulations.
7. [Name of contractor] agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, or who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and/or, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**



**If a DD is signing, change Regional to District, and say "...unless the Regional Director or Director..."*

8. This Agreement will be deemed to have been accepted by the Government on the date of signature by the Regional* Director for OFCCP, unless the Director, OFCCP indicates otherwise within 45 days of the Regional* Director's signature of this Agreement.**

***If the CA involves back pay, the back pay should be disbursed following this 45 day period.*

****Paragraph 9 is called the MANDATORY ENFORCEMENT CLAUSE. This clause implements 41 CFR 60-1.34, which requires that when OFCCP concludes that a CA has been violated, a 15-Day Notice will be issued (unless irreparable injury is involved, see Section 8H02) and if, during the 15-day period, the contractor cannot demonstrate in writing that it did not violate the CA, enforcement proceedings may be initiated without issuing a Show Cause Notice.*

9.*** If at any time in the future, OFCCP believes that [name of contractor] has violated any portion of this Agreement during the term of this Agreement, [name of contractor] will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide [name of contractor] with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such a delay would result in irreparable injury.

Enforcement proceedings for violation of this Agreement may be initiated at any time after the 15-day period has elapsed (or sooner, if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes that [name of contractor] has violated this Conciliation Agreement, evidence regarding the entire scope of [name of contractor]'s alleged noncompliance [add, as applicable: which gave rise to the Notice of Violations/Show Cause Notice/Amended Show Cause Notice] from which this Conciliation Agreement resulted, in addition to the evidence regarding the [name of contractor]'s alleged violation of the Conciliation Agreement, may be introduced at enforcement proceedings.

Liability for violation of this Agreement may subject [name of contractor] to sanctions set forth in [as applicable, Section 209 of the Executive Order, 41 CFR 60-250.28 and/or 41 CFR 60-741.28] and/or other appropriate relief.

Part II - Specific Provisions: This will

PART II – Specific Provisions

1. VIOLATION:



be the second part of each CA and will describe each violation and the remedy required to correct it. See Section 8F01(f).

REMEDY:

As applicable, describe additional violation/ remedy items numbered consecutively.

2. **VIOLATION:**

REMEDY:

Part III - Reporting.
This will be the third part of each CA and will describe the content, period to be covered and due date of each report to be filed by the contractor. See Section 8F01(g).

PART III – Reporting

[Name of contractor] agrees to furnish the OFCCP [name and address of OFCCP office] with the following reports:

1.

As applicable, describe additional reports numbered consecutively.

2.



(f) Contents of Part II - Specific Provisions:

(1) VIOLATION:

- (a) Description of: The description of the violation must be specific enough for a reader unfamiliar with the case to understand what was the problem. For example: "ABC's workforce analysis listed job titles by EEO-1 category rather than by department or other similar organizational unit as required by 41 CFR 60-2.11(a);" not "ABC's workforce analysis did not meet the requirements of 41 CFR 60-2.11(a)." Note that where the violation involved other than strictly written AAP issues, the violation statement must provide a brief description of the circumstances giving rise to the violation. (See, for example, the violation statements in Figure 8-5a, items 1, 2, and 4.)
- (b) Regulatory Citations: Each violation will be supported by citations of the relevant portion of the regulations. The regulation must be fully and accurately described and cited. However, if a particular violation is not specifically named in the regulations; e.g., racial harassment), it is sufficient to describe the violation clearly and to cite, as applicable, the nondiscrimination and/or affirmative action provisions of the appropriate EEO/AA clauses.

(2) REMEDY:

- (i) Each violation will be followed by a specific description of the remedies agreed upon, including dates for completion and a commitment not to repeat the violation.
- (ii) It is important to phrase remedies specifically enough for the contractor's implementation of the remedy to be auditable (see Sections 8F01(g) and 8G01 below). For example:
- a) In 8F01(f)(1)(a) above, "ABC's workforce analysis in future AAPs will list job titles within ABC's departments;" not "ABC's workforce analysis in future AAPs will meet the requirements of 41 CFR 60-2.11(a);" or
- b) In a good-faith effort violation, "ABC will list all Drafting openings with DEF and XYZ referral sources . . .;" not "ABC will make a good-faith effort to recruit more minorities for Drafting jobs."



-
- (3) The CA should include all violations identified during the compliance review, including those that have already been corrected when the CA is prepared. As with any other violation, include the date of correction and a commitment not to repeat the violation. For example, the contractor may have been issued a Show-Cause Notice for failure to submit an Executive order AAP for desk audit. If the AAP was then submitted, the CA would include the violation, the date the AAP was received and the contractor's commitment to submit future AAPs within thirty (30) days of its receipt of OFCCCP's request to do so.
- (g) Contents of Part III - Reporting:
- (1) When Required: Reporting is required for all remedies that involve future commitments or obligations. Reporting is not required for remedies that have already been implemented when the CA is prepared, unless such reporting is essential to ensure that the violation is not repeated.
- (2) Contents of Reports: All reporting requirements shall specify the period to be covered by the report and its contents. The description of report contents will be sufficiently detailed to ensure that the information submitted will enable a thorough review of the contractor's compliance with the CA provisions.
- (3) Date(s) of Report(s):
- (i) Reporting requirements shall include the date(s) by which the report(s) is to be submitted. This includes situations where the timing of the event being reported is unpredictable; e.g., an offer of the "next" Technical Illustrator opening. In such cases, the contractor should be required to report--on specified dates--whether any such opening has occurred and, if so, the action taken.
- (ii) The specified date of the last report will be sufficiently in advance of the expiration date of the CA (see Section 8F02 below) to permit an evaluation of that report, with appropriate follow-up (see Section 8G01(d) below) if the evaluation raises questions about the contractor's full implementation of the CA.
- (4) Frequency of Reports: Reporting should be frequent enough to enable a thorough review of the contractor's compliance with the CA provisions. However, except in unusual circumstances, reports should not normally be required more frequently than semi-annually.
- (5) Contractor Retention of Data: All reporting requirements shall specify the contractor's obligation to retain records pertinent to violations resolved by the CA and to reports



submitted under it (including the underlying data/ information on which the reports are based) until the expiration date of the CA or consistent with regulatory requirements, whichever is later. For example, a contractor is required by 41 CFR 60-3.15 to retain data on components of a selection process that has adverse impact for at least two years after the elimination of that impact.

- (6) For a discussion of monitoring reports submitted under a CA (see Section 8G01 below.)

8F02 TERMINATION DATE

- (a) CAs shall have termination dates based on the minimum time necessary for contractors to correct all violations and for OFCCP to verify such correction.
- (b) While full correction of all violations will be possible within one or two years under most CAs, some remedies may require a longer period of time. For example, if the CA requires make-whole relief for discrimination and that relief includes extending job offers as openings occur, the CA termination date would be open-ended until all job offers have been made and all back pay and/or front pay has been paid.

8F03 SIGNATURE AUTHORITY

- (a) CAs will be signed and dated by the following persons:
- (1) The contractor's top establishment official (however, if the establishment is a corporate or intermediate headquarters, the CA may be signed by the top official's designee) and any additional contractor official(s) that the contractor wishes;
 - (2) If a union(s) is a party to the CA (see Sections 7F06(f)(1) and 8C04(a)), the union local's top official and any additional union official(s) the union wishes;
 - (3) The CO who conducted or led the compliance review or complaint investigation;
 - (4) The Assistant District Director (ADD), if applicable;
 - (5) The District Director (DD); and
 - (6) The RD, OFCCP, unless otherwise delegated (see 8F03(c) below).



-
- (b) The RD is authorized to sign all CAs, including those involving pattern or practice discrimination regardless of class size or dollar amount, without NO review. However, where the class exceeds 50 persons or back pay exceeds \$100,000, the CA must have written legal clearance by the RSOL before being signed by the RD. To facilitate this clearance process, as soon as it becomes apparent that a case may involve a class size and remedy of this magnitude, it should be discussed with RSOL through the Joint Review Committee (JRC) process, so that RSOL is aware of the background of the case and the general outlines of remedy as it is being developed; i.e., before the CA is presented to RSOL for legal clearance.
- (c) The RD may delegate signature authority to a DD for CAs involving:
- (1) Only affirmative action issues,
 - (2) Only individual discrimination issues, and/or
 - (3) Pattern or practice discrimination in which the class does not exceed ten (10) persons and back pay does not exceed \$25,000.
- (d) Upon signature of the CA by the indicated applicable persons, the contractor will be issued a "NRC - Major Violations Resolved in a CA." If a SCN was issued, use Figure 8-13 (which includes rescission of the SCN). If no SCN was issued, use Figure 8-14.

8G ACTIONS FOLLOWING EXECUTION OF A LOC OR CA

8G00 RETENTION OF EVIDENCE OF VIOLATIONS

All evidence regarding violations resolved in a LOC or CA will be retained in the case file so it can be readily retrieved and used if there should be enforcement proceedings. (See Section 8F01(g)(5) for the contractor's obligation to retain records pertinent to violations and to reports submitted.)

