

**Q: 1:14 PM: For educational institutions, should we run separate plans for each individual college?**

A: You should consider questions such as: Are they separate legal entities? Do they operate separately? Generally, the answer is yes.

**Q: 1:25 PM: Are there any plans of using availability based on some other source than census data, which is 10 years old.**

A: There are other sources for more updated occupational census data such as through the Department of Labor's Bureau of Labor Statistics or some State Employment Services agencies. However, these other sources typically do not provide the detailed occupational data by the geographical areas that may be needed. The most detailed occupational census data available is through the EEO Special File from the U.S. Census Bureau. This project is requested and paid for by the Justice Department, EEOC and OFCCP decennially. In 2005 the Census Bureau launched the American Community Survey (ACS) which is a year-round effort to gather detailed information which includes employment for every geographic area recognized by the Census Bureau. However, due to the manpower and cost of transforming the data into a useable AAP format.

**Q: 1:26 PM: Do the regulations apply to 2nd and 3rd tier sub-contractors??**

A: Yes. If your organization meets the 50 EE, \$50K threshold, the primary remaining question is whether your organization supports fulfillment of the prime federal contract. If so, it doesn't matter if you're first-tier, second-tier, etc.

**Q: 1:26 PM: Since AAP is a summary of the organization's workforce, and its data does not include identifiable information, is the document consider to be confidential by State or Federal laws and regulations? Can employees of the organization have a copy/review their organization's AAP?**

A: The Executive Order AAP which protected women and minorities is considered confidential. However, the regulations state that a company is to make available the AAPs for Individuals with Disability and Protected Veterans to any applicant or employee upon request.

**Q: 1:27 PM: Can you talk about how you determine what an establishment is? Size of employee population, geographic location, buildings, business lines**

A: The regulations do not define "establishment". In the Federal Contract Compliance Manual, OFCCP defines the term establishment as 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. In public forums in the past, OFCCP officials have indicated that an establishment is an address.

**Q: 1:29 PM: The EEO-1 report makes a distinction for subcontractors by tier; the OFCCP's regulations do not.**

A: If your organization meets the 50 EE, \$50K threshold, the primary remaining question is whether your organization supports fulfillment of the prime federal contract. If so, it doesn't matter if you're first-tier, second-tier, etc.

**Q: 1:37 PM: In Protected Veteran infographic on the OFCCP website, one of the periods of war is: Persian Gulf War August 2, 1990 – current. Is everyone who served on active duty during this time (whether deployed or not) considered a Protected Veteran?**

A: Yes. OFCCP addressed this error in the regs at 60-300 which originally used “during a war” as the definition. The definition was updated to “period of war.” 38 U.S.C. § 101 defines “period of war” as the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

**Q: 1:41 PM: I would be interested in a Biddle-sponsored class on job group creation. I hope you all consider having one soon.**

A: I highly recommend you join the BCG Institute for Workforce Development (BCGi). [www.bcginstitute.org](http://www.bcginstitute.org). Review the site for upcoming webinars and let us know if you'd like to see anything that's not currently in the calendar.

**Q: 1:42 PM: How big or small should our job groups be?**

A: Difficult question. There are some hard-and-fast rules that cannot be broken (i.e., job groups cannot cross EEO categories). Beyond that, it really depends on the number of people within each EEO category, the number of unique jobs with each EEO category, and the number of people in each unique job within each EEO category. The goal is to have sufficient sample size (i.e., number of employees) to yield meaningful analyses, but not so many employees as to (inappropriately) inflate statistical results. This really is a topic for further discussion.

**Q: 1:43 PM: How important is it to break job groups up by those who are exempt and non-exempt pay status given that OFCCP will be conducting pay analysis by job group?**

A: Important. Your job is to analyze together (and guide the OFCCP to analyze together) those employees who are similarly situated. To the degree grouping exempt and non-exempt employees together would yield misleading results (i.e., incorrect statistically significant findings that will need to be “unraveled” later in the audit), then it should be

avoided. This is also a longer conversation with many caveats, but generally-speaking they shouldn't be analyzed together.

