

## OFCCP Internet Applicant Recordkeeping & PCRecruiter

As of February 6, 2006, the OFCCP required that all government contractors collect information for their candidate searches (see <http://www.dol.gov/esa/regs/compliance/ofccp/faqs/iappfaqs.htm>). There was a 90-day grace period, which means that May 7, 2006 was the actual live date from which data must be sustained. The responsibility for collecting this data lies solely with the person performing the search. PCRecruiter now has functionality in place to assist the collection of this information.

### Overview

Company (Organization), Name and Position (Requisition) records now have an EEOC "OFCCP" status field to indicate whether they are of Government Contractor status or not. New Reqs/Positions created under any Org/Company with this status also inherit this status. Through a candidate OFCCP search, candidates will also inherit this status. The OFCCP Search criteria and results are stored under the job, and a new Presentation-type Interview record is generated anytime a candidate is viewed under the job record. Setting the "OFCCP" status on a candidate also indicates that their record cannot be deleted for a period of two years after its use.

The candidate search can be audited (recreated) in the future through a special attachment in the Position's "More >> Attachments" area that holds the information as described in the previous paragraph. The PCRecruiter user can download this attachment for archival purposes. This attachment, the position, and the candidates all need to be kept for a period of two years.

Main Sequence Technologies, Inc. has made every effort to create this functionality to match the requirements of the new OFCCP ruling. While it is ultimately the user's responsibility to gather this information, we would like PCRecruiter to be a viable tool in assisting with this effort. We welcome our users' feedback regarding the effectiveness and functionality of this new feature, which we will use to continue to enhance this data collection process.

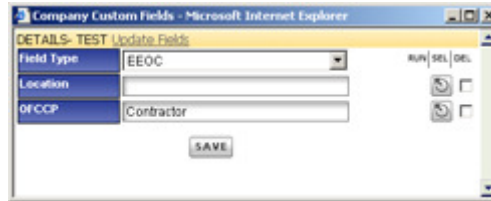
**IMPORTANT:** Use of this "OFCCP Search" feature will require your database to be re-indexed for the PCRecruiter Keyword v2 search engine with Boolean logic. This conversion will require your database(s) to be merged into a new SQL Database file, which will require technical support involvement. The time and costs involved are dependent on the size and number of databases in your PCRecruiter profile – we estimate a minimum of 2 and a maximum of 8 hours, with potential database downtime. Please contact your Main Sequence Technologies, Inc. representative for pricing details and to schedule this necessary data conversion. *The "OFCCP Search" feature will not work with Access databases or Keyword v1 SQL databases.*

The OFCCP Search feature is currently only available for INTERNAL USERS of the PCRecruiter database, and does not bear on use of the Employer Web Extensions. Details of candidate searches performed through the web extensions are not stored by PCRecruiter at this time – you may wish to disable this feature (if currently enabled) and only allow internal recruiters to search candidate records.

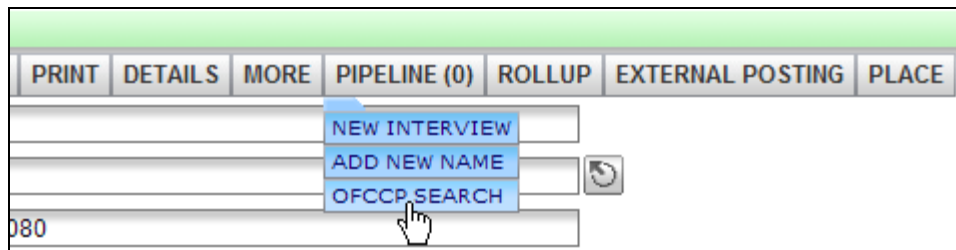
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## Performing an OFCCP Search

- 1) Start by marking the Org/Company as an OFCCP record. To do this, open the "EEO DATA" sub-section from the "DETAILS" button on the Company. Enter the word "Contractor" into the OFCCP box. Any position created under this record will be set automatically to OFCCP status as well, but you may also enable the OFCCP setting for individual positions by entering the value "Contractor" into the OFCCP field on the job's OFCCP EEO Data field.

