

**CONSTANGY**

**BROOKS & SMITH, LLP**

The Employers' Law Firm, Since 1946

# **AAP TOOLKIT**

[www.StrategicAAP.com](http://www.StrategicAAP.com)

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## OFCCP AUDIT “DO’S & DON’TS”

You just received a letter from the Office of Federal Contract Compliance Programs (OFCCP) with the Department of Labor requesting your Affirmative Action Plan. Unsure what to do? Don't panic. Here is a list of DOs and DON'Ts to consider before submitting an AAP.

### DO:

- Do record the date the scheduling day letter was received from OFCCP. You have 30 days to submit the required information, so time is of the essence.
- Do ensure that your company is a federal contractor or subcontractor subject to OFCCP's jurisdiction. If there is any question about coverage, it is best to challenge jurisdiction prior to the submission of an AAP.
- Do determine if you have a current AAP, and if so, what the date of the Plan is. If your AAP is more than six months into the current AAP year, you are required to submit year-to-date information regarding your applicants, hires, promotions, and terminations.
- Do gather all Collective Bargaining Agreements that cover the facility under review.
- Do make copies of the past 3 EEO-1 Reports for the establishment being reviewed.
- Do determine if the establishment is still open and whether it has less than 50 employees. OFCCP will often cancel a review if the facility has closed or if it has less than 50 employees.
- If you do not have a current AAP for the facility under review, do begin gathering the information that will be needed to prepare the Plan: workforce data as of AAP date (employee name, ID No., race, sex, ethnicity, department, job title, wage/salary, grade, EEO code, job group, date of hire, etc.) and personnel activity for the 12-month period preceding the AAP date (applicants, hires, promotions to/from, transfers to/from, terminations, layoffs, recalls, etc.).

### DO NOT:

- Do not contact OFCCP to ask them what the letter means or explain that you do not have an AAP.
- Do not submit an AAP to OFCCP unless you understand the information in the Plan and are aware of all areas of potential liability.
- Do not submit an AAP to OFCCP without thoroughly reviewing the data included in the Plan. Errors are common in computer-run reports and should be cleaned-up prior to analyzing.
- Do not submit an AAP to OFCCP unless you have analyzed your applicants, hires, promotions, and terminations and know whether any areas of adverse impact exist. Adverse impact can lead to monetary liability. You should determine ways to reduce or eliminate any adverse impact PRIOR to submission of the AAP.
- Do not submit an AAP to OFCCP unless you have analyzed the facility's compensation practices and have ensured that employees are grouped together appropriately for analysis. Unexplained compensation disparities can result in monetary liability.
- Do not complete your analysis of Hires v. Applicants without understanding the Definition of an Internet Applicant and how it affects your facility.

**If you have any questions regarding how to respond to OFCCP's audit letter or about the preparation of your AAP, call Constangy. We have experienced lawyers and AAP Specialists who can assist you with all of your OFCCP compliance needs. Call us at 866-843-9555 or e-mail us at [AffirmativeAction@Constangy.com](mailto:AffirmativeAction@Constangy.com).**

# RECRUITMENT CHECKLIST

Identify diverse recruitment sources for each job opening, particularly for those job groups where goals exist. When an opening occurs, record specific sources utilized and attach supporting documentation. This form can be completed for each job opening.

Job Title: \_\_\_\_\_

AAP Job Group Code: \_\_\_\_\_

Department: \_\_\_\_\_

Reports to: \_\_\_\_\_

Requisition Number: \_\_\_\_\_

Date: \_\_\_\_\_

Basic Qualifications:

Will Consider:        \_\_\_\_\_ Paper Application/Resume Only  
                              \_\_\_\_\_ Electronic and Related Technology Only  
                              \_\_\_\_\_ Paper Application/Resume AND Electronic Expression

Date position posted internally: \_\_\_\_\_  
Attach copy of notice. (Include EEO/M/F/V/D)

Date position listed with State Job Service where position is located: \_\_\_\_\_  
Attach copy of notice. (Include EEO/M/F/V/D)

Newspaper Advertisement - List sources and dates.  
Attach copy of advertisement. (Include EEO/M/F/V/D)

Source: \_\_\_\_\_ Date: \_\_\_\_\_

Source: \_\_\_\_\_ Date: \_\_\_\_\_

Internet Recruitment - List sources and dates of notice  
Attach copy of notice. (Include EEO/M/F/V/D)

Source: \_\_\_\_\_ Date: \_\_\_\_\_

Source: \_\_\_\_\_ Date: \_\_\_\_\_

- Educational Institutions - List sources and dates of notice  
Attach copy of notice. (Include EEO/M/F/V/D)