**Q: 1:45 PM: Who determines which job code should belong under which job group? The organization itself? If so, who monitors/audits these categories/decisions?**

A: This is at the sole discretion of those developing the AAP.

**Q: 1:45 PM: Will be Biddle software be coming out with Doctorates Earned data?**

A: MyAAP allows for the manual inclusion of any/all available data, but no, it will not automatically include doctorates earned data in the upcoming foreseeable future.

**Q: 1:48 PM: With the 2020 Census not asking employment questions do you believe that the OFCCP will continue to use the 2010 Census for goals?**

A: In 2020 only the census short form was used. As mentioned previously, the American Community Survey (ACS) has been collecting employment data since 2005. It is expected that the results of the 2020 Census will include information from both the short form and the ACS.

**Q: 1:48 PM: Question about Interns. (1) Do you have guidelines on when they should NOT be included, based on the definition of 'employees'? (2) Do you see any issues of not creating availability for the Intern group given that all interns are placed in a single Intern job group? (3) If availability must be created, I assume university enrollment data should be used?**

A: (1) Interns should be included in an AAP if they are paid by the company. They should not be included if they are not paid and not considered "employees" of the company.

**Q: 1:48 PM: is it possible different attorneys would use a different term for "workforce analysis" in compiling our AAP reports? We seem to have Job Group Analysis and Comp Impact Ratio Analysis**

A: The regulations at 60-2.11 describe an Organizational Profile and that includes in (c) a description of a Workforce Analysis. We suggest you compare the reports you have been provided against that description to determine if you, in fact, have a compliant WFA in your AAP.

**Q: 1:49 PM: WFH and remote workers are going to completely rework how we do this analysis**

A: By insuring you are utilizing census data from the geographical areas that those remote employees are recruited/hired from.

**Q: 1:51 PM: For availability: If we don't have applicant zip codes, would a reasonable substitute be an analysis of the zip codes of hires for the year of analysis?**

A: Due to a likely lack of hires across all job groups, I would recommend using employee ZIP codes as the alternative to applicants (and not hires).

**Q: 1:51 PM: How do you manage this with a remote workforce?**

A: You still identify where you are recruiting/hiring from to insure you are using the correct “reasonable recruitment areas”. With a remote workforce, using nationwide census data may become a reality for many companies who previously recruited and hired only locally.

**Q: 1:51 PM: Our university assigns SOC Codes to our employees, and in the past, FactFinder allowed us to use the SOC Codes to run our external availability analyses. Have you had any feedback on the new census.gov data site and being able to get that information by SOC Code since we don't assign the census codes?**

A: We have not extensively used the new census.gov website for pulling data. Our databases use the existing datasets from the previous FactFinder website.

**Q: 1:53 PM: Do we need to add this to our AAP or set up our job groups keeping compensation in mind?**

A: I'm not sure of the exact question, but consideration of salary/compensation is always a good idea when creating job groups. Given that any OFCCP investigation will initially be based on job groups, I recommend not combining employees/jobs with wildly different wage rates.

**Q: 1:53 PM: We have highly specialized technical positions. We have trouble creating realistic goals based upon the census. We have also looked at graduation data, but our positions require 5+ years experience. Any tips on how to handle?**

A: Since the EEO Special file provides data for 487 occupations. Naturally, there are thousands or perhaps tens of thousands of job titles utilized through the civilian workforce. The census occupations do provide some general occupations. We suggest you map these technical positions to the most appropriate and closest occupation code that you can.

**Q: 1:53 PM: Question: You just spoke about a zip code analysis - How do you do that?**

A: Visit [www.biddle.com](http://www.biddle.com) and inquire about myAAP cloud-based AAP software. You can also call 916-294-4250 and ask for Jeff Davies.

**Q: 1:53 PM: We don't include compensation data in our AAP's**

A: You do not have to provide actual compensation data in your AAP reports. However, you do need salary information to prepare the Workforce Analysis Reports as required by the regulations. Companies under OFCCP jurisdiction are required to perform an annual compensation analysis of their workforce. This requirement is not a part of the AAP itself.