8G01 EVALUATION OF PROGRESS REPORTS

- (a) Progress Report Not Received: If a progress report required under a LOC or CA is not received when due, the contractor will be contacted to determine if it is en route. If it is en route, five (5) calendar days will be allowed for its receipt. If there is no reason to believe it is en route or it is not received within five (5) calendar days:
- (1) LOC: A SCN (see Section 8D and Figure 8-7) is issued for violation of the LOC.



- (2) CA: A 15-Day Notice (see Section 8H and Figure 8-16) is issued for violation of the CA.
- (b) Timeframe for Evaluation: A progress report will normally be evaluated within fifteen (15) days of receipt (see Order No. ADM 89-4/Other for DO/AO progress report tracking systems), and a determination made of whether it is acceptable or whether additional information is needed. If it is acceptable, the CO will prepare a letter so notifying the contractor. If additional information is needed, the CO will determine how it is best obtained; e.g., by phone, mail or an onsite visit or review; see 8G01(c) below, and will so notify the contractor.
- (c) Questions Raised by Evaluation:
- (1) If the evaluation of a progress report raises a question about the contractor's implementation of the provisions of a LOC or CA, OFCCP may contact the contractor to obtain clarification of the report and/or may schedule an onsite visit.
 - (2) If such an onsite visit concerns a LOC, it will normally be limited to the specific LOC implementation question at issue; if it concerns a CA, it may be limited to the CA implementation question or conducted as a follow-up compliance review.
 - (3) Where such an onsite visit is limited to the LOC or CA implementation question at issue, a narrative report will be prepared describing the results of the investigation and recommending whether the contractor should be found in violation of the LOC/CA. Where a follow-up compliance review is conducted, a SCRR will be prepared (see Appendix 2A-1 or 4A, as appropriate), with special emphasis on findings and recommendations on the LOC/CA implementation question.
- (d) Contractor Maintenance of Records: In response to such an inquiry or during such a visit the contractor must be prepared to furnish the underlying records or information on which the report was based (see Section 8F01(g)(5)). Where copies of these data are requested, the contractor may provide the copies, allow the CO to use its equipment to make the copies, or loan the documents for off-site OFCCP copying, etc. A failure to maintain or furnish these data will be considered a violation of the LOC or CA (see Section 8G02).
- (e) Notification of Results: If, after obtaining and evaluating contractor evidence relevant to fulfillment of LOC/CA commitments, OFCCP concludes that the LOC/CA was not violated, the contractor will be so notified in writing (where the evaluation was part of a follow-up review, this notice can be included in the applicable standard close-out letter). If, however, OFCCP concludes that the LOC/CA was violated, see Section 8G02.



-
- (f) Retention of Progress Reports and Evaluations: Progress reports and a copy of the evaluations of them will be retained in the case file.

8G02 VIOLATION OF A LOC OR CA

- (a) LOC: Where OFCCP concludes that the contractor has not fulfilled LOC commitments, and the commitments not fulfilled include one(s) pertaining to the Executive order and/or Section 503, a SCN should be issued (see Section 8D and Figure 8-7). Where the only LOC commitment(s) not fulfilled pertains to Section 503 and/or 38 U.S.C. 4212, see the modifications to be made to Figure 8-7. Unless the contractor is able to show that OFCCP's conclusions are incorrect, a CA (see Section 8F) will be required to correct the violation.
- (b) CA:
- (1) Violation During the Term of a CA: Where OFCCP determines that a contractor violated the provisions of a CA prior to the expiration of the CA, the procedures set out at 41 CFR 60-1.34 require OFCCP to send the contractor a 15-Day Notice (see Section 8H, but where irreparable injury is involved, see specific procedures in 8H02). This applies whether the finding itself is made during the term of the CA or after the CA has expired, so long as the violation occurred during the term of the CA.
- (2) Repetition of Violation After Expiration of a CA:
- (i) If OFCCP finds that, following expiration of a CA, the contractor has repeated any of the violations that generated the CA; e.g., see Appendix 2A, SCRR page 3 on Recurrence of Past Problems, these violations, along with any new ones identified, may be incorporated in a second CA (but also see Section 8A02(a) (2) and (b)).
- (b) This second CA will have a minimum term of four (4) years (and may be longer if needed to ensure full implementation of remedy or in unusual circumstances), and at least one compliance review will be conducted before the CA expires to ensure that its terms are being/have been fulfilled.

8H 15-DAY NOTICE



8H00 WHEN USED

When OFCCP finds that a CA has been violated, unless irreparable injury is alleged (see Section 8H02 below), a 15-Day Notice should be issued to the contractor.

8H01 CONTENTS (NO IRREPARABLE INJURY)

- (a) The 15-Day Notice will include a cover letter and an enclosure citing the provisions of the CA the contractor has violated and the bases for the findings. (See Figures 8-16 and 8-16a.) As noted in 8H04(b) below, this Notice will be cleared with RSOL.
- (b) The 15-Day Notice will give the contractor fifteen (15) working days from receipt of the Notice to demonstrate, through written presentation of facts and evidence, that it is in compliance with the cited provisions of the CA (see 41 CFR 60-1.34(a)(1) and (a)(2)).

8H02 PROCEDURE WHERE IRREPARABLE INJURY

- (a) Irreparable injury may occur where a violation of a CA is either in progress or expected, and cannot be readily corrected if allowed to proceed during the 15-working day response time normally allowed. For example:
 - (1) Employees are experiencing severe harassment or retaliation.
 - (2) The contractor has a CA commitment to offer a victim of discrimination a unique job (one unlikely to open again in the foreseeable future), such an opening occurs, and the contractor is about to fill it with someone other than the victim.
- (b) Where irreparable injury is alleged, a 15-Day Notice will not be issued. Instead, after obtaining RSOL clearance, the RD shall attempt to notify the top establishment official by telephone that OFCCP intends to proceed directly to enforcement (see 41 CFR 60-1.34(a)(3) and 60-741.63(b)).
- (c) The oral notice of breach of the CA and irreparable injury shall be immediately followed by a confirming letter, cleared by RSOL, which cites the provisions of the CA the contractor has violated, the bases for the findings, the reason irreparable injury is alleged and OFCCP's intent to proceed directly to enforcement.



8H03 TO WHOM SENT

A 15-Day Notice (or confirming letter in Section 8H02(c) above) is sent to the same persons as a SCN (see Section 8D05) by certified mail, return receipt requested.

8H04 SIGNATURE AUTHORITY

- (a) The RD has signature authority for a 15-Day Notice and may not further delegate that authority. DDs will send a proposed 15-Day Notice to the RO, along with a copy of the CA that the contractor has violated and documentation pertaining to the CA provisions violated.
- (b) Since the outcome of a 15-Day Notice--unless the contractor shows OFCCP's findings are incorrect--is normally referral to RSOL for enforcement (see Section 8I03 below), the RD will secure RSOL concurrence before issuing the 15-Day Notice.

8H05 CONTRACTOR RESPONSE

- (a) The contractor has fifteen (15) working days from the date it receives the 15-Day Notice to respond.
- (b) If the contractor does not respond within the 15-day period, or reasonable extensions thereof, the case should be referred for enforcement (see Section 8I).
- (c) If the contractor does respond, OFCCP will evaluate whether the response shows that the 15-Day Notice was erroneously issued or otherwise explains the violation(s). If so, the 15-Day Notice will be rescinded (see Figure 8-17) or the matter otherwise resolved with the contractor. If not, the case will be formally referred to the Solicitor of Labor (SOL).
- (d) SOL, with OFCCP's assistance, will attempt to negotiate a consent decree which includes all appropriate remedies. If the contractor is unwilling to enter into a consent decree, SOL will treat the case as a normal enforcement referral (see Section 8I below).

8I ENFORCEMENT RECOMMENDATION

8I00 WHEN USED

An enforcement recommendation should be made where:



-
- (a) With or without a SCN, the contractor (see Section 8D02):
- (1) Refuses to submit an Executive order AAP and support data;
 - (2) Refuses to provide access to its premises for an onsite review;
 - (3) Refuses to provide access to necessary information; or
 - (4) Harasses an agent of OFCCP; e.g., an OFCCP or SOL employee acting on behalf of the agency, usually an CO, DD, or manager.
- (b) A SCN has not been resolved within 30 days, or reasonable extensions thereof (see Section 8D07(b)(2));
- (c) In a compliance review in which the only violation(s) involved are of Section 503 and/or 38 U.S.C. 4212, the violation(s) have not been resolved within thirty (30) days, or reasonable extensions thereof (see Section 8D00(c)(2));
- (d) In a Section 503 or 38 U.S.C. 4212 complaint investigation, settlement negotiations fail to resolve a violation(s) specified in the NRI (see Section 8B04(e)(2));
- (e) A 15-Day Notice for violation of a CA (no irreparable injury involved) has not been resolved within fifteen (15) days, or reasonable extensions thereof (see Section 8H05(c)(2)); or
- (f) Violation of a CA involves irreparable injury (see Section 8H02).

8I01 CONTENTS (COMPLIANCE REVIEW)

A compliance review case file submitted for enforcement consists of a brief cover memorandum, a transmittal memorandum, and the standard case file prepared for all compliance reviews.