Source: \_\_\_\_\_ Date: \_\_\_\_\_

Source: \_\_\_\_\_ Date: \_\_\_\_\_

- Minority Organizations - List sources and dates of notice  
Attach copy of notice. (Include EEO/M/F/V/D)

Source: \_\_\_\_\_ Date: \_\_\_\_\_

Source: \_\_\_\_\_ Date: \_\_\_\_\_

- Women's Organizations - List sources and date of notice  
Attach copy of notice. (Include EEO/M/F/V/D)

Source: \_\_\_\_\_ Date: \_\_\_\_\_

Source: \_\_\_\_\_ Date: \_\_\_\_\_

- Disability Organizations - List sources and date of notice  
Attach copy of notice. (Include EEO/M/F/V/D)

Source: \_\_\_\_\_ Date: \_\_\_\_\_

Source: \_\_\_\_\_ Date: \_\_\_\_\_

- Veterans Organizations - List sources and date of notice  
Attach copy of notice. (Include EEO/M/F/V/D)

Source: \_\_\_\_\_ Date: \_\_\_\_\_

Source: \_\_\_\_\_ Date: \_\_\_\_\_

Internal Applicant Database Searches

Note: If more than one search is conducted using additional criteria, document search criteria for each search.

Search No.: \_\_\_\_\_

Date: \_\_\_\_\_

Substantive Search Criteria: \_\_\_\_\_

\_\_\_\_\_

Search No.: \_\_\_\_\_

Date: \_\_\_\_\_

Substantive Search Criteria: \_\_\_\_\_

\_\_\_\_\_

Search No.: \_\_\_\_\_

Date: \_\_\_\_\_

Substantive Search Criteria: \_\_\_\_\_

\_\_\_\_\_

Search No.: \_\_\_\_\_

Date: \_\_\_\_\_

Substantive Search Criteria: \_\_\_\_\_

\_\_\_\_\_

External Applicant Database Searches

Note: If more than one search is conducted using additional criteria, document data and search criteria.

Search No.: \_\_\_\_\_

Source: \_\_\_\_\_

Date: \_\_\_\_\_

Substantive search criteria: \_\_\_\_\_

\_\_\_\_\_

Attach resumes of those who met basic qualifications and were considered.

Search No.: \_\_\_\_\_

Source: \_\_\_\_\_

Date: \_\_\_\_\_

Substantive search criteria: \_\_\_\_\_

\_\_\_\_\_

Attach resumes of those who met basic qualifications and were considered.

