

Office of Federal Contract Compliance Programs

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Transmittal Number: 283

DATE: August 14, 2008

OFCCP ORDER NO.: ADM Notice/Other

1. **SUBJECT:** Federal contractors' obligation to maintain and analyze the race and ethnicity data of applicants and employees in Affirmative Action Programs prepared in accordance with Executive Order 11246, as amended.
2. **PURPOSE:** To establish field enforcement guidance for evaluating the use of race and ethnicity categories in the Affirmative Action Programs prepared by federal contractors in accordance with Executive Order 11246, as amended
3. **FILING INSTRUCTIONS:**

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

District and Area Offices:
File this Notice with the attachment behind the tab for ADM Directives in your FCCM Binder.
4. **OBSOLETE DATA:** None
5. **DISTRIBUTION:** A; B (both hard copy and electronically); C (hard copy only).
6. **EXPIRATION DATE:** This Directive remains in effect until superseded.

(Signed) Charles James

Charles E. James, Sr.
Deputy Assistant Secretary for
Federal Contract Compliance

August 14, 2008

Date

**OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
WASHINGTON, DC 20210**

ADM NOTICE/OTHER

1. **SUBJECT:** Federal contractors' obligation to maintain and analyze the race and ethnicity data of applicants and employees in Affirmative Action Programs prepared in accordance with Executive Order 11246, as amended.
2. **PURPOSE:** To establish field enforcement guidance for evaluating the use of race and ethnicity categories in the Affirmative Action Programs prepared by federal contractors in accordance with Executive Order 11246, as amended.
3. **BACKGROUND:** Several provisions in the regulations implementing Executive Order 11246, as amended (the "Executive Order"), require federal contractors to maintain and analyze data on the sex, race, and ethnicity of employees and applicants.⁽¹⁾ The Executive Order Affirmative Action Program (AAP) regulations generally require that contractors perform these analyses for minorities in the aggregate, rather than for particular minority groups. Only one provision of the AAP regulations – 41 CFR § 60–2.11 – requires contractors to use specific race and ethnic categories. This section requires contractors to develop an organizational profile reflecting the sex, race, and ethnicity of its incumbents, and indicating the total number of male and female incumbents in each of the following groups: Blacks, Hispanics, Asians/Pacific Islanders, and American Indians/Alaskan Natives. See 41 CFR § 60–2.11(b)(3)(iv), 60–2.11(c)(4).⁽²⁾

Under 41 CFR § 60–1.7(a), federal contractors with 50 or more employees, and that meet the following thresholds, must complete and file annually an accurate Standard Form 100 (EEO–1) Report:

- a. have a Government contract, subcontract, or purchase order of \$50,000 or more,
- b. serve as a depository of Government funds in any amount, or
- c. are a financial institution that acts as an issuing and paying agent for U.S. savings bonds and savings notes.

The EEO–1 Report is used by both OFCCP and the United States Equal Employment Opportunity Commission (EEOC) to collect data from private employers and government contractors about their minority and female workforce.⁽³⁾ The agencies also use the EEO–1 Report data to analyze patterns of employment of women and minorities and to support civil rights enforcement.

Since 1977, employers have been required to report data on the EEO–1 Report using five race and ethnic categories, and nine job categories. The race and ethnic categories are:

- Hispanic
- White (not of Hispanic origin)
- Black (not of Hispanic origin)
- Asian or Pacific Islander
- American Indian or Alaskan Native

The job categories are:

- Officials and Managers
- Professionals
- Technicians
- Sales Workers
- Office and Clerical
- Craft Workers (Skilled)
- Operatives (Semi-skilled)
- Laborers (Unskilled)
- Service Workers

In November 2005, the EEOC, after consultation with OFCCP and consideration of extensive public comments, finalized several modifications to the system used by employers to classify, the race, ethnicity, and job categories of their workforce on the EEO–1 Report. The revised EEO–1 Report requires reporting in seven racial and ethnic categories, and subdivides the

