

Gerstco Events and Training

Affirmative Action Planning Training for
Human Resources & Managers



Affirmative Action Programs

Applicant Recordkeeping to Support Recruitment Efforts



Objectives

- **Understand the current OFCCP requirements for applicant recordkeeping.**
- **Be able to explain and provide documentation for your organization's employment selections and non-selections.**
- **Be aware of the potential impact of non-compliance.**



The Role of Contractors, Recruitment Firms and Individual Recruiters, in the Employment Selection Process

- **The organization is a federal government contractor covered by the E.O. 11246 and its implementing regulations.**
- **Acting as an Agent for a federal contractor, the recruitment firm, independent recruiter, etc. takes on federal recordkeeping obligations under the E.O. 11246.**
- **In a Compliance situation, the Recruiting Firm's data and selection processes may be needed to support the Contractor's program of nondiscrimination and affirmative action.**

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Legal Basis for Applicant Recordkeeping



Historical View

- **Before OFCCP's Internet Applicant Rule in 2006, the Agency considered "everyone who expressed an interest in employment" an "Applicant."**
- **Employers were required to try and obtain race/ethnicity and gender from all applicants.**
- **The existence of the Internet as an employment recruitment source, resulted in an *explosion in the number of "Applicants."***
- **Until 2006, employers not meeting OFCCP's data collection requirements were considered non-compliant.**



Uniform Guidelines on Employee Selection Procedures

1978 – Questions and Answers to Clarify and Provide a Common Interpretation of the UGESP

Question and Answer 15 – “Applicant” Definition

Q. What is meant by the terms “applicant” and “candidate” as they are used in the UGESP?

A. The precise definition of the term “applicant” depends upon the user’s recruitment and election procedures. The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. This interest might be expressed by completing an application form, or might be expressed orally, depending upon the employer’s practice.

The term “candidate” includes current employees for promotion or training or other opportunities, without inviting applications.

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Executive Order 11246

(Department of Labor, Office of Federal Contract Compliance Programs (OFCCP)).

Affirmative Action Programs and Non-Discrimination in Employment.

“The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin.”

March 2004: Internet Applicant Proposed. OFCCP issued an NPR amendment governing applicant recordkeeping requirements for compliance monitoring, requiring contractors to *retain records of all expressions of interest* through the Internet or related technologies.



OFCCP Internet Applicant Rule

February 6, 2006

The Rule addresses recordkeeping for Federal Contractors regarding the Internet hiring process and solicitation of race, gender, ethnicity, of “Internet Applicants”.

- **Identifies the type of Internet-related technologies involved: email, resume databases, job banks, electronic scanning, ATS, applicant screeners, etc.**
- **Addresses contractor options to narrow down large numbers of individuals meeting basic qualifications: (1) data management techniques, (2) screen for removal of expression of interest by applicant, (3) screen for basic qualifications.**
- **Demographic information of race, ethnicity and gender must still be solicited from all job seekers with basic qualifications, if they meet all other conditions of the IA definition.**



DOL/OFCCP “Internet Applicant”*

Definition. Individual Must Satisfy all 4 factors:

1. Individual *submits an “expression of interest”* in employment through the internet or related electronic data technologies;
2. Contractor *considers the individual* for employment in a *particular position*;
3. The individual’s expression of interest indicates that the person possesses the *basic qualifications for the position*; and
4. The individual, *at no point in the selection process prior to receiving an offer of employment, removes him/herself from further consideration* or otherwise indicates that he/she is no longer interested in the position,

* *OFCCP 2006*



IA Definition – Expression of Interest

1. **Applicant** directly submits a resume or completes an employment application for a particular position, for example:

Company website, email, internal employees, referrals, resumes in response to job posting, external database linked to Company website

2. **Employer** considers individual from external databases or other indirect sources for example:

Recruiting events, employment agencies, unsolicited resumes, external databases, etc.



IA Definition – “Considers” an Individual

Employer assesses the substantive information (i.e., work experience, education, skills, etc.) provided in the expression of interest to determine if the individual meets basic job qualifications for a *particular position*.

Limitations.