Search No.: \_\_\_\_\_

Source: \_\_\_\_\_

Date: \_\_\_\_\_

Substantive search criteria: \_\_\_\_\_

\_\_\_\_\_

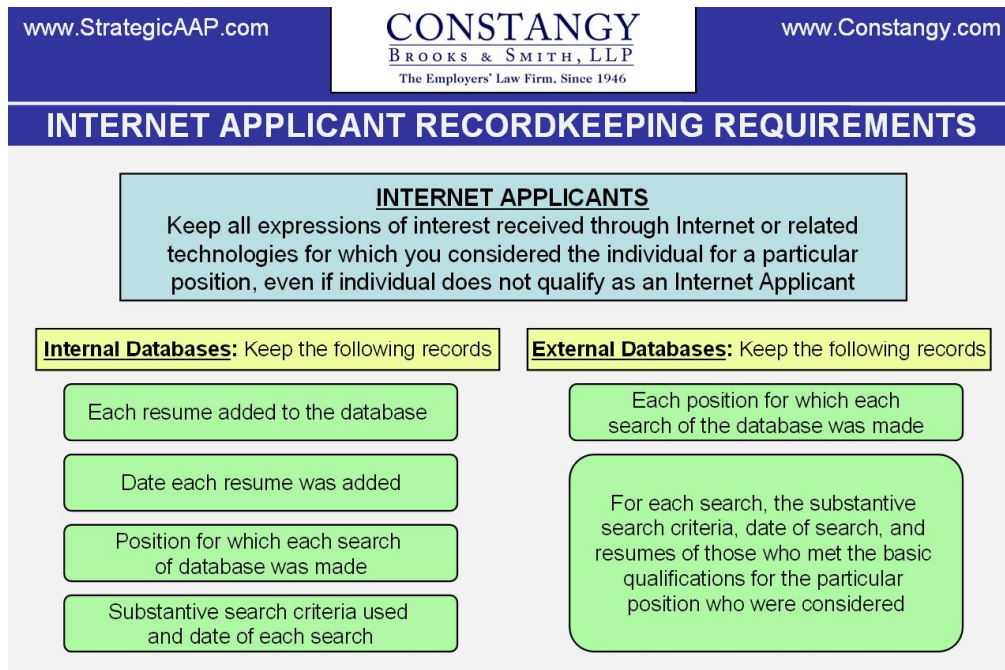
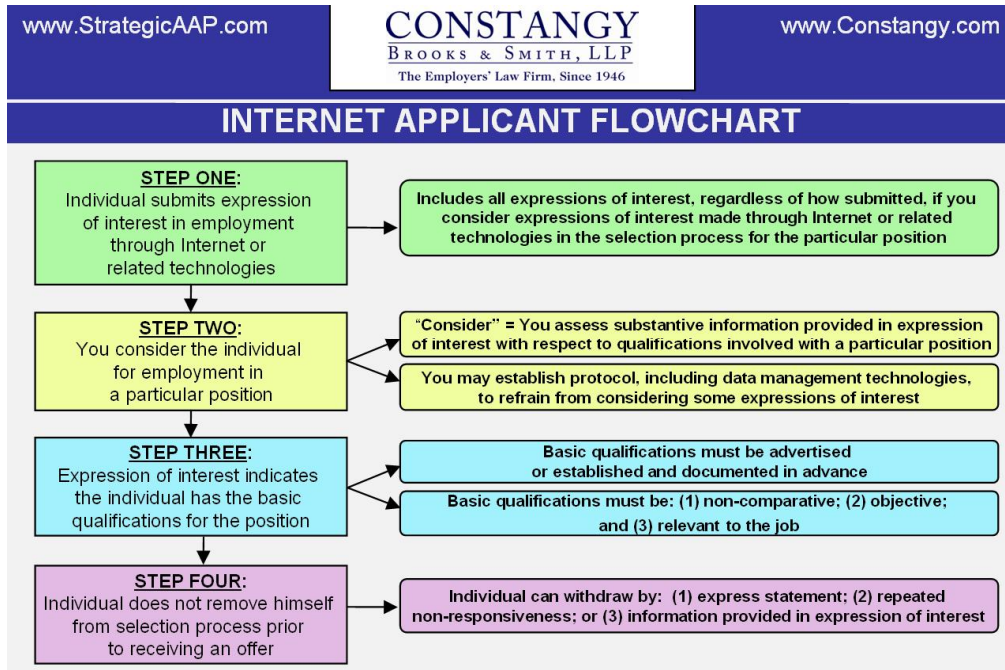
Attach resumes of those who met basic qualifications and were considered.

# ANNUAL AAP COMPLIANCE CHECKLIST

Plan Date: \_\_\_\_\_ to \_\_\_\_\_

- \_\_\_\_\_ 1. Presentation on Affirmative Action Training for Officials & Managers
- \_\_\_\_\_ 2. Attendance Roster for Officials & Managers Training
- \_\_\_\_\_ 3. Agendas and Attendance Rosters of Meetings where AA Issues Discussed
- \_\_\_\_\_ 4. Recruiters Presentation on AA Issues
- \_\_\_\_\_ 5. Attendance Roster for Recruiters Presentation
- \_\_\_\_\_ 6. Current Year AAP Postings
- \_\_\_\_\_ 7. All Disability & Veterans Voluntary Self-Identification Forms
- \_\_\_\_\_ 8. Memoranda to Unions
- \_\_\_\_\_ 9. Notices to Recruiters/Employment Agencies
- \_\_\_\_\_ 10. Notices to Referral Sources
- \_\_\_\_\_ 11. Job Advertisements
- \_\_\_\_\_ 12. Listings with State Employment Service
- \_\_\_\_\_ 13. Subcontractor Notification Letters
- \_\_\_\_\_ 14. All Applicant Voluntary Self-Identification Forms
- \_\_\_\_\_ 15. EEO-1 Report
- \_\_\_\_\_ 16. VETS-100 Report
- \_\_\_\_\_ 17. Logs of Accommodations made for Disabilities or Religion and National Origin
- \_\_\_\_\_ 18. Medical Leave Log
- \_\_\_\_\_ 19. Employee Newsletters & Bulletins
- \_\_\_\_\_ 20. Sample Employee Orientation Checklist
- \_\_\_\_\_ 21. Progress Towards Attaining Goals Worksheets
- \_\_\_\_\_ 22. Testing Validations