“Officials and Managers” job category. The chart below outlines these changes:

Topic	Old EEO-1 Report	New EEO-1 Report
Race and Ethnicity	Hispanic	Hispanic or Latino
	White (not of Hispanic origin)	White, not Hispanic or Latino
	Black (not of Hispanic origin)	Black or African-American, not Hispanic or Latino
	Asian or Pacific Islander	Asian, not Hispanic or Latino
		Native Hawaiian or Other Pacific Islander, not Hispanic or Latino
	American Indian or Alaskan Native	American Indian or Alaskan Native, not Hispanic or Latino
	Two or More Races, not Hispanic or Latino.	
Job Categories	Officials and Managers	Executive/Senior Level Officials and Managers
		First/Mid Level Officials and Managers
	Professionals	Professionals
	Technicians	Technicians
	Sales Workers	Sales Workers
	Office and Clerical	Office and Clerical
	Craft Workers (Skilled)	Craft Workers (Skilled)
	Operative (Semi-Skilled)	Operative (Semi-Skilled)
	Laborers	Laborers
	Service Workers	Service Workers

OFCCP’s regulations regarding the race, ethnicity, and job categories used by contractors have not changed to reflect the new EEO-1 categories, thus resulting in contractors either maintaining dual data collection systems or delaying implementation awaiting further instructions from OFCCP.

4. **POLICY:** As a matter of enforcement discretion, OFCCP will not cite any contractor for non-compliance with the Executive Order solely because it utilizes the race, ethnicity, or job categories required by the new EEO-1 Report. Further, OFCCP will accept AAPs and supporting records that reflect the race, ethnicity, and job categories outlined in either 41 CFR Part 60-2 or the new EEO-1 Report.

5. **FIELD ENFORCEMENT GUIDANCE:** Compliance Officers should adhere to the following principles when evaluating the use of race and ethnicity categories in the AAPs prepared by federal contractors in accordance with the Executive Order, as amended:

A. Contractor data tracking responsibilities remain the same.⁽⁴⁾ Accordingly, self-identification will remain the preferred method for compiling information about the sex, race or ethnicity of applicants and employees. A contractor’s invitation to self-identify race or ethnicity should state that the submission of such information is voluntary. However, contractors may use post-employment records or visual observation when an individual declines to self-identify his or her race or ethnicity.⁽⁵⁾

B. Until further rules and guidance are provided by OFCCP, contractors should not be cited for noncompliance with the Executive Order if they prepare their AAPs using the revised EEO-1 categories, rather than the race and ethnicity categories listed in §60-2.11 (the original EEO-1 categories). Contractors also should not be cited for continuing to use the racial and ethnic categories provided under OFCCP's current regulations. Regardless of which categories are used, and consistent with the guidance of the EEOC,⁽⁶⁾ Compliance Officers should evaluate whether contractors are: (1) permitting individuals to choose to self-identify as belonging to more than one race; and (2) obtaining this data either by allowing individuals to select more than one of the single race categories or by allowing individuals to select a two or more races category.

C. It is important that contractors be permitted to collect and analyze workforce data in a manner that allows them to meaningfully examine their progress towards equal employment opportunity. Accordingly, nothing in this Directive is intended to prohibit more detailed data collection efforts by contractors. Contractors may, but are not required to, obtain more detailed demographic data from applicants and employees. Some contractors may find such data useful for research or statistical purposes, or for self-monitoring of their equal employment opportunity efforts. For example, some contractors may wish to obtain more detailed demographic data from individuals self-identifying as a single race, such as Asian, while other contractors may wish to obtain more detailed demographic data, including racial data, from those individuals who self-identify as Hispanic or Latino. Still other contractors may wish to collect and analyze more detailed demographic data regarding those individuals who self-identify as belonging to more than one race.

D. Regardless of how detailed the demographic data the contractor collects, it must be maintained in accordance with OFCCP's recordkeeping requirements.