- Employer may establish uniform ‘employment application procedures’ (e.g., submit resume on-line only, identify an open position) that must be followed for the individual’s expression of interest to be considered
- Employer may limit the number of individuals considered, using data management techniques (for large numbers of expressions of interest)
 - (i) No review of qualifications
 - (ii) Random sampling permitted
 - (iii) No Numerical limits



IA Definition – “Basic Job Qualifications”

- **Advertised job qualifications.**
- **Non-advertised *but criteria established in advance.***
- **Non-comparative.**
- **Objective (specific vs. subjective).**
- **Basic Job Qualifications must be relevant to the successful job performance of a particular position.**



IA Definition – “Candidate Removed Him/Herself”

- Declines invitation for a job interview.
- Candidate repeatedly fails to respond to Contractor telephone calls, emails, asking about job interest, *etc.*
- Candidate’s expression of interest indicates other preferences for work location, salary requirements, *etc.*
- *Documentation required in a Compliance Review regarding non-interest in the job.*



Significance of the Applicant Definition

Individuals meeting the definition of an Internet Applicant ***must be*** extended an invitation to voluntarily self-identify for race, ethnicity, gender, disability and Veteran status when:

- (1) Initially applying for a *specific position*; and
- (2) After an offer is made.

Candidates who meet the definition of an Internet Applicant for a specific job are in the pool when conducting 'adverse impact' analysis .

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Employment Recruitment and Selection Process



Recordkeeping

The Internet Applicant Rule generally requires Contractors to retain all expressions of interest that are ‘considered’ even those who are not Internet Applicants.

- **Contractors must maintain records of all job seekers contacted for a particular position.**
- **Internal Resume Databases:** Keep all records of resumes added, dates of resumes, position for each search, all search criteria and date of search.
- **External Resume Databases:** Keep records on each search, criteria used, search date, resumes of job seekers who met basic qualifications for a particular position, and who were considered.
- **Record Retention:**
 - One Year** - Contractors with fewer than 150 employees, or covered contract of at least \$150,000;
 - Two Years** – Contractors with at least 150 employees and covered contract of \$150,000.
 - Three Years** – AAPs for Veterans and Individuals with Disabilities applicant outreach efforts.



Data Management Techniques

- ✓ ***Data Management Techniques are used to limit the number of applicants considered for a particular position.***
- ✓ ***DM Techniques are used before considering the qualifications of an applicant.***
- ✓ ***DM does not reduce the total number of applicants who apply.***
- ✓ ***No minimum number of individuals required to be 'considered.'***
- ✓ ***However, be aware of a one-to-one applicant to hire ratio.***



Applicants for Employment Recordkeeping

- All records must be retained for up to 3 years but not all applicant records must be included in the selection process analysis (adverse impact analysis).
- **Include** records for all hires and qualified internal employees that applied or were selected for an open position during the AAP reporting period.
- **Remove** all applicant records when the position is cancelled.
- *Applicant dispositions should track the Contractors' own selection processes.*

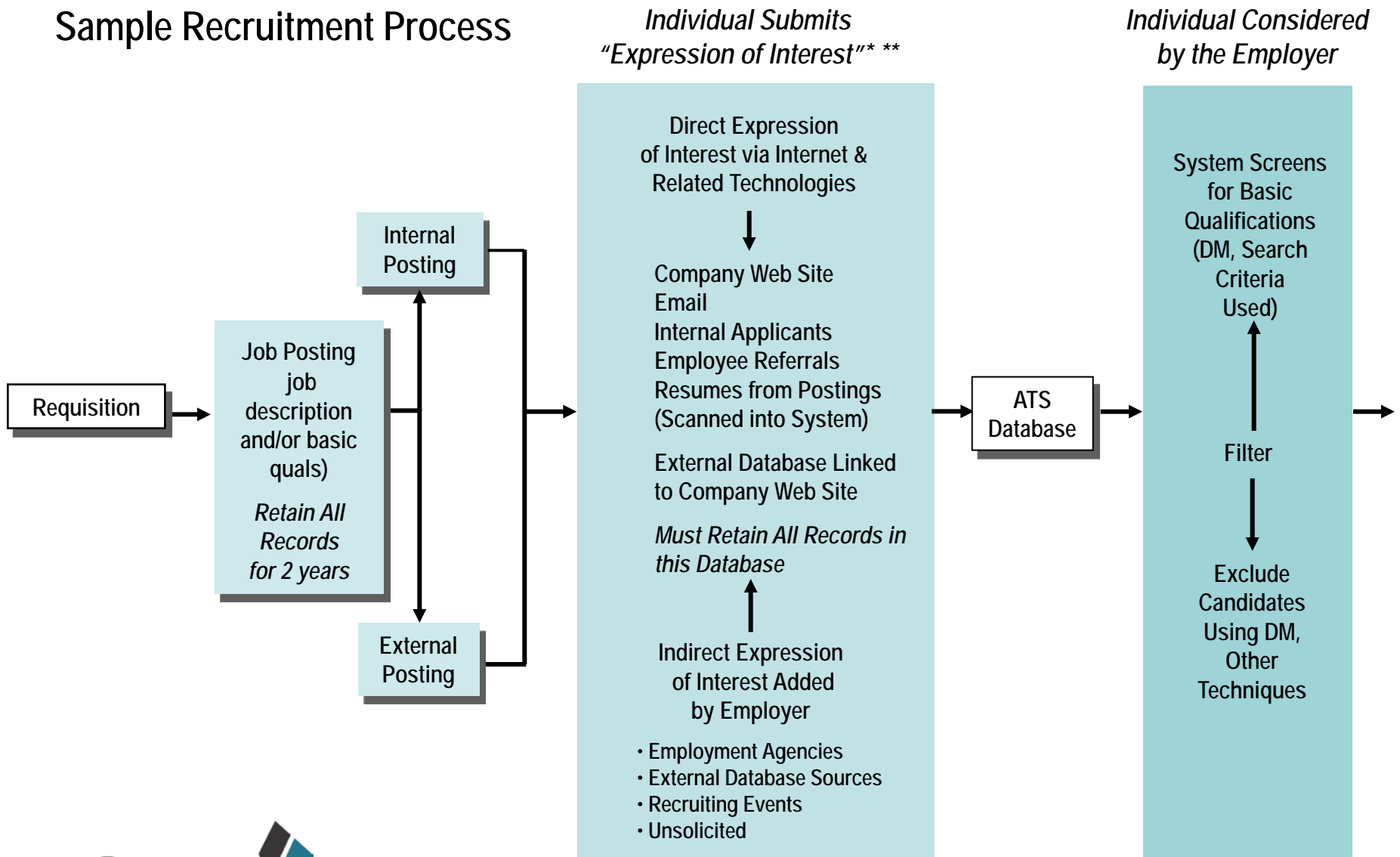
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Recruitment & Selection Process