**Q: 1:55 PM: For seasonal workers, what is the best approach in job grouping? Should they be grouped in one job group under the associated EEO-1 category? There could be multiple seasonal job groups depending on the eeo-1 category of the seasonal jobs. I assume availability should be created for all seasonal workers given that they are being recruited just like all regular workers.**

A: The regulations state that Job Groups should be created based on “similar content, wage rates and opportunities” (progression). That is the only guidance provided. Job Groups are subdivisions of EEO-1 categories. You should create job groups that make sense for your organization. Yes, you may create multiple seasonal job groups if it fits the definition and makes sense for your organization. And, yes, you calculate availability for seasonal workers the same as other employees.

**Q: 1:55 PM: if you do the applicant zip code analysis, should you then apply the correlating percentages exactly to the external recruitment areas?**

A: Good question. You need to first re-create your denominator and then re-calculate your weights after removing inappropriate/incorrect labor areas that showed up in your analysis. For example - ZIP Code Analysis Results:

San Francisco - 53% (final weight =  $53/98 = 54.1$ )

San Jose - 34% (final weight =  $34/98 = 34.7$ )

Oakland/Alameda - 11% (final weight =  $11/98 = 11.2$ )

Tucson 1% (to be removed)

Miami 1% (to be removed)

**Q: 1:57 PM: Does the tool kit factor in jobs at universities?**

A: Yes. It includes all codes from the ACS 2006-2010 survey.

**Q: 1:58 PM: EEO-1 category is useful for finding the 'right' Census code, but you should choose Census codes to reflect the skills for the job, regardless of where you actually report**

**the job on the EEO-1. Example: might consider using the Census code for customer service representatives (EEO-1 category 5) to reflect the skills necessary for a customer service manager (reported in EEO-1 category 2).**

A: Census codes that are assigned to EEO-1 categories in some materials are “guidance” to the user. It goes back to the fact that there are \_\_\_\_ occupations provided in the census and many more job titles in our workforce. We agree that it is important to use common sense and logic in making census code assignments.

**Q: 2:01 PM: Is there ever a time when the availability percentage should be questioned for appearing too high or too low?**

A: You should absolutely be confident that final availability appears to be “reasonable” for each job group. When it does not appear to be reasonable you can look to: how you created job groups (example combining business and engineering professional positions), what geographical census areas you utilized, how you mapped your job titles to census occupations, whether you used accurate feeder pools and/or whether you appropriately assigned external and internal weights.

**Q: 2:02 PM: How to proceed in situation when most job codes standalone (with different pay grade, with different job description...) in particular organization? How should an organization with e.g. 500 employees; 450 electricians and 50 with unique job codes (such as finance analyst, payroll, talent manager, administrator, IT support etc) aggregate data and proceed with the analysis. What would be your recommendation on how to proceed with the (pay) analysis for the 50 unique jobs?**

A: Bottom line: any statistical analysis requires sufficient sample size per group. Some analyses (i.e., regression) require more; 20-30+. Some analyses (i.e., t-test) require less; 5-10+. If you are unable to aggregate to have sufficient sample sizes, then a file-by-file (non-statistical) comparison may be necessary. That said, this is a much bigger conversation. There are ways to statistically aggregate positions and then “control” for different positions. The OFCCP likes utilizing these techniques, but it’s important you know their strengths and weaknesses in the event you come up against a compliance officer employing these techniques. I recommend you join the Biddle Consulting G Institute for Workforce Development ([www.bcginstitute.org](http://www.bcginstitute.org)) to find a webinar on this topic.

**Q: 2:04 PM: How do tested positions (Civil Service) fit into the availability data?**

A: Just like any other. A person operating as an Accountant (for example) in Civil Services is included in the census data for Accountants just like any other.

**Q: 2:05 PM: What about companies that don't track internal transfers or promotions. How "bad" is it to not have internal feeder groups?**

A: We recommend that companies set up a system to track all movements – transfers, promotions and demotions. You only need to use internal feeder groups if you have, or reasonably expect to have, internal movements.