- (a) Cover Memorandum: This memorandum will normally not exceed one page. It will request enforcement, briefly state the major issue(s) in the case, and indicate what matters were at impasse when conciliation terminated; e.g., jurisdiction, whether there was a violation, the amount of back pay, etc.
- (b) Transmittal Memorandum: The contents of the transmittal memorandum are described in Appendix 8A.



8I02 CONTENTS (COMPLAINT INVESTIGATION)

- (a) A complaint investigation case file submitted for enforcement consists of a cover memorandum and the standard case file prepared for all complaint investigations.
- (b) Cover Memorandum: This memorandum will request enforcement, state the program under which the complaint was filed and its basis and issue, and summarize the violation(s) found and the results of conciliation (including the issues at impasse when conciliation terminated).

8I03 TO WHOM SENT

- (a) An enforcement recommendation will be sent to the RSOL (unless it involves a novel or unprecedented issue, see (b) immediately below). A copy of the cover memorandum and the transmittal memorandum (compliance reviews) or NRI (complaints) will be sent to the NO, Division of Program Operations, and to the NO SOL (Associate Solicitor, Civil Rights Division, Office of the Solicitor, U.S. Department of Labor, Room N-2464, 200 Constitution Ave., N.W., Washington, D.C. 20210).
- (b) Novel Issues: An enforcement recommendation involving a novel or unprecedented issue will be sent to the NO, Division of Program Operations, for review and referral to NO SOL. Because such issues are often ones that are "legally unsettled," they will change over time. Appendix 8B, which will be periodically updated, lists issues currently designated as novel.

8I04 SIGNATURE AUTHORITY

The RD, OFCCP, has signature authority for an enforcement recommendation and this authority cannot be delegated further. The originating District Office (DO) will prepare the cover memorandum and transmittal memorandum, as appropriate, for the RD's signature.

8J STOPPING ENFORCEMENT PROCEEDINGS

8J00 PRE-REFERRAL TO SOL

Efforts to reach a voluntary resolution of the noncompliance should continue up until the time the matter is referred to SOL. Settlement negotiations, however, should not be permitted to unduly delay an



enforcement recommendation. For example, an enforcement recommendation is appropriate as soon as it becomes clear that the contractor is not negotiating in good faith.

8J01 POST-REFERRAL TO SOL

- (a) Once a case is referred to SOL for enforcement, any further settlement negotiations are between the contractor and SOL. Any contact by the contractor must be immediately referred to SOL.
- (b) Contractor Agrees to Remedy: Where, as a result of those negotiations, the contractor agrees to remedy fully the violation(s) involved, including the provision of make-whole relief to any victims of discrimination (see Section 7F), SOL may incorporate the agreed-upon remedy in a consent decree and stop the enforcement process. An ALJ (see Section 8K00(b) below), normally will be asked to endorse the proposed resolution and may retain jurisdiction over the consent decree to ensure that the contractor fully complies with its terms.

8K TYPES OF ENFORCEMENT PROCEEDINGS

Once a case is referred to SOL for enforcement, SOL will determine whether the case is litigation worthy and, in the process of doing so, may seek additional information on the case from OFCCP. SOL also recommends to the DAS, OFCCP, whether an enforcement proceeding should be administrative or judicial.

8K00 ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

- (a) Administrative enforcement proceedings are normally initiated unless circumstances warrant referral to the DOJ for judicial proceedings (see Section 8K01 below).
- (b) Administrative enforcement proceedings are initiated when SOL files an Administrative Complaint with ALJ.
- (c) An administrative hearing on the Complaint is conducted before an ALJ under the procedures set forth in 41 CFR Part 60-30.
- (d) Following the administrative hearing, ALJ issues a Recommended Decision. This Recommended Decision is made to the Secretary of Labor in an Executive order case; to the Assistant Secretary for Employment Standards in a Section 503 or 38 U.S.C. 4212 case.



-
- (e) The Secretary or Assistant Secretary, as applicable, issues a Final Decision and Order that adopts, modifies, or reverses, in whole or in part, the ALJ's Recommended Decision.
 - (f) The contractor may request judicial review of the Final Decision and Order by filing suit in Federal district court. In such a suit, however, the contractor must prove that the Final Decision and Order was not supported by "substantial evidence" under the standards of the Administrative Procedure Act (APA). Under the APA, a case decided administratively cannot be "retried," but the Federal district court can determine whether the Department of Labor (DOL), in issuing the Final Decision and Order, exceeded its authority under the Executive order or statutes involved.

8K01 JUDICIAL ENFORCEMENT PROCEEDINGS

- (a) Where SOL determines that circumstances so warrant, upon the concurrence of the DAS, OFCCP, a case may be referred to the DOJ for judicial enforcement proceedings. For example, an injunction may be needed against a sole source contractor; e.g., a public utility, etc., since cancellation of Federal contracts may not be practical.
- (b) Referrals to DOJ for judicial enforcement may be made at any stage in the enforcement process without proceeding through conciliation efforts (41 CFR 60-1.26(a)(2)).
- (c) DOJ initiates judicial enforcement proceedings when the Attorney General files a Complaint on behalf of DOL in Federal district court. As with any other Federal court case, the losing party may appeal to the circuit court of appeals, and the losing party in the court of appeals may request review (by filing a "writ of certiorari") by the U.S. Supreme Court.

8L SANCTIONS AND PENALTIES

For information on the sanctions and penalties which can be imposed for noncompliance with an OFCCP program, refer to:

- (a) Executive Order: For noncompliance with the Executive order (see Section 209 of the Executive order). This Section provides for contract cancellation and/or debarment from future Federal contracts, as well for such less severe sanctions as suspension of a contract or a portion of a contract. In this latter area, the Comptroller General has held that this provision permits the withholding of progress payments on a contract since such payments can be construed to be a "portion" of a contract.
- (b) Section 503: For noncompliance with Section 503, see for example, 41 CFR 60-741.66.



- (c) 38 U.S.C. 4212: For noncompliance with 38 U.S.C. 4212, see for example, 41 CFR 60-250.28.

8M REINSTATEMENT OF DEBARRED CONTRACTOR

For procedures applicable to the reinstatement of debarred contractors, see 41 CFR 60-1.31, 60-741.68, and 60-250.50.



FIGURES

FIGURE 8-1: SHOW-CAUSE NOTICE FORMAT (Supply and Service) - FAILURE TO SUBMIT EXECUTIVE ORDER AAP AND/OR SECTION 503 AAP (and, if applicable, failure also to submit 38 U.S.C. 4212 AAP)*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

In our letter of [date], you were requested to submit to this Office within thirty (30) days a copy of your establishment's Affirmative Action Programs (AAP) and supporting documentation prepared in accordance with our regulations implementing:

1. Executive Order 11246, as amended (41 CFR Part 60-2);
2. Section 503 of the Rehabilitation Act of 1973, as amended (41 CFR Part 60-741); and
3. The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (41 CFR Part 60-250).

To date, your Executive order [Section 503 and/or 38 U.S.C. 4212] AAP[s] has [have] not been received.

Due to your firm's failure to submit an Executive order AAP, we are issuing this Notice to Show Cause, within thirty (30) calendar days of your receipt of this Notice, why enforcement proceedings should not be initiated pursuant to Sections 208 and 209(a) of the Executive order, as implemented by 41 CFR 60-1.26 and/or 41. [Due to your firm's additional failure to submit a Section 503 and/or 38 U.S.C. 4212 AAP, we offer you a concurrent 30-day period to show why enforcement proceedings should not also be initiated pursuant to 41 CFR 60-741.28 and/or 41 CFR 60-250.28.]



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

*Use shaded material as applicable. Note that this Notice is not used if an Executive Order AAP and 503 AAP were submitted but not a 4212 AAP (in that case, instead see Section 2C02(b)).



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

You are required to submit this [\[these\]](#) AAP[s] and the support data specified in our original request (copy enclosed) within thirty (30) calendar days of your receipt of this Notice, or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR 60-1.26 [\[60-741.28 and/or 60-250.28\]](#). In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed.

The submission of this [\[these\]](#) AAP[s] and support data does not preclude the identification of further violations, based either upon a finding during the desk audit or subsequent onsite review, that your AAPs do not meet the requirements of 41 CFR Part 60-2, Part 60-741 and/or Part 60-250 or that your establishment is not in compliance or has failed to comply in the past with the requirements of the Executive order, Section 503 and/or 38 U.S.C. 4212, and their implementing regulations. We shall not withdraw this Notice to Show Cause until all deficiencies cited in this Notice (or subsequently identified in an Amended Show-Cause Notice incorporating any additional violations found during the desk audit or onsite review) have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [\[CO's name\]](#), Compliance Officer, at [\[time\]](#) on [\[date\]](#), at this Office to conciliate a resolution of these violations. Please contact [\[CO's name\]](#) or [\[his/her\]](#) supervisor, [\[supervisor's name\]](#), at [\[telephone number\]](#), to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[\[Regional/District Director\]](#)

Enclosure

cc: [\[Name of Corporate CEO\]](#)
[\[Name of properly designated representative\]](#)

FIGURE 8-2: SHOW-CAUSE NOTICE FORMAT (Supply and Service) - FAILURE TO SUBMIT A REASONABLE EXECUTIVE ORDER AAP (and, if applicable, failure also to submit Section 503 and/or 38 U.S.C. 4212 AAP)*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

We have reviewed your Affirmative Action Program (AAP) and supporting documentation prepared pursuant to Executive Order 11246, as amended, and submitted for desk audit. The results of this review indicate that your AAP does not meet the requirements of our regulations at 41 CFR Part 60-2 implementing the Executive order. Consequently, we are issuing this Notice to Show Cause why enforcement proceedings should not be initiated pursuant to Sections 208 and 209(a) of the Executive order, as implemented by 41 CFR 60-1.26.