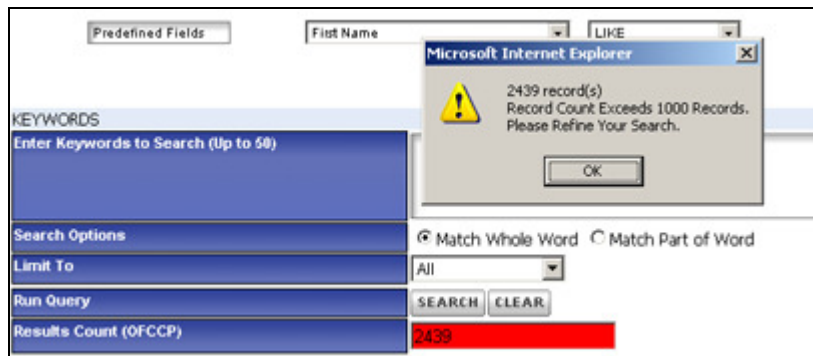


- 2) Once a position has been set for OFCCP contractor status, a new option labeled "OFCCP Search" will be available by hovering over the "PIPELINE" button in the menu. All candidate searches relating to this job should henceforth be performed directly from the position record.

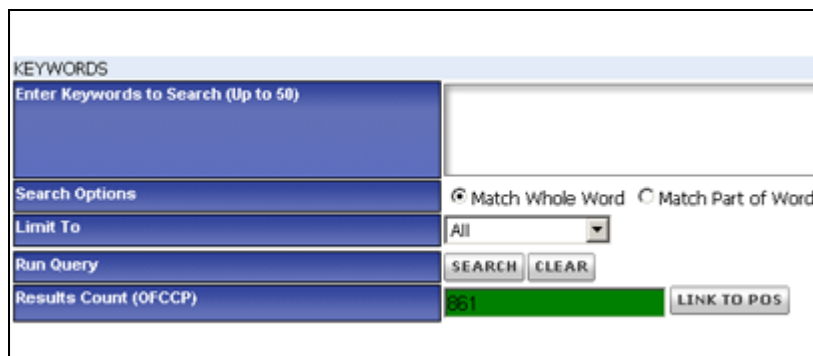


- 3) Clicking on the "OFCCP Search" link will open the Advanced Search form. Boolean logic can be applied to standard fields, and/or keyword records (for more information on PCRecruiter's Boolean searches, please refer to [www.pcrecruiter.com/docs/docs\\_boolean.htm](http://www.pcrecruiter.com/docs/docs_boolean.htm)). After setting up the search criteria, perform the search check by clicking "RUN". This will count the number of results in the search and display them in the results box. If there are 0 results, or greater than 999 results, the box will turn red and a message will request that you refine the search criteria.

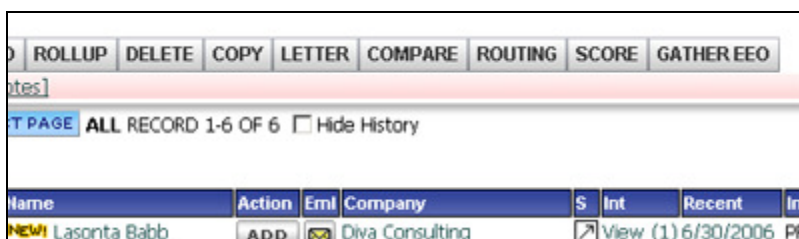
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- 4) A green box indicates that an acceptable result count has been achieved, and allows the resulting name records to be tied to the job as applicants and marked as OFCCP contractor candidates. Click the "LINK TO POS/REQ" button to confirm this step. After the applicants have been linked, their records are unlocked, and an attachment is created under the position record containing information on the search criteria used.