# INTERNET APPLICANT FLOWCHARTS



**SERVICE AREA OVERVIEW:  
AFFIRMATIVE ACTION**

**Constangy's Affirmative Action Practice Group**

is experienced in all areas of affirmative action compliance. We can help

- Advise on jurisdictional issues
- Develop affirmative action plans
- Analyze compensation, including use of multiple regression analysis
- Defend compliance reviews and corporate management reviews
- Draft policies and help you communicate, enforce, and defend them
- Provide preventive advice
- Train in-house attorneys, Human Resources, management and employees
- Perform mock audits
- Properly prepare and submit EEO-1 and VETS-100 Reports

We also offer services related to ensuring full compliance by assisting employers with a variety of practical issues:

- Collection and tracking of data necessary for creating an affirmative action plan
- Development of processes for making internal and external selection decisions
- Implementation of affirmative action plans

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**AFFIRMATIVE ACTION  
COMPLIANCE**

**FOR MORE INFORMATION**

Call Toll-Free, 866-843-9555

visit [www.constangy.com](http://www.constangy.com)

e-mail us at [affirmativeaction@constangy.com](mailto:affirmativeaction@constangy.com)

The attorneys on Constangy's Affirmative Action team are conveniently located throughout our offices and are ready to assist. We can identify and help to resolve potential discrimination issues, but we also have the experience and judgment to avoid overreactions that could cost your company unnecessarily and leave you vulnerable to allegations of reverse discrimination. All of our affirmative action attorneys have substantial experience in employment discrimination litigation as well, so we can analyze the employment practices of "the whole client."

Constangy's Affirmative Action team also has a complement of "Affirmative Action Specialists"—individuals with paralegal and human resources backgrounds who can prepare plans and perform many other aspects of affirmative action compliance at a significant cost savings. Because the attorneys and the specialists work together as a team, clients get the best of both worlds - low-cost help on the more routine, labor-intensive aspects of affirmative action compliance, and easy access to legal counsel for areas in which risk and potential exposure are higher.

### Attorney-Client Privilege

As lawyers and paraprofessionals working under the supervision of lawyers, we provide our clients with the attorney-client privilege and work product protections to the fullest extent of the law. This may not be the case if your affirmative action work is performed by a human resources consultant or other non-lawyer entity.

### Full-Service Plan (recommended)

Our traditional full-service package includes complete plan development and comprehensive statistical analyses. All plans are developed in compliance with Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans' Readjustment Assistance Act, and include the following required statistical affirmative action reports and narratives:

Workforce Analysis  
Job Group Analysis  
Availability Analysis  
Comparison of Incumbents to Availability and Establishment of Goals  
Progress Toward Prior Year Goals  
Statistical Adverse Impact Analysis of Hires v. Applicants  
Statistical Adverse Impact Analysis of Promotions Into v. Incumbents  
Statistical Adverse Impact Analysis of Promotions From v. Incumbents  
Statistical Adverse Impact Analysis of Terminations v.

Incumbents  
Summaries of Employment Activity  
Initial Compensation Analysis  
Female and Minority Affirmative Action Plan Narrative  
Individuals with Disabilities Affirmative Action Plan Narrative  
Covered Veterans Affirmative Action Plan Narrative

In addition, as a part of our plan development for each facility, you will receive an attorney-client privileged analysis of areas of adverse impact and potential monetary liability.

Our Full-Service Plan includes a thorough data reconciliation process. Inaccurate data can create the appearance of "adverse impact" where none actually exists. Our experience demonstrates that investing more in plan development up front yields significant savings in the long run - not only by avoiding painful audits and monetary liability, but also by making plan development in later years much faster and simpler with no loss of accuracy.

### Streamlined-Service Plan

We recognize that some clients have the resources to reconcile and ensure the accuracy of their own data and do not need or want to spend time or money duplicating that process. The Streamlined-Service Plan includes all of the Full-Service plan development and required analyses with the exception of data reconciliation. This streamlined service plan will provide a government contractor with a comprehensive affirmative action plan that meets the government requirements but will yield significant cost savings in the shorter term. However, we recommend a thorough analysis of the data before submitting a "streamlined" plan to outside parties, including the OFCCP.

### À la Carte Services

Finally, Constangy offers à la carte services for clients who may want some, but not all, of the services we provide. Any one of the distinct plan components listed under the description of the Full-Service Plan may also be purchased individually.

Please contact a Constangy attorney for a customized estimate for Affirmative Action Plan development for your company based on your desired level of service. simpler with no loss of accuracy.