The specific elements of your Executive order AAP which do not meet the requirements of 41 CFR Part 60-2 are listed in the enclosure. You are required to correct these violations as indicated within thirty (30) calendar days of your receipt of this Notice, or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR 60-1.26. [\[Due to your firm's additional failure to submit a Section 503 and/or 38 U.S.C. 4212 AAP\(s\), we offer you a concurrent 30-day period to show why enforcement proceedings should not also be initiated pursuant to 41 CFR 60-741.28 and/or 41 CFR 60-250.28.\]](#) In any enforcement proceedings you would have an opportunity to request a hearing before any sanctions are imposed.

Submission of the corrected Executive order AAP [\[and of the Section 503 and/or 38 U.S.C. 4212 AAP\(s\)\]](#) does not preclude the identification of further violations based upon a finding during the desk audit or subsequent onsite review that your AAPs do not meet the requirements of 41 CFR Part 60-2, Part 60-741, and/or Part 60-250, or that your establishment is not in compliance or has failed to comply in the past with the requirements of the Executive order; Section 503 of the Rehabilitation Act of 1973, as

*Use shaded material as applicable.



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

amended and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212; and their implementing regulations. We shall not withdraw this Notice to Show Cause until all deficiencies cited in this Notice (or subsequently identified in an Amended Show-Cause Notice incorporating any additional violations found during the desk audit or onsite review) have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Officer, at [time] on [date], at this Office to conciliate a resolution of these violations. Please contact [CO's name] or [his/her] supervisor, [supervisor's name], at [telephone number] to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]

Enclosure

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



FIGURE 8-2a: ENCLOSURE TO FIGURE 8-2

SAMPLE FORMAT

1. Violation: Your workforce analysis lists job titles by EEO-1 category rather than by department or other organizational unit as required by 41 CFR 60-2.11(a).

Corrective Action: Develop and include in the AAP a workforce analysis which lists job titles within each organizational unit pertinent to your establishment.

2. Violation: In four of the job groups identified in your utilization analysis as underutilized, you failed to set goals or to explain why you did not do so as required by 41 CFR 60-2.12(k). These job groups are: Design Engineers (minorities and women), Health Scientists (minorities), Electronic Technicians (women), and Tool and Die Makers (minorities and women).

Corrective Action: In the job groups specified above, either establish goals at least equal to availability (for minorities and/or women, as noted) or explain in your AAP why such goals are not established.



FIGURE 8-3: SHOW-CAUSE NOTICE FORMAT - (Supply and Service) - FAILURE TO SUBMIT EMPLOYMENT ACTIVITY DATA FOR DESK AUDIT*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

In our letter of [date], you were requested to submit to this Office within thirty (30) days the following employment activity data as part of support data for your Affirmative Action Program (AAP) prepared pursuant to Executive Order 11246, as amended:

1. [Specify the data which were not submitted for desk audit]

Submission of these/the data is/are required by 41 CFR 60-3.4 and 60-3.15 [if missing data are for applicant flow and/or hires, add 60-2.12(m) and 60-1.40(b)(2); if missing data are for promotions, add 60-1.40(b)(3)].

Additionally, 41 CFR 60-2.13(d), (f), and (g)) require that your AAP include analysis and monitoring of such activity to identify and correct problem areas--an obligation that cannot be adequately implemented without maintenance of the referenced data.

To date, these/the data have/has not been received. Consequently, we are issuing this Notice to Show Cause why enforcement proceedings pursuant to Sections 208 and 209(a) of the Executive order, as implemented by 41 CFR 60-1.26, should not be initiated due to your firm's failure to submit the required employment activity data.

You are required to submit the support data as specified in our original request (copy enclosed) within thirty (30) calendar days of your receipt of this Notice, or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR 60-1.26. In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed.

*Use shaded material as applicable.



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

The submission of this support data does not preclude the identification of further violations based upon a finding during the desk audit or subsequent onsite review that your AAP(s) do not meet the requirements of 41 CFR Part 60-2, Part 60-741, and/or Part 60-250, or that your establishment is not in compliance or has failed to comply in the past with the requirements of the Executive order, Section 503 and/or 38 U.S.C. 4212, and their implementing regulations. We shall not withdraw this Notice to Show Cause until all deficiencies cited in this Notice (or subsequently identified in an Amended Show-Cause Notice incorporating any additional violations found during the desk audit or onsite review) have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Officer, at [time] or [date], at this Office to conciliate a resolution of this violation. Please contact [CO's name] or [his/her] supervisor, [supervisor's name], at [telephone number], to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]

Enclosure

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



***FIGURE 8-4: SHOW-CAUSE NOTICE FORMAT - (Supply and Service) - FAILURE TO
SUBMIT CORRECTED EMPLOYMENT ACTIVITY DATA***

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

On [date] we called you and requested that within ten (10) calendar days you resubmit certain employment activity data which we determined to be unacceptable during the desk audit of your Affirmative Action Program (AAP) prepared pursuant to Executive Order 11246, as amended. Specifically, we informed you that [identify the unacceptable data, state how they are unacceptable and the required correction(s)].*

To date, the requested corrected employment activity data have not been received. Consequently, we are issuing this Notice to Show Cause why enforcement proceedings should not be initiated pursuant to Sections 208 and 209(a) of the Executive order, as implemented by 41 CFR 60-1.26.

You are required to submit the support data specified above within thirty (30) calendar days of your receipt of this Notice, or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR 60-1.26. In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed.

The submission of these support data does not preclude the identification of further violations based upon a finding during the desk audit or subsequent onsite review that your AAPs do not meet the requirements of 41 CFR Part 60-2, Part 60-741 and/or Part 60-250, or that your establishment is not in compliance or has failed to comply in the past with the requirements of the Executive order; Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212; and their implementing regulations. We shall

*For example: ". . . your data on hires and terminations are unacceptable because they are provided for the workforce as a whole, and must be resubmitted either by job group or by job title, as required by 41 CFR 60-3.4 and 3.15."



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

not withdraw this Notice to Show Cause until all deficiencies cited in this Notice (or subsequently identified in an Amended Show-Cause Notice incorporating any additional violations found during the desk audit or onsite review) have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Officer, at [time] on [date], at this Office to conciliate a resolution of these violations. Please contact [CO's name] or [his/her] supervisor, [supervisor's name], at [telephone number], to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]

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

**Use shaded material as applicable.



**FIGURE 8-5: SHOW-CAUSE NOTICE FORMAT (Compliance Reviews) -
UNRESOLVED VIOLATIONS - Executive Order (including any Section 503 and/or 38 U.S.C.
4212 violations)***

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

On [date] we sent you a Notice of Violation based on the findings of our recent compliance review of your [establishment] [work sites in the (name of geographic area)].** On [date] we met with [name of contractor representative] to conciliate a resolution of the violation(s) listed in that Notice. Our conciliation efforts, however, failed to resolve the violation(s).

Consequently, we are issuing this Notice to Show Cause, within thirty (30) calendar days of your receipt of this Notice, why enforcement proceedings should not be initiated pursuant to Sections 208 and 209(a) of Executive Order 11246, as amended, as implemented by 41 CFR 60-1.26. [The violations also include [Section 503 of the Rehabilitation Act of 1973, as amended and/or of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212]. Therefore, we are offering you a concurrent 30-day period to show why enforcement proceedings should not also be initiated pursuant to [41 CFR 60-741.28 and/or 41 CFR 60-250.28.]***

*Use shaded material as applicable. If the ONLY unresolved violations are of 503 and/ or 4212, see note (***) for modifications to be made to paragraph 2.

**If the contractor did not respond to the NOV, in the remainder of this paragraph substitute: "To date, you have not responded to that Notice or otherwise indicated your willingness to remedy those violations."

***If only 503 and/or 4212 violations are involved, this paragraph should read:

Consequently, we are offering you a 30-day period to show why enforcement proceedings should not be initiated pursuant to [Section 503 of the Rehabilitation Act].
The violations at issue are listed in the enclosure. You are required to correct these violations as indicated within thirty (30) calendar days of your receipt of this Notice or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR [60-1.26] [60-250.28] [60-741.65]. In those proceedings you would have an



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

opportunity to request a hearing before any sanctions are imposed. We shall not withdraw this Notice until all deficiencies cited in the enclosure have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Officer, at [time] on [date], at this Office to conciliate a resolution of these violations. Please contact [CO's name] or [his/her] supervisor, [supervisor's name] at [telephone number], to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]

Enclosure

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

*** (Continued)

Act of 1973, as amended, as implemented by 41 CFR 60-741.28 and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, as implemented by 41 CFR 60-250.28].