E. Compliance with specific AAP requirements:

1. **Workforce Analysis (Organizational Profile 60-2.11):** Until further rules and guidance are provided by OFCCP, when developing an organizational profile, as required by § 60-2.11, contractors should not be cited for noncompliance with the Executive Order if they choose to develop such analyses using the revised EEO-1 categories, rather than the race and ethnicity categories listed in §60-2.11 (the original EEO-1 categories). Contractors also are permitted to prepare their AAP using the racial and ethnic categories provided under OFCCP's current regulations.

2. **Job Group Analysis (60-2.12):** When conducting a job group analysis for affirmative action purposes, small contractors with fewer than 150 employees may prepare the required analysis utilizing the revised EEO-1 Report job categories as job groups. Accordingly, these contractors will generally subdivide the officials and managers AAP job group into two AAP job groups: (1) Executive/Senior Level Officials and Managers and (2) First/Mid Level Officials and Managers. In some circumstances, subdividing the officials and managers category may result in job groups with too few incumbents to permit meaningful analyses and goal setting. In these cases, contractors with fewer than 150 employees should combine the Executive/Senior Level Officials and Managers and the First/Mid Level Officials and Managers subcategories when examining potential underutilization.

3. **Utilization Analysis (60-2.13 through 60-2.15):** Consistent with OFCCP's longstanding policy, all individuals identified as being Hispanic or Latino should continue to be counted as minorities when comparing the percentage of women and minorities in each of a contractor's job groups to the available workforce, as required by §60-2.13, 60-2.14, and 60-2.15, or when examining whether a contractor's employment practices result in disparities in the employment or advancement of minorities, as required by §60-2.17. If an individual self-identifies as Hispanic or Latino and also selects a race, contractors should continue to identify the individual as being "Hispanic or Latino" when preparing the required AAP analyses. This approach is consistent with the approach adopted by the EEOC for purposes of the revised EEO-1 Report.

Similarly, contractors should consider all individuals identified as belonging to two or more races as minorities when comparing the percentage of women and minorities in each of their job groups to the available workforce, as required by §60-2.13, 60-2.14 and 2.15, or when examining whether their employment practices result in disparities in the employment or advancement of minorities, as required by §60-2.17.

4. **Placement of Goals (60-2.16):** When establishing placement goals pursuant to §60-2.16, contractors should, in most cases, continue to establish a single goal for all minorities. Where a substantial disparity exists in the

utilization of a particular minority group, or in the utilization of men or women of a particular minority group, the contractor may be required to establish separate goals for those groups. Contractors are not expected to set a separate placement goal for individuals identified as belonging to more than one race. If a contractor has established placement goals for particular minority groups and has maintained data regarding the specific races of those individuals identified as belonging to two or more races, the contractor may present such data to OFCCP to demonstrate its good faith efforts in addressing its utilization of particular minority groups.⁽²⁾

5. Additional AAP Requirements (60–2.17): OFCCP’s regulations require that a contractor perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist. Section 60–2.17 requires that contractors examine whether their employment practices result in disparities in the employment of minorities in the aggregate.⁽⁸⁾ When conducting this analysis, contractors are not required to separately evaluate their employment practices with regard to individuals identified solely as belonging to two or more races. Rather, these individuals should be considered as part of the aggregate group of minorities.

Some contractors find it useful to conduct the analyses required by §60–2.17 for particular minority groups, as well as for minorities in the aggregate. Contractors that maintain more detailed information regarding the race and ethnicity of their workforces may choose to reallocate those identified as belonging to two or more races into single race categories for purposes of affirmative action analyses. Contractors electing to do this reallocation may use the allocation rules developed by OMB in its Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement.⁽⁹⁾

6. Support Data (60–2.17(b)(2) and Part 60–3): When evaluating whether a contractor has maintained information on the impact of its selection procedures and conducted an adverse impact analysis under part 60–3, contractors will only be expected to produce analyses relating to the impact on those identified as belonging to one of the single race and ethnic categories. Contractors will not be expected to produce analyses of the impact of employee selection procedures on groups comprised of individuals identified as belonging to more than one race; but contractors may be asked for other employment records they may have relating to such individuals. Such records may include any information regarding the reallocation of individuals identified as belonging to more than one race into single race categories, or records maintained by the contractor that utilize the race and ethnic categories of the new EEO–1 form.