Sample Recruitment Process



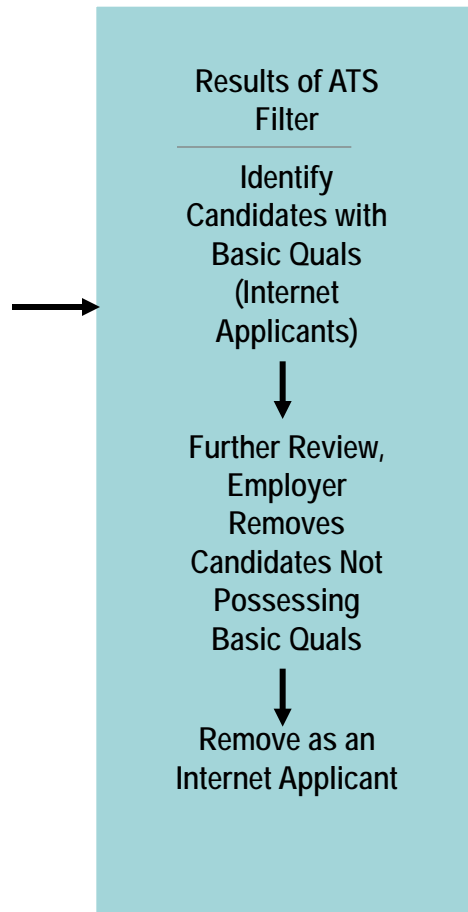
*Recordkeeping begins for Internet Applicant