FIGURE 8-5a: ENCLOSURE TO FIGURE 8-5

SAMPLE FORMAT

1. Violation: ABC Company discriminated on the basis of race through the disparate treatment of two Black female (BF) applicants for Inspection jobs, in violation of Executive Order 11246, as amended, and the Equal Employment Opportunity Clause (41 CFR 60-1.4(a)(1)) in its Federal contracts.

Specifically, ABC was unable to provide a legitimate, nondiscriminatory reason for rejecting Sandra Jones (BF), who was better qualified under ABC's stated standards than a White female (Paula Wilger) hired 9/12/88, as an Inspector. Additionally, the reason ABC provided for rejecting Barbara Rogers (BF), was not equally applied to two White females hired as Inspectors. Had Ms. Rogers not been disparately treated, she would have been hired 9/23/88, as an Inspector.

Remedy: ABC must make a bona fide offer to hire Ms. Rogers and Ms. Jones into the next two Inspector openings, and must provide them with make-whole relief including all wages, seniority and employment related benefits they would have received had they not been victims of discrimination. Such relief shall be retroactive to the date each would have been hired absent discrimination and shall include:

- (a) Back pay, plus interest;
- (b) Retroactive seniority;
- (c) All employment benefits; and
- (d) Any other appropriate make-whole relief.

Additionally, ABC will provide Ms. Rogers and Ms. Jones with front pay from the date this violation is resolved until they either are hired as Inspectors or refuse a bona fide offer to be so hired. Reports to OFCCP con-firming fulfillment of this remedy will be required.

2. Violation: ABC failed to make a good-faith effort, as required by 41 CFR 60-2.12(e), to recruit minorities for job groups within the Professional and Office and Clerical categories, as committed in its calendar year 1988 and 1989 Executive Order AAPs, thus substantially deviating from those AAPs. More specifically, in both AAPs (Section 5, item 7), ABC committed itself to work closely with the Metropolis Urban League, NAACP, and SER to ensure an adequate applicant flow of minorities for all underutilized job groups. ABC, however, was unable to demonstrate that it listed any of its 15 Professional or 25 Office and Clerical openings with these organizations or otherwise sought their assistance in improving its very low minority applicant flow for these job groups.



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

Remedy: ABC will take immediate action to develop and implement effective and meaningful linkage with each of the organizations listed in its AAP. ABC will meet with appropriate representatives of each organization to acquaint them with the types of job openings ABC is likely to have, qualification requirements, working conditions/benefits, etc. ABC will then list each opening with these organizations sufficiently in advance of filling the job to permit meaningful referrals, and for each opening will document the date listed, job title, referrals received and outcome with respect to those referrals. Reports to OFCCP on these efforts will be required.

3. Violation: ABC's Executive order AAP did not address the compliance of its personnel policies and practices with the Sex Discrimination Guidelines (41 CFR Part 60-20) as required by 41 CFR 60-2.13(h).

Remedy: On March 20, 1989, ABC added an acceptable section to its Executive order AAP addressing the Sex Discrimination Guidelines. All future ABC Executive order AAPs will address the Sex Discrimination Guidelines.

4. Violation: ABC failed to list 36 jobs (paying less than \$25,000 and filled by hire) with the State Employment Service, in violation of 41 CFR 60-250.4(b) through (h).

Remedy: ABC will list all suitable jobs (defined as those paying less than \$25,000 and to be filled by hire) with the Metropolis State Employment Service office. Reports to OFCCP on these listings will be required.



***FIGURE 8-6: SHOW-CAUSE NOTICE FORMAT (Executive Order Complaint) -
UNRESOLVED VIOLATIONS***

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

On [date] we sent you a Notification of Results of Investigation specifying violations found during our investigation of the complaint filed by [complainant's name] against your company. On [date] we met with [name of contractor representative] to conciliate a resolution of those violations. Our conciliation efforts, however, failed to resolve the violations. Consequently, we are issuing this Notice to Show Cause why enforcement proceedings should not be initiated pursuant to Sections 208 and 209(a) of Executive Order 11246, as amended, as implemented by 41 CFR 60-1.26.

The violations at issue are listed in the enclosure. You are required to correct these violations as indicated within thirty (30) calendar days of your receipt of this Notice or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR 60-1.26. In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed. We shall not withdraw this Notice until all deficiencies cited in the enclosure have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Officer, at [time] on [date], at this Office to conciliate a resolution of these violations. Please contact [CO's name] or [[his/her] supervisor, [supervisor's name] at [telephone number], to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

Enclosure

cc:* [\[Name of Corporate CEO\]](#)
[\[Name of properly designated representative\]](#)

*Use shaded material as applicable.

FIGURE 8-7: SHOW-CAUSE NOTICE FORMAT - VIOLATION OF LOC*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

Dear [Name of CEO]:

On [date] your establishment entered into a Letter of Commitment (LOC) with this agency to correct violations found during the conduct of a [compliance review] [complaint investigation]. As a result of our audit of the report[s] you have submitted under that LOC [and our recent follow-up visit], we have determined that the terms of that LOC have been violated. Specifically, the following corrective action[s] listed in the LOC [has/ have] not been executed:

1. (List all corrective actions--word for word from the LOC--which have not been executed.)

Consequently, we are issuing this Notice to Show Cause, within thirty (30) calendar days of your receipt of this Notice, why enforcement proceedings pursuant to Sections 208 and 209(a) of the Executive order, as implemented by 41 CFR 60-1.26, should not be initiated for failure to fulfill the terms of the LOC that pertain to the Executive order. [The LOC terms not fulfilled also pertain to [Section 503 of the Rehabilitation Act of 1973, as amended and/or of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212]. Therefore, we are offering you a concurrent 30-day period to show why enforcement proceedings should not also be initiated under [41 CFR 60-741.28 and/or 41 CFR 60-250.28].]**

*Use shaded material as applicable.

** If the only LOC term(s) not fulfilled concern 503 and/or 4212, this paragraph should read:

Consequently, we are offering you a 30-day period to show why enforcement proceedings should not be initiated pursuant to [Section 503 of the Rehabilitation Act of 1973, as amended, as implemented by 41 CFR 60-741.65 and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, as implemented by 41 CFR 60-250.28].

You are required to enter into a Conciliation Agreement to take the corrective action(s) listed above within thirty (30) calendar days of your receipt of this Notice, or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR [60-1.26] [60-250.28][60-741.28]. In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed. We shall not withdraw this Notice until all deficiencies cited above have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Officer, at [time] on [date], at this Office to conciliate a resolution of this violation. Please contact [CO's name] or [his/her] supervisor, [supervisor's name], at [telephone number], to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

cc: [\[Name of Corporate CEO\]](#)
[\[Name of properly designated representative\]](#)



FIGURE 8-8: SHOW-CAUSE NOTICE FORMAT (Construction) - FAILURE TO SUBMIT CC-257 TWICE WITHIN A ONE-YEAR PERIOD*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

Pursuant to the Equal Employment Opportunity Clause of your [[Federal construction contract](#)][[federally assisted construction contract](#)] your company agreed to comply with the provisions of Executive Order 11246, as amended, and its implementing regulations. The applicable regulations, 41 CFR 60-1.4 and 41 CFR Part 60-4, require contractors to maintain employment and related records and to furnish such information and reports to this Agency. You are required to submit a Monthly Employment Utilization Report (Form CC-257) each month to this Office.

For the months of [specify months] you failed to submit the required reports. Consequently, we are issuing this Notice to Show Cause why enforcement proceedings should not be initiated pursuant to Sections 208 and 209(a) of the Executive Order, as implemented by 41 CFR 60-1.26.

You are required to submit these reports within thirty (30) calendar days of your receipt of this Notice, or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR 60-1.26. In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed. We shall not withdraw this Notice to Show Cause until all deficiencies cited in this Notice have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Officer, at [time] on [date], at this Office to

* Use shaded material as applicable.



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

conciliate a resolution of these violations. Please contact [CO's name], Compliance Officer, or [his/her] supervisor, [supervisor's name], at [telephone number], to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]

cc: [\[Name of Corporate CEO\]](#)
[\[Name of properly designated representative\]](#)

*Use shaded material as applicable.

***FIGURE 8-9: SHOW-CAUSE NOTICE FORMAT (Construction) - FAILURE TO SUBMIT
CORRECTED CC-257***



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

In our letter of [date] (copy attached) we requested that you resubmit a corrected Monthly Employment Utilization Report (CC-257) for the month of [specify month]. To date, that corrected CC-257 has not been received.

Consequently, we are issuing this Notice to Show Cause why enforcement proceedings pursuant to Sections 208 and 209(a) of Executive Order 11246, as amended, as implemented by 41 CFR 60-1.26, should not be initiated due to your company's failure to submit the corrected CC-257 as required by 41 CFR 60-1.4 and 41 CFR Part 60-4.

