



OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS



ROFFMAN HORVITZ, PLC
LEGAL COUNSELING
FEDERAL CONTRACT COMPLIANCE & EMPLOYMENT DATA ANALYTICS

Office of Federal Contract Compliance Programs

The regulations implementing Executive Order 11246 permit federal supply and service contractors to develop affirmative action programs (AAPs) based on business or functional units rather than contractor establishments. These functional AAPs (FAAPs) allow a contractor to organize its AAP to reflect how the company operates functionally, and thereby may make it easier for contractors to organize and analyze data, identify issues, establish clear lines of responsibility for implementing its AAP, and monitor progress.

GENERAL FAAP FAQs

1. What is a Functional Affirmative Action Program?
2. What is the difference between an establishment and functional or business unit?
3. What are the requirements a functional or business unit must meet to have a functional AAP?
4. How can covered contractors apply for the FAAP Program?
5. How long does the application process take?
6. How long does a new contractor have to implement the new FAAP AAPs?
7. What are the required elements of a Functional AAP?
8. What is the term of the Functional AAP agreement?
9. What should a contractor with an approved FAAP agreement do if it undergoes an acquisition, merger or major restructuring leading to changes to its approved functional units?
10. Where should I send my request to modify, certify, or terminate my FAAP agreement?
11. Is the contractor required to maintain prior year personnel data during a modification or elimination of its functional units?
12. What is the process for certifying a FAAP agreement?
13. Can contractors add or remove functional units during the five-year certification?
14. Which OFCCP office will send scheduling letters for the compliance evaluation of a functional or business unit, and where will I submit the written AAP and support data for my functional or business unit?
15. How is a FAAP compliance evaluation different from an establishment-based

compliance evaluation?

16. Can OFCCP schedule a contractor for an establishment-based compliance evaluation after they submit a request for a FAAP agreement?
17. How can my company terminate its Functional AAP agreement?

EDUCATIONAL INSTITUTION FAAP FAQs

1. Are educational institutions eligible to apply for functional affirmative action programs?
2. What are the possible advantages of developing a functional affirmative action program?
3. What compliance assistance is available to educational institutions interested in developing functional affirmative action programs?

GENERAL FAAP FAQs

What is a Functional Affirmative Action Program?

As an alternative to developing establishment-based Affirmative Action Programs (AAPs), federal contractors can enter into an agreement with the Office of Federal Contract Compliance Programs (OFCCP) that permits the development of a program organized around functional or business units. For some multi-establishment contractors that have large business or functional units such as a Sales Division or a Research and Development function that spans across establishments located in different states or regions, an AAP developed by functional or business unit may better align with the contractor's operations. These functional AAPs, or FAAPs, allow the contractor to examine whether its personnel practices and affirmative action efforts are sufficient to ensure equal employment opportunity for applicants and employees of a functional or business unit, rather than a particular establishment. See criteria for a functional AAP in the Functional AAP Directive.

What is the difference between an establishment and functional or business unit?

An establishment refers to a facility or unit that produces goods or services, such as a factory, office, store, or mine. In most instances, the unit is a physically separate facility at a single location, although OFCCP may consider several facilities located at two or more sites as a single establishment when the facilities are in the same labor market or recruiting area. A single establishment may contain several different functional units (e.g., a sales division, a research division, and a division of service workers)

A functional or business unit, on the other hand, is not generally defined by physical location, but rather refers to a component within an organization that operates autonomously in the ordinary course of the organization's business, potentially spanning several different

establishments. A functional or business unit should also have identifiable personnel practices or transactional activities specific to the functional or business unit (e.g., applicant flow, hires, promotions, compensation determinations, terminations, etc.) that are distinguishable from other parts of the organization's business. Functions or business units are identified and defined based on the organization's existing business operations, personnel practices, and management structures.

What are the requirements a functional or business unit must meet to have a functional AAP?

Generally, to be suitable for a FAAP, the functional or business unit must exist and operate independently (e.g., managing official has ultimate responsibility for the decisions made within a functional or business unit), have at least 50 employees, have its own managing official, and have the ability to track and maintain its own personnel activity.

How can covered contractors apply for the FAAP Program?

Contractors may apply for a FAAP agreement by submitting a written request to the OFCCP Director explaining why it believes functional AAPs would be appropriate. This request must include, among other things, a detailed description of how the proposed functional AAPs correlate to the contractor's organizational structure and include a transition plan describing the process and timing by which the organization will move from establishment-based AAPs to functional AAPs. In addition, the request must include the name and contact information of the corporate representative who will be responsible for overseeing the request for a functional AAP agreement. Please see Directive 2013-01 Revision 2, Section 9(a), for a full discussion of the requirements for this submission.

OFCCP must receive the request for a functional AAP agreement no later than 120 calendar days prior to the expiration of the current corporate headquarters' AAP, or within 120 days from the award of the federal contract if this is a new contractor.

Send written requests for FAAP agreements to OFCCP at OFCCP_FAAP-UNIT@dol.gov. Contractors can also send requests to OFCCP at the following address:

U.S. Department of Labor
Office of Federal Contract Compliance Programs
Functional Affirmative Action Program Branch
200 Constitution Avenue, NW
Room N3416
Washington, DC 20210

How long does the application process take?

OFCCP will notify the contractor of its decision to approve or deny the request within 60 days receipt of a complete application package. Contractors must submit a complete application package as outlined in Attachment A of the directive to initiate the FAAP application process. OFCCP will review application materials, perform background research, and may request a meeting with company officials to discuss the application and the company profile. Contractors must continue to develop, implement, and maintain AAPs at the establishment level until the FAAP agreement is approved.

How long does a new contractor have to implement the new FAAP AAPs?