**"Self ID Offered: Minorities, Females, Vets, IWD

No Basic Qualifications Used

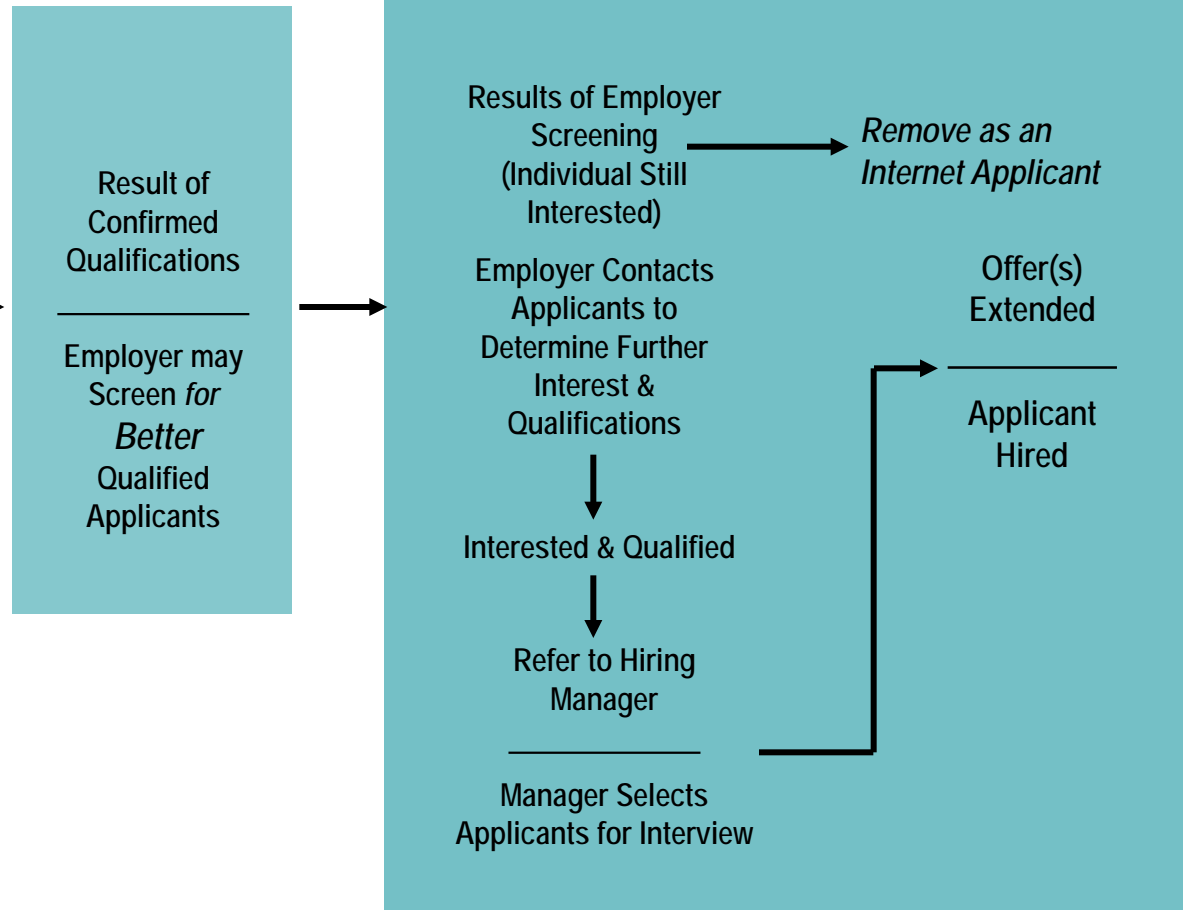
Selection Process

Expression of Interest
Indicates Basic Qualifications



****Record All Applicant Dispositions***

Individual Does Not Remove Him/Her-Self
from Selection Process



Internet Applicant Recorded



Voluntary Self-Identification

- **As of February 2006, voluntary self-identification for race, ethnicity and gender must be offered when an applicant initially applies for a position, and again after a job offer is made.**
- **Since March 14, 2014, Voluntary self-identification must also be offered for Protected Veteran and Disability status when an individual applies for a position and again, after a job offer has been made.**
- **Information on an applicant's Disability or Veteran status must be filed separately from the individual's application/resume. Disability information must not be filed with employee medical information. A separate file for disability and veteran information must be used.**

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Factors

- **Conversion from Temporary to Regular Employee Status**
 - Posted position?
 - Other candidates considered?
 - Is the original candidate pool for temporary position considered?
- **Search Firms**
 - Applicants - all candidates recruited referred to the Company, or
 - Are candidates “considered” by the Search Firm before sending slate to the Company?
- **Recruitment Events**
 - Building a pipeline vs. seeking to fill an open position.
 - What is the Company’s Employment application process at events?
- **Change in job requirements**
 - Is a new requisition issued?
 - Are previously rejected applicants reviewed against new job criteria:



Other Factors (continued)

Candidates Who Withdraw

- Failure to respond; no show for interview; etc.
- No longer meet the Internet Applicant definition.
- Not analyzed for adverse impact analysis.

Rejected Job Offers

- Applicants removed from applicant pool for IA analysis.
- Offer documented as 'good faith effort'.

Fail Background Check Process?

Not qualified for the particular position?



Checklist for General Recordkeeping

- ✓ **Keep all records created, produced or received during the employment recruitment and selection process.**
- ✓ **Maintain all records for a period of not less than 2 years. (3 years for Veterans and Individuals with Disabilities outreach)**
- ✓ **Document steps in the Company's current Recruitment and Selection process.**
- ✓ **Recommendations:**
 - ✓ **In advance of job posting, establish basic job-related qualifications for open external positions.**
 - ✓ **Determine when, in the recruitment/selection process to capture race, ethnicity and gender information.**
 - ✓ **Multi-establishment Contractors: Establish a uniform process to collect and maintain U.S. applicant records.**



Penalties for Non-Compliance

- **Recordkeeping (Technical) Violation**
 - Enter into a Conciliation Agreement with OFCCP, requiring regular data collection, analysis, and reporting to the Agency.

- **Finding of Discrimination**
 - Financial penalties (Back pay, plus interest; Front pay).
 - Preference in future hiring opportunities.
 - Additional recordkeeping required.