You are required to submit the corrected CC-257 within thirty (30) calendar days of your receipt of this Notice, or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR 60-1.26. In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed. We shall not withdraw this Notice to Show Cause until the violation cited in this Notice has been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Officer, at [time] on [date], at this Office to conciliate a resolution of this violation. Please contact [CO's name] or [his/her]

* Use shaded material as applicable.

supervisor, [supervisor's name], at [telephone number], to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]

Enclosure

cc: [Name of Corporate CEO]



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

[Name of properly designated representative]



FIGURE 8-10: SHOW-CAUSE NOTICE FORMAT (Construction) - FAILURE TO SUBMIT CORRECT CC-257 (after being advised of and correcting a similarly erroneous CC-257 within a one-year period)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

In our letter of [date] we informed you that your Monthly Employment Utilization Report (CC-257) for the month of [specify month] had been incorrectly completed because it [describe problem].* Our letter requested that you correct and resubmit this CC-257, and on [date] we received your corrected report.

On [date] we received your CC-257 report for the month of [specify month]. Unfortunately, it contains the same type of [error(s)/omission(s)] found in the earlier CC-257 referenced above. The regulations governing construction contractors, 41 CFR 60-1.4 and 41 CFR Part 60-4, require you to furnish accurate and complete reports.

Consequently, we are issuing this Notice to Show Cause why enforcement proceedings pursuant to Sections 208 and 209(a) of Executive Order 11246, as amended, as implemented by 41 CFR 60-1.26, should not be initiated due to your repetition of the violation.

You are required, within thirty (30) calendar days of your receipt of this Notice, to resubmit a corrected [specify month] CC-257 and enter into a Conciliation Agreement not to again repeat this violation or we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR 60-1.26. In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed. We shall not withdraw this Notice until the cited violation is fully and satisfactorily resolved in a written Conciliation Agreement.

* For example: "...listed employee work hours by total site workforce rather than by trade."



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Officer, at [time] on [date], at this Office to conciliate a resolution of this violation. Please contact [CO's name] or [his/her] supervisor, [supervisor's name], at [telephone number] to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]

cc:** [\[Name of Corporate CEO\]](#)
[\[Name of properly designated representative\]](#)

** Use shaded material as applicable.



FIGURE 8-11: AMENDED SHOW-CAUSE NOTICE FORMAT (Compliance Reviews) - UNRESOLVED VIOLATIONS - Executive order (including any Section 503/38 U.S.C. 4212 Violations)*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

On [date] your company was issued a Notice to Show Cause which listed specific violations of Executive Order 11246, as amended, and offered you thirty (30) days in which to show why enforcement should not be initiated. [\[That Notice also listed violations of \(Section 503 of the Rehabilitation Act of 1973, as amended and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212\) and offered you a concurrent 30-day period to resolve them.\]](#) This Office's subsequent review of your company's equal employment opportunity policies and practices [\[if a construction contractor, add: at your construction work sites in the \(name of geographic\) area\]](#) has been completed, and we have identified additional violations of the Executive order [\[Section 503 and/or 38 U.S.C. 4212\]](#).

Consequently, we are issuing this Amended Notice to Show Cause, within thirty (30) calendar days of your receipt of this Notice, why enforcement proceedings should not be initiated pursuant to Sections 208 and 209(a) of the Executive order, as implemented by 41 CFR 60-1.26 [\[and we offer you a concurrent 30-day period to show why enforcement proceedings should not also be initiated pursuant to Section 503, as implemented by 41 CFR 60-741.28 and/or 38 U.S.C. 4212, as implemented by 41 CFR 60-250.28\].**](#)

The enclosure lists the most recently identified violations along with those specified in the [date] Notice to Show Cause. You are required to correct these violations as indicated within thirty (30) calendar days of your receipt of this Notice, or we shall

* Use shaded material as applicable. If the ONLY unresolved violations are of 503 and/or 4212, see note (**) on the next page for modifications to be made to paragraph 2.



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

recommend that enforcement proceedings be initiated in accordance with 41 CFR 60-1.26 [[41 CFR 60-741.28](#) and/or [41 CFR 60-250.28](#)]. In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed. We shall not withdraw this Amended Notice to Show Cause until all deficiencies cited in this Notice have been fully and satisfactorily resolved in a written Conciliation Agreement.

We wish to avoid enforcement proceedings if at all possible. Therefore, it is suggested that you meet with [CO's name], Compliance Office, at [time] on [date] at this Office to conciliate a resolution of these violations. Please contact [CO's name] or [his/her] supervisor, [supervisor's name], at [telephone number], to confirm this meeting or to arrange another mutually acceptable time or date.

Sincerely,

[Regional/District Director]

Enclosure***

cc: [[Name of Corporate CEO](#)]
[\[Name of properly designated representative\]](#)

** In the rare event that following issuance of Figure 8-5 (appropriately modified) for 503/4212 violations only, the review then identifies additional violations of 503/4212 only, use this Amended Notice but delete the term "Show Cause" and references to the Executive order, and revise paragraph 2 to read:

Consequently, we are issuing this Amended Notice offering you a 30-day period to show why enforcement proceedings should not be initiated pursuant to [[Section 503 of the Rehabilitation Act of 1973, as amended, as implemented by 41 CFR 60-741.28 and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, as implemented by 41 CFR 60-250.28](#)].

*** See Enclosure to Figure 8-5 for a sample format.



FIGURE 8-12: RECISION OF SHOW-CAUSE NOTICE FORMAT - ERRONEOUSLY ISSUED*

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

On [date] we issued your company a [Notice to Show Cause/Amended Notice to Show Cause] within thirty (30) calendar days why enforcement proceedings should not be initiated pursuant to Sections 208 and 209(a) of Executive Order 11246, as amended. [That Notice also offered you a concurrent 30-day period to show why enforcement should not be initiated pursuant to Section 503 of the Rehabilitation Act of 1973, as amended and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212].**

Subsequently, [it has been determined that the Notice was erroneously issued] [you demonstrated that your company is exempt from OFCCP's requirements] [you demonstrated that the allegations which gave rise to the Notice are incorrect]. Therefore, the Notice referenced above is hereby rescinded.

Sincerely,

[Regional Director or Designee]

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

* Use shaded material as applicable.

** If the Notice or Amended Notice being rescinded was for 503/4212 violations only, this paragraph should read:

On [date] we issued your company a [Notice/Amended Notice] to show within thirty (30) calendar days why enforcement proceedings should not be initiated pursuant to [Section 503 of the Rehabilitation Act of 1973, as amended and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212].

(Intentionally left blank)



**FIGURE 8-13: NOTICE OF REVIEW COMPLETION FORMAT - MAJOR DEFICIENCIES
RESOLVED IN A CONCILIATION AGREEMENT* (Includes Rescission of a Show-Cause
Notice)**

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

We recently completed a compliance review of your equal employment opportunity policies and practices at your [establishment] [construction work sites in the (name of geographic) area].

Based on violations found during that review, on [date] we issued your company a [Notice to Show Cause/Amended Notice to Show Cause] within thirty (30) calendar days why enforcement proceedings should not be initiated pursuant to Sections 208 and 209(a) of Executive Order 11246, as amended. [That Notice also offered you a concurrent 30-day period to show why enforcement should not be initiated pursuant to Section 503 of the Rehabilitation Act of 1973, as amended and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212].**

* Use shaded material as applicable.

** If the Notice or Amended Notice being rescinded was for 503/4212 violations only, this paragraph should read:

Based on violations found during that review, on [date] we issued your company a [Notice/Amended Notice] to show within thirty (30) calendar days why enforcement proceedings should not be initiated pursuant to [Section 503 of the Rehabilitation Act of 1973, as amended and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212].



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

On [date] representatives of your company and this Office concluded a Conciliation Agreement which addressed each of the violations cited in the [\[Notice to Show Cause/Amended Notice to Show Cause\]](#).*** Therefore, that Notice is rescinded.

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 Deputy Assistant Secretary, OFCCP.**** However, if neither the Regional Director nor the DAS take action on it within forty-five (45) [\[calendar/working\]](#) 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,

[\[District Director\]](#)

cc: [\[Name of Corporate CEO\]](#)
[\[Name of properly designated representative\]](#)

*** If the Notice/Amended Notice being rescinded was for Section 503 and/or 38 U.S.C. 4212 violations only, change this to "[\[Notice/Amended Notice\]](#)."

**** 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."



***FIGURE 8-14: NOTICE OF REVIEW COMPLETION FORMAT - MAJOR DEFICIENCIES
RESOLVED IN A CONCILIATION AGREEMENT (No Show-Cause Notice Issued)****

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

We recently completed a compliance review of your equal employment opportunity policies and practices at your [\[establishment\]](#) [\[construction work sites in the \(name of geographic\) area\]](#).

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 Deputy Assistant Secretary (DAS), OFCCP.** However, if neither the Regional Director nor the DAS take action on it within forty-five (45) [\[calendar/working\]](#) 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.

* Use shaded material as applicable.

** 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."



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

[OPTIONAL PARAGRAPH]

We appreciate the cooperation and courtesies extended by you and your staff during the conduct of the compliance review.

Sincerely,

[District Director]

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

***FIGURE 8-15: NOTICE OF REVIEW COMPLETION FORMAT - MINOR DEFICIENCIES
RESOLVED IN A LETTER OF COMMITMENT****



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

We recently completed a compliance review of your equal employment opportunity policies and practices at your [\[establishment\]](#) [\[construction work sites in the \(name of geographic\) area\]](#).

