

One Minute Memo®



OFCCP Posts Date By Which Federal Contractors Must Use New Census Data for Affirmative Action Programs

Today, the Department of Labor's Office of Federal Contract Compliance Programs ("OFCCP") advised that contractors will be expected to use the new 2006-2010 Census EEO Tabulation ("2010 EEO Tab") in the development of their Affirmative Action Programs (AAP) by January, 1, 2014, at the latest. [Click here](#) for text of the Notice.

OFCCP regulations require covered contractors to prepare AAPs to monitor equal employment opportunity in the workplace. When developing AAPs, contractors are required to make a determination regarding the "availability of qualified minorities and women for the contractor's openings" in order to "establish benchmark[s] against which the demographic composition of the contractor's incumbent workforce can be compared...to determine whether barriers to equal employment opportunity may exist within particular job groups." See 41 CFR 60-2.14.

OFCCP mandates that these availability estimates be based on the most current EEO Tabulation, a data file developed by a consortium of federal agencies based on emerging Census Bureau Data. The 2010 EEO Tab will replace the former Census 2000 Special EEO File that OFCCP and covered federal contractors had been using since January 2005.

Showing some inclination to listen to contractors on this issue, OFCCP opted to delay mandating the 2010 EEO Tab after it learned that some contractors had already prepared their 2013 AAPs based on Census 2000 data. It further recognized that IT conversions to the new EEO Tab may be more time-consuming than originally expected.

As such, federal contractors must begin using the 2010 EEO Tab for all AAPs commencing on or after January 1, 2014. They may start using the 2010 EEO Tab earlier if they wish. OFCCP will itself begin using the 2010 EEO Tab on January 1, 2014.

What Contractors Need To Do Now

While the differences between the 2000 Special File and the 2010 EEO Tab are not particularly extensive, it is not too early to begin to map your jobs to the new census codes. This task can be time consuming and also presents an opportunity to review whether your job groupings are appropriate and whether you have chosen the most appropriate occupational categories and geographic areas for determining availability. OFCCP has been paying more attention to the contractor's availability analysis than it has in the past. It has, on occasion, compared the contractor's external availability projection with applicant flow, alleging that minority or female applicant flow that is less than availability indicates that the contractor is not making sufficient outreach efforts to minorities or women. The agency also, on occasion, has attempted to substitute the contractor's availability data for applicant flow if it believes that the applicant flow is flawed. Accordingly, it is very important that the availability analysis be conducted carefully and with attention to accurate occupational and geographic choices so as not to overstate or understate true availability. We welcome your questions about use of census data for OFCCP compliance and diversity measurement purposes.

By: [Valerie J. Hoffman](#) and [Cassandra Hanley Carroll](#)

[Valerie J. Hoffman](#) is a partner in Seyfarth Shaw's Los Angeles and Chicago offices. [Cassandra Hanley Carroll](#) is an associate in the firm's San Francisco office. If you would like further information, please contact your Seyfarth attorney, Valerie Hoffman at vhoffman@seyfarth.com or Cassandra Carroll at ccarroll@seyfarth.com.