Contractors have up to 120 days following the effective date of its new FAAP agreement or certification to implement its FAAPs. The contractor must notify OFCCP when its FAAPs are implemented.

What are the required elements of a Functional AAP?

All functional AAPs must include the required AAP elements outlined in 41 CFR 60-2, Subpart C of 41 CFR 60-300, and Subpart C of 41 CFR 60-741.

What is the term of the Functional AAP agreement?

Functional AAP agreements expire five years from the date of approval by the OFCCP Director.

What should a contractor with an approved FAAP agreement do if it undergoes an acquisition, merger or major restructuring leading to changes to its approved functional units?

A change in a contractor's organizational structure that affects the functional units in an existing FAAP agreement requires a modification. A contractor is required to notify OFCCP, in writing, within 60 days of the effective date of the change. OFCCP will modify the FAAP agreement to reflect the changes. For a full discussion of the procedures for modifying a FAAP agreement, please see Directive 2013-01 Revision 2, Section 9(b).

Where should I send my request to modify, certify, or terminate my FAAP agreement?

Contractors should send requests to modify, certify, or terminate a FAAP agreement to the FAAP Branch at OFCCP_FAAP-UNIT@dol.gov. Hard copy requests can be sent to the following address:

U.S. Department of Labor
Office of Federal Contract Compliance Programs
Functional Affirmative Action Program Branch
200 Constitution Avenue, NW
Room N3416

Washington, DC 20210

Is the contractor required to maintain prior year personnel data during a modification or elimination of its functional units?

Yes. In accordance with 41 CFR 60-1.12, contractors must preserve any record made by the contractor for at least two years, depending on the size of the contractor's workforce, from the date that the record is made. Such records include but are not limited to those pertaining to recruitment; hiring; promotion; compensation; termination; and data analysis as they apply to each functional or business unit, including identification of units that have different personnel or compensation practices.

What is the process for certifying a FAAP agreement?

The contractor must certify in writing every five years (at least 120 calendar days prior to the expiration of the existing agreement) that it continues to operate under a functional structure. The written notification must provide information on functional units that were added and/or removed. Additionally, the contractor must provide an updated employee location listing and updated contract information, if the previously provided contract expired. OFCCP will re-issue certified FAAP agreements for another five-year term after the execution of the agreement by the contractor's representative and the OFCCP Director. For a full discussion of the procedures for certifying a FAAP agreement, please see Directive 2013-01 Revision 2, Section 9(c).

Can contractors add or remove functional units during the five-year certification?

Yes. If the contractor determines that it continues to operate under a functional structure; however, as a result of organizational changes it needs to add or remove functional units these changes can be made during the five-year certification. If the contractor is adding or removing units at this time, it must provide a written statement explaining the changes.

Which OFCCP office will send scheduling letters for the compliance evaluation of a functional or business unit, and where will I submit the written AAP and support data for my functional or business unit?

The OFCCP regional and/or district office where the FAAP compliance evaluation is scheduled sends the scheduling letter. Contractors must submit their Functional AAPs and support data to the office indicated on the scheduling letter within 30 days receipt of the scheduling letter.

How is a FAAP compliance evaluation different from an establishment-based compliance evaluation?

OFCCP conducts FAAP compliance evaluations in the same manner that it does establishment-based compliance evaluations. During FAAP compliance evaluations, OFCCP follows the compliance evaluation procedures identified in the Federal Contract Compliance Manual (FCCM).

However, because functional units typically span several locations, a FAAP compliance evaluation may involve onsite visits to multiple locations.

Can OFCCP schedule a contractor for an establishment-based compliance evaluation after they submit a request for a FAAP agreement?

Yes. Contractors can be scheduled for establishment-based compliance evaluations during the FAAP agreement approval process. Further, establishment-based evaluations scheduled prior to and during the FAAP approval process will continue after the FAAP agreement is approved. Contractors are only exempt from future establishment-based compliance evaluations once the FAAP agreement is signed and executed by the OFCCP Director.

How can my company terminate its Functional AAP agreement?

Contractors who wish to terminate their Functional AAP agreement must submit a 90 day written notice with a brief explanation of the reason(s) for the termination and the effective date. All employees must be covered by an establishment-based AAP no later than 120 days from the contractor's notification of termination.

EDUCATIONAL INSTITUTION FAAP FAQs

Are educational institutions eligible to apply for functional affirmative action programs?

Yes. Educational institutions covered by Executive Order 11246 are eligible to request and, upon approval, develop functional affirmative action programs in accordance with 41 CFR 60-2.1 (d) (4). Developing FAAPs allow educational institutions the opportunity to organize their affirmative action programs by functional or business unit instead of by establishment. Educational institutions may choose to develop their FAAP by schools, job functions, departments, or other functional or business units applicable to their organization. For example, a university could develop a FAAP that covers professors and associate professors, and another FAAP for administrative staff.

What are the possible advantages of developing a functional affirmative action program?

Contractors may realize several advantages in developing functional affirmative action programs. FAAPs allow contractors more flexibility in structuring their affirmative action programs to better align with way in which their organization operates. Further, FAAPs allow contractors to assign responsibility to the appropriate individuals for each functional or business unit within their organizations.

As it relates to educational institutions, the development of functional AAPs also provide the opportunity to conduct more meaningful analyses of personnel practices as they relate to

specific functions (i.e. schools, departments, job functions, program areas, etc.) rather than analyzing the institution's practices as a whole.

What compliance assistance is available to educational institutions interested in developing functional affirmative action programs?

OFCCP's Functional Affirmative Action Program Branch is available to provide compliance assistance regarding the FAAP program. Compliance assistance materials are available on the agency's website at the Functional Affirmative Action Program website. Organizations may also contact the FAAP Branch via email at OFCCP_FAAP-UNIT@dol.gov.