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 Deputy Assistant Secretary, Office of Federal Contract Compliance Programs, within forty-five (45) [\[calendar/working\]](#) 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.

[OPTIONAL PARAGRAPH]

We appreciate the cooperation and courtesies extended by you and your staff during the conduct of the compliance review.

Sincerely,

[District Director]

cc: [\[Name of Corporate CEO\]](#)
[\[Name of properly designated representative\]](#)

* Use shaded material as applicable.

** If this Notice is being signed by the RD, delete "...the Regional Director or..."



FIGURE 8-16: 15-DAY NOTICE FORMAT - VIOLATION OF A CONCILIATION AGREEMENT*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

On [date] the Office of Federal Contract Compliance Programs entered into a Conciliation Agreement with your company. This Agreement set forth your company's specific commitments to remedy violations found during the conduct of a [\[compliance review\]](#) [\[complaint investigation\]](#).

A review of your compliance with this Agreement was completed on [date]. The results of this review indicate that your company has failed to comply with commitments set forth in that Agreement. These commitments and the facts and circumstances which indicate that you have not fulfilled them are specified in the enclosure.

Accordingly, pursuant to [\[41 CFR 60-1.34 and\]](#)** the Conciliation Agreement referenced above, you have fifteen (15) working days from the date of your receipt of this Notice to demonstrate, through written presentation of facts and evidence, that you have complied with the specified provisions of the Agreement. If you fail to do so within that period of time, we shall recommend that enforcement proceedings be initiated in accordance with 41 CFR [\[60-1.26\]](#) [\[60-250.28\]](#) [\[60-741.28\]](#). In those proceedings you would have an opportunity to request a hearing before any sanctions are imposed.

* Use shaded material as applicable.

** Use this citation only if a CA provision violated involves the Executive order.



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

Should you have any questions or wish to discuss this matter, please contact [CO's name], Compliance Officer, or [his/her] supervisor, [supervisor's name], at [telephone number].

Sincerely,

[Regional Director]

Enclosure

cc: [\[Name of Corporate CEO\]](#)
[\[Name of properly designated representative\]](#)



FIGURE 8-17: RECISION OF 15-DAY NOTICE FORMAT*

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

[Name of Establishment CEO]
[Title of CEO]
[Establishment Name]
[Street Address]
[City, State, Zip Code]

Dear [Name of CEO]:

On [date] we issued your company a 15-day Notice pursuant to 41 CFR 60-1.34. On [date] we received your written reply which took the position that the allegations which gave rise to the Notice were incorrect. We have examined the evidence you have presented, and have concluded that the allegations were, in fact, incorrect. Therefore, the Notice is hereby rescinded.

Sincerely,

[Regional Director]

cc: [\[Name of Corporate CEO\]](#)
[\[Name of properly designated representative\]](#)

* Use shaded material as applicable.



APPENDICES

APPENDIX 8A: TRANSMITTAL MEMORANDUM FOR AN ENFORCEMENT RECOMMENDATION (COMPLIANCE REVIEWS)

The memorandum transmitting a recommendation for enforcement arising from a compliance review will contain the following sections:

1. CONTRACTOR'S IDENTITY
 - (a) State the establishment's full name and mailing address, including the county in which it is located, and the names and titles of primary establishment contact persons; i.e., top establishment official, legal representative, EEO/AA Coordinator.
 - (b) If the establishment is part of a multi-establishment corporation, also state the corporate name and address, the names and titles of primary contact persons (as above), and describe the relationship between the establishment and corporation. The description of this relationship is critical when the establishment itself does not hold a Federal contract.
 - (c) Give any known information on the ownership make-up of the business and its legal address in the state in which it is incorporated. This information is often available in industrial directories or from the Secretary of State's office (corporations).

2. CONTRACTOR'S BUSINESS

Describe the contractor's main product(s), basic structure, total employment, and major types of jobs.

3. PRIOR HISTORY

Indicate whether (and when) the establishment has previously been reviewed and/or been subject to an OFCCP complaint investigation and note the outcome of any such review/investigation. Also reference any relevant legal actions against the establishment (pending Title VII suit, consent decree, etc.).

4. CONTRACT COVERAGE



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

Describe the basis for OFCCP jurisdiction. For basic coverage requirements, under the Executive order (see 41 CFR 60-1.5(a)); under Section 503 (see 41 CFR 60-741.3); and under 38 U.S.C. 4212 (see 41 CFR 250.3). If a violation asserted relates to a written AAP, for the Executive order (see 41 CFR 60-1.40(a)); for Section 503 (see 41 CFR 60-741.5(a)); and for 38 U.S.C. 4212 (see 41 CFR 60-250.5(a)).

As used below, the term Federal contracts means Federal prime contracts, subcontracts, and federally assisted construction contracts and subcontracts.

- (a) Basic Contract Information (All Cases): List here (or in an attachment if voluminous) all known Federal contracts held by the contractor during the review period and during the period for which violations are asserted. For each such contract, give the information requested on page 2, item 5, of the Supply and Service SCRR (see Appendix 2A-1) plus the goods, services, lease arrangements, etc., provided under the contract and any available information on whether there was a break or modification during the period the contract was in effect.

If coverage is based on contracts for indefinite quantities; e.g., a blanket purchase order, a rate agreement, etc., note:

- (1) The amounts ordered in the business year(s) of the violations; and
- (2) The identity and location of contracting officers and/or others who may be able to provide copies of invoices and other documents verifying coverage.

- (b) Additional Contract Information Where Actual or Potential Coverage Dispute: If coverage is or is anticipated to become an issue, state the grounds on which the contractor claims not to be covered, or any grounds you believe it might use to do so, and analyze the claim/potential claim.

- (1) Separate Entity Issue: If the contractor claims or may claim not to be covered based on the fact it is a separate entity from the company holding the Federal contract, it is critical to include information on the following factors concerning that relationship:
 - (i) Common ownership;
 - (ii) Common directors and/or officers;
 - (iii) De facto exercise of control;
 - (iv) Personnel policies emanating from a common source; and
 - (v) Dependency of operations.
- (2) Where a serious jurisdictional question is present or anticipated, obtain a copy (from the contracting agency or the contractor) of the relevant portions of at least one contract



which establishes coverage for the review period and the violation period. The relevant portions of a contract are those pages containing the following information:

- (i) The parties to the contract;
- (ii) The contract's dollar amount;
- (iii) The contracting period (begin and end dates);
- (iv) The EEO clause (in full or by reference) the contractor allegedly violated; and
- (v) The signature page.

Attach this information to the transmittal memorandum or, if not yet received, attach a copy of the request for it.

5. SUMMARY OF EVENTS

Indicate how the company was selected for review, and then list major review events, including current status. Major events include (as applicable) ones such as:

- (a) The date the AAP was received;
- (b) The dates of the onsite;
- (c) The date of any Predetermination Notice, Notice of Violation, Show-Cause Notice and/or 15-Day Notice;
- (d) The period during which conciliation was attempted; and
- (e) The date conciliation was terminated.

6. LIST OF VIOLATIONS FOR WHICH ENFORCEMENT IS SOUGHT

List each violation for which enforcement is being sought under the subheadings of "Affirmative Action" or "Discrimination."

7. ANALYSIS OF VIOLATIONS

For each violation for which enforcement is sought, give the following analysis, specifically referring to the case file location (file and page number) of the relevant portions of documents and interviews.

Note, however, that violations may be grouped where to do so would result in a clearer and more succinct presentation of the case. For example, many affirmative action violations are inter-related and can more



easily be described together; e.g., problems with job group formation usually result in problems with utilization analysis, underutilization determinations and goals.

- (a) Violation: State the practice that constitutes the violation and identify the sections of the regulations and/or statutes allegedly violated.
- (b) Facts: Summarize factual findings. Reference the file and page location of data; e.g., worksheets, statistical analyses, cohort analyses, salary analyses, medical evidence, contractor documents, etc, which are the basis for each factual finding.
- (c) Analysis: Analyze:
 - (1) Why the facts lead to a conclusion of violation. Where discrimination is the issue, analyze under the appropriate theory and burden of proof (see Chapters 3 and 7).
 - (2) The contractor's position and any data provided in support of its position (referencing file location), giving the reasons (referencing supporting documentation) for concluding that the contractor has not adequately responded to evidence of violation and/or that its position is a pretext for discrimination.
 - (3) Possible further contractor positions and the overall strengths and weaknesses of the case.
- (d) Remedy: Describe the proposed remedy. Indicate the basis and support for the type of remedy proposed. Describe the contractor's position on remedy if this has been discussed with the contractor.
 - (1) Individually Based Back pay: If proposed remedy includes individually based back pay, indicate the pay rate used (and if from other than payroll records, its source), the method of computation, and applicable interest rates. Include or attach a summary list of back pay due with the name of each alleged victim, the period covered and amount allegedly due (referencing the file location of individual computation sheets).
 - (2) Formula Relief: If proposed remedy includes formula relief, indicate the rationale for a formula approach, the basis for calculating the total amount due, and the method of allocating the total amount among class members.
- (e) Where the analysis described in this item 7 has already been prepared in narrative format (addressing all sub items given here) in the SCRR, if the SCRR analysis is on word processing



equipment, copy it to here. If the relevant SCRR analysis is not on word processing equipment, you may conventionally copy and "cut and paste" here (as neatly as possible).