**Q: 2:14 PM: when should you use whole person vs. 80/20 rule.**

A: Both rules are moderate choices and each have strengths/weaknesses depending on the size of the job group. I personally like the whole person rule because it won't flag those situations where a Native American or 2+ race category has zero incumbents unless the availability for those categories is sufficiently high to yield a whole person difference.

**Q: 2:15 PM: is it ok to communicate placement goals by race to HR teams? 2:15 PM: or should it only be high level minority and women**

A: The regulations state that you should establish a goal for a specific minority group "in the event of a substantial disparity in utilization". So there are instances where you should be communicating to your HR and executive teams specific sub minority goals.

**Q: 2:16 PM: If we have underutilization and set a goal, can part of our action plan include providing advantages to the underutilized group. Using your example, could we say that the next 5 hires will be minorities?**

A: You cannot. You must always hire the most qualified applicant regardless of their protected status. If you have a goal you have an obligation to perform outreach and special recruitment to have a pool of qualified applicants that mirrors the recruitment area. As an example, if you have a goal for female engineers, then your obligation is to take affirmative action to identify and contact organizations that can provide referrals of qualified female engineers, so they are in the pool for selection. However, to be selected they must be the most qualified.

**Q: 2:18 PM: Do auditors have a preference on whether you use statistical significance, whole person, 80%, etc. rule? Are they more or less favorable to one methodology over the other?**

A: Compliance Officers cannot have a preference. The benchmark they use in reviewing your Availability Reports in an audit is "less than would reasonably be expected". They do not allow combining more than one methodology, i.e., such as combining Whole Person and 80% Rules.

**Q: 2:28 PM: Can an audit be requested through OFCCP?**

A: Why would you subject yourself to such stress? If you want to make sure you can pass an OFCCP audit successfully, we recommend you utilize consultants to conduct a mock audit and identify any areas of non-compliance.

**Q: 2:35 PM: Still seeking for answer for this one: Since AAP is a summary of the organization's workforce, and its data does not include identifiable information, is the document consider to be confidential by State or Federal laws and regulations? Can employees of the organization have a copy/review their organization's AAP?**

A: The Executive Order AAP which protected women and minorities is considered confidential. However, the regulations state that a company is to make available the AAPs for Individuals with Disability and Protected Veterans to any applicant or employee upon request.

**Q: 2:37 PM: This was SUCH a great presentation. Thank you so much!!**

A: You are welcome. It was our pleasure.

**Q: 2:38 PM: please have these guys next year and give them 2 sessions!!!**

A: Totally agree! Tony, are you seeing this? 😊

#### ANSWERED DURING WEBINAR:

ANSWERED DURING WEBINAR: 1:18 PM: Given the expansion of the definition of 'active duty wartime or campaign badge veteran' is it safer for contractors to assume that a veteran is 'covered' for AAP and complaint purposes

ANSWERED DURING WEBINAR: 1:25 PM: Just wondering why all companies don't have to complete an affirmative action plan, as you would think it would enforce more equality

ANSWERED DURING WEBINAR: 1:31 PM: We have had a lot of back-and-forth with IT on the implementation of the new CC-305. Can you discuss what you consider allowable changes for the electronic version?

ANSWERED DURING WEBINAR: 1:33 PM: So it includes "Page 1 of 1" ?

ANSWERED DURING WEBINAR: 1:40 PM: There was a great NILG presentation a week or 2 ago on Job Groups.

ANSWERED DURING WEBINAR: 1:54 PM: Can you speak to the order of the occupational code -- how the placement on the code list relates (somewhat) to the level in the organization?

ANSWERED DURING WEBINAR: 2:00 PM: For external availability, should we be calculating the availability from where we recruit, or where the applicants who are hired actually come from? For example, if we recruit in the Midwest, but most of the hires come from within our state, do we look up the census data for all the midwest states we recruited in, or only our state since that's where the applicants most often come from?