F. Where a contractor has not maintained more detailed demographic information about those individuals identified as belonging to more than one race, Census data, labor market data, and other labor market data may be used to assess a contractor’s employment practices. In conducting this analysis, the proportion of individuals identified as belonging to more than one race in the contractor’s workforce may be compared with labor force statistics or other data on the percentages of multiple race individuals in the relevant qualified labor force. This data could then be used to estimate single race allocation for those individuals identified as belonging to more than one race when a contractor has not retained such information.

6. OBSOLETE DATA: None.

7. DISTRIBUTION: A; B (both hard copy and electronically); C (hard copy only).

8. EXPIRATION DATE: This Directive remains in effect until superseded.

(Signed) Charles James

Charles E. James, Sr.
Deputy Assistant Secretary for
Federal Contract Compliance

August 14, 2008

Date

¹ All references to federal contractors also include covered federal subcontractors. The term “applicant” is intended to refer to both applicants and Internet Applicants as those terms are used in section 60–1.12(c).

² See also, 41 CFR § 60–3.4, in which contractors are required to maintain records by “sex, and the following races and ethnic groups: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), white (Caucasians) other than Hispanic....”

³ See 42 U.S.C 2000e–8(c). For more information on who must file the EEO–1 Report, see <https://eeocdata.org/>

⁴ See [Contractor Data Tracking Responsibilities Directive](#).

⁵ Contractors are encouraged to use tear–off sheets, post cards, or short forms to request demographic data.

⁶ “Employers may ask employees to specify particular races rather than to check ‘Two or More Races,’ but they are not required to do so.” <https://eeocdata.org/> The Commission does not require employers to collect and maintain more detailed data than needed to complete the EEO–1 report, although the Commission notes that some employers may find it necessary to do so for research or statistical purposes or for self–monitoring. See 70 Fed. Reg. 71294, 71298 (11/28/05).

⁷ The small number of individuals identified as belonging to more than one race makes it unlikely that many quantitative analyses of a contractor’s workforce will reveal a substantial disparity in the utilization of individuals belonging to Two or More Races. In the 2000 Census, 2.4 percent of the total population (or 6.8 million people) identified themselves as belonging to more than one race. See United States Census Bureau, The Two or More Races Population: 2000, Census 2000 Brief, at p. 9 (November 2001), available at <https://www.census.gov/prod/2001pubs/c2kbr01–6.pdf>. The U.S. Census 2005 American Community Survey Report reported that only 1.9 % of the total U.S. population identified as belonging to the Two or More Races category. See United States Census Bureau, American Community Survey, General Demographic Characteristics: 2005, available at <https://data.census.gov/cedsci/>

⁸ Pursuant to section 60–2.17, the contractor must evaluate the following minimum areas: (1) The workforce by organizational unit and job group to determine whether there are problems of minority or female utilization (i.e., employment in the unit or group), or of minority or female distribution (i.e., placement in the different jobs within the unit or group); (2) personnel activity (applicant flow, hires, terminations, promotions, and other personnel actions) to determine whether there are selection disparities; (3) compensation system(s) to determine whether there are sex–, race–, or ethnicity–based disparities; (4) selection, recruitment, referral, and other personnel procedures to determine whether they result in disparities in the employment or advancement of minorities or women; and (5) any other areas that might impact the success of the affirmative action program.

⁹ OMB, Bulletin 00–02, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement (March 9, 2000), available at https://www.whitehouse.gov/wp-content/uploads/2017/11/bulletins_b00-02.pdf

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