- (f) SOL/JRC or RO/NO Opinions: If applicable, reference the file location of and summarize any SOL/JRC and/or RO/NO opinions or recommendations and the action taken respecting them.

8. CONCILIATION

Describe the conciliation efforts undertaken. Describe significant aspects of those efforts; e.g., what was offered, by whom, rationale for rejecting, and issues at impasse. Identify dates conciliation was attempted; the participant(s); and summarize the results, referencing the file location of meeting notes, pertinent correspondence, etc.

If, however, there has already been some discussion of conciliation with respect to particular violations in item 7 above; e.g., the contractor's position on the violation/ remedy, etc., that discussion may be referenced here in the context of total conciliation efforts.

IMPORTANT: If conciliation sessions continue after this transmittal memorandum is prepared, it is critical that, at a minimum, an addendum be attached updating the status of negotiations (including any additional violations resolved--see item 10 below) and referencing the file location of pertinent meeting notes and/or correspondence.

9. CONCLUSIONS/RECOMMENDATION

Indicate the action being recommended.

10. ATTACHMENT - VIOLATIONS FORMALLY CITED BUT RESOLVED

In an attachment to the transmittal memorandum, list any violations cited in one or more of the following documents that have been resolved as of the date the transmittal memorandum is prepared:

Predetermination Notice; NOV; SCN/ASCN; and/or 15-Day Notice.

Briefly describe the resolution, referencing the file location of documents that provide more information on the issue and its resolution.



APPENDIX 8B: NOVEL ISSUES

The following issues are currently designated as novel. When a case involving a listed issue is recommended for enforcement, the case file will be sent to the National Office (NO), Division of Program Operations, for referral to the National Office Solicitor of Labor (NSOL) rather than being sent to the Regional Solicitor. (See Section 8I03.)

1. Enforcement cases in which make-whole relief affects the contractor's collective bargaining agreement (CBA) with a union, the union refuses to sign the Conciliation Agreement (CA), and the contractor will not sign the CA without a nonadmissions clause.

For further discussion, see Sections 7F06(f), 8C, and the 8F01(e) comment on paragraph 3 of the standard CA text.

2. Enforcement cases in which the contractor refuses to implement properly the requirement that, for utilization analysis and goals purposes, jobs are included in the Affirmative Action Program (AAP) of the establishment where decision-making authority for them resides.

For further discussion, see Section 2C05.

3. Enforcement cases involving fetal protection/reproductive hazards.

For further discussion, see Section 2G15(d)(2).

4. Enforcement cases involving testing or other disparate impact issues.

For further discussion, see Sections 3N02, 3Q00, and 7E.

5. Enforcement cases in which the contractor, based on the provisions of a consent decree or other court order, refuses to submit an AAP and/or to allow an onsite review.

Note that Section 2B10 continues to apply when the refusal is based on current litigation or when the issue is limitation of the scope of the onsite review because of a consent decree or other court order.



6. Cases in which OFCCP determines that enforcement is appropriate for a contractor's violation of the provisions of a CA and a 15-Day Notice for violation has been issued and the contractor has not demonstrated that it has complied with the terms of the CA. For further discussion see Sections 8H00, 8H01, and 8H02.
7. Cases involving a temporary help agency. This includes, for example, issues relating to:
 - (a) The 50-employee threshold for such an agency to develop an AAP;
 - (b) Who is to be included in that AAP; and
 - (c) Alleged discrimination by such an agency's client company against a temporary agency employee placed at that client company; e.g., sexual harassment.



APPENDIX 8C: OFFICE OF FEDERAL CONTRACT COMPLIANCE - POLICY ALERT

No. 1..... Preservation of Document Authenticity..... 8C-3

No. 2..... Reviewing Corporate Data Off-Site..... 8C-5

No. 3..... EEDS Selection Procedures 8C-7

No. 4..... Investigation of Complaints Alleging Failure to Take9
Affirmative Action..... 8C-9

No. 5..... Use of the “Scheduling Letter Requesting AAP and
Support Data”..... 8C-11

No. 6..... Coverage Based on Contracts with the Resolution
Trust Corporation..... 8C-13

No. 7..... Vietnam Era Veterans’ Readjustment Assistance
Act of 1974 (VEVRAA)..... 8C-15



APPENDIX D: RESOLUTION OF NONCOMPLIANCE INDEX

Administrative Enforcement Proceedings 8-55
Administrative Procedure Act..... 8-55
Affirmative Action Plans (AAPs), Acceptability of 8-6, 8-7, 8-9
AAP, Executive Order, Employment Activity Data 8-6, 8-24, 8-65, 8-67
AAP, Executive Order, Non-Receipt of..... 8-6, 8-59
AAP, Section 503/38 U.S.C. 4212, Non-Receipt of..... 8-5, 8-59
Amended Show-Cause Notice 8-4, 8-24, 8-25 to 8-26
Applicant Flow Records 8-65

Case File 8-29, 8-45, 8-46, 8-52, 8A-4, 8B-1
Castillo v. Usery..... 8-30
Conciliation Agreement 8-12, 8-13, 8-15, 8-16, 8-17, 8-18, 8-19, 8-21 to 8-22, 8-25,
8-33 to 8-44, 8-45, 8-46, 8-47, 8-48, 8-49, 8-51
Conciliation Discussions, Union Involvement in 8-14, 8-21 to 8-22
Coverage 8-25, 8A-2 to 8A-3

Debarment as a Sanction..... 8-2
Debarred Contractor, Reinstatement of 8-52
Disparate Impact 8B-1

EEO Clause 8-27, 8A-3
EEO-1 8-40, 8-64
Enforcement Proceedings, Administrative 8-55
Enforcement Proceedings, Judicial..... 8-25, 8-56
Enforcement Proceeding, Stopping..... 8-54
Enforcement Recommendation..... 8-4, 8-7, 8-9, 8-11, 8-13, 8-14, 8-15, 8-16,
8-17, 8-18, 8-22, 8-25, 8-50 to 8-53

Fetal Protection/Reproductive Hazards 8B-1
15-Day Notice 8-18, 8-45, 8-47, 8-48 to 8-50, 8-51, 8-94 to 8-97, 8A-3, 8A-7

Harassment..... 8-10, 8-14, 8-27, 8-40, 8-48
Hires, Records of, Missing..... 8-59

Interviews..... 8A-4
Irreparable Injury 8-18, 8-48



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

Job Groups 8-64, 8-67, 8-69, 8A-4

Judicial Enforcement Proceedings8-25, 8-56

Letter of Commitment (LOC)..... 8-4, 8-12, 8-13, 8-16, 8-17, 8-31 to 8-33,
8-92 to 8-93

Linkage 8-30

Monthly Employment Utilization Report (CC-257),
failure to submit.....8-8, 8-24, 8-77, 8-79, 8-81

Monthly Employment Utilization Report (CC-257),
Incomplete8-8, 8-23

Monthly Employment Utilization Report, (CC-257),
Incorrectly Completed8-24, 8-81

Notice of Violation 8-4, 8-10, 8-11, 8-12, 8-13, 8-69, 8A-3, 8A-7

Novel Issues 8-22, 8-54, 8-55, 8B-1 to 8B-2

Pattern or Practice Case, Remedies in 8-10

Predetermination Notice 8-4, 8-10, 8A-7

Progress Reports, Evaluation of..... 8-42 to 8-43

Promotion, Temporary Suspension of 8-20

Promotion Records, Missing..... 8-59

Records, Access to 8-10, 8-14, 8-43

Records, Obligation to Retain..... 8-40

Reinstatement of Debarred Contractor 8-52

Remedies in Pattern or Practice Case 8-10

Remedies versus Sanctions 8-1 to 8-2

Reproductive Hazards/Fetal Protection 8B-1

Retroactive Seniority8-10, 8-14, 8-20, 8-22, 8-65

Sanctions and Penalties..... 8-51

Sanctions for failure to implement acceptable remedies..... 8-2

Sanctions versus Remedies 8-1 to 8-2

Seniority, Retroactive8-10, 8-14, 8-20, 8-22, 8-65

Show-Cause Notice..... 8-4, 8-6, 8-10, 8-12, 8-16, 8-22 to 8-29, 8-53 to 8-81

Show-Cause Notice, Amended 8-4, 8-22, 8-25 to 8-26

Signature Authority..... 8-21, 8-27, 8-29, 8-46, 8-49



**U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)
CHAPTER VIII - RESOLUTION OF NONCOMPLIANCE**

Standard Compliance Review Report (SCRR)	8-43, 8-44, 8A-2, 8A-6
Stopping Enforcement Proceedings	8-49
Substantial Evidence	8-50 to 8-51
Title VII, Civil Rights Act of 1964	8A-1
Underutilization Determination	8A-4
Union Involvement in Conciliation Discussions	8-14, 8-21 to 8-22
Union, Notice to	8-14, 8-21 to 8-22
Violation, Notice of	8-4, 8-10, 8-12, 8-21, 8-25, 8-63, 8A-3, 8A-7
Workforce Analysis	8-39