- 5) After the "OFCCP Search" results have been linked to the position, you will be taken to the Candidate List (PIPELINE) area. At this point, all candidates in the "Inbox" may be clicked on and reviewed, in accordance with the OFCCP guidelines. Clicking on the candidate will automatically generate a presentation interview tracking that they have been reviewed, along with the appropriate Activity records. Candidates tied to OFCCP job records, along with their interview records and resumes, cannot be deleted from the database for a period of two years – you will receive an error if you attempt to delete these records. A new "Gather EEO" button appears in the toolbar, which can be used to send an EEO Self-Identification Collection Form Letter to selected applicants.



# OFCCP Internet Applicant Recordkeeping & PCR Recruiter

## OFCCP Internet Applicant Recordkeeping Rule FAQ

### **What is the purpose of the Internet Applicant final rule?**

The Internet Applicant final rule, issued by the Office of Federal Contract Compliance Programs (OFCCP), addresses recordkeeping by Federal contractors and subcontractors about the Internet hiring process and the solicitation of race, gender, and ethnicity of "Internet Applicants." The rule is the product of a lengthy deliberative process, including public input, to develop a definition of "Internet Applicant" applicable in the Internet age (added to 41 CFR 60-1.3). The recordkeeping requirements of the rule (amending 41 CFR 60-1.12) will provide meaningful data that OFCCP will use to enhance its enforcement of the nondiscrimination laws.

### **When does this Internet Applicant rule become effective and when will Federal contractors have to begin complying with the rule's provisions?**

The final rule became effective February 6, 2006, one hundred twenty days after the date of publication in the Federal Register. A contractor's recordkeeping practices must comply with the new rule from that date. For example, as of February 6, 2006 a contractor must solicit demographic information about Internet Applicants and retain the records required by the rule for hiring decisions made on or after that date. The rule does not apply retroactively to hiring decisions made before February 6, 2006.

### **What if a contractor is having difficulty updating its systems to comply with the requirements of the Internet Applicant Rule? Will the effective date of the rule be extended?**

No, the effective date of the Internet Applicant Rule will not be extended. The Rule is effective on February 6, 2006 (see FAQ above). However, under OFCCP enforcement discretion, for a period of 90 days following February 6, 2006, OFCCP would not cite a contractor for a purely technical recordkeeping violation for failure to comply with the Internet Applicant final rule, provided that the contractor (1) demonstrates that it is taking reasonable steps to update its systems to comply with the rule, including a projected date of compliance, and (2) collects and maintains records according to the established procedures consistent with OFCCP recordkeeping requirements that preexisted the Internet Applicant final rule, i.e., 41 CFR 60-1.12.

### **Will contractors need to amend their current affirmative action programs in response to the new Internet Applicant rule?**

No. As part of their affirmative action programs (AAPs), contractors are required to analyze personnel activity data to determine whether there are selection disparities. The amendments to the recordkeeping requirements in section 60-1.12 will apply to data on hiring decisions made on or after February 6, 2006. AAPs created before February 6, 2006 will not need to be amended.

# OFCCP Internet Applicant Recordkeeping & PCRecruiter

## How does this Internet Applicant rule change existing rules?

The final rule:

- Defines "Internet Applicants," job seekers applying for work through the Internet or related electronic data technologies from whom contractors must solicit demographic information;
- Prescribes the records contractors must maintain about hiring done through use of the Internet or related electronic data technologies; and,
- Explains the records OFCCP will require contractors to produce when evaluating whether a contractor has maintained information on impact and conducted an adverse impact analysis under 41 CFR Part 60-3, the Uniform Guidelines on Employee Selection Procedures.

## What is the definition of an "Internet Applicant" in the final rule?

An Internet Applicant is defined as an individual who satisfies the following four criteria:

- The individual submits an expression of interest in employment through the Internet or related electronic data technologies;
- The contractor considers the individual for employment in a particular position;
- The individual's expression of interest indicates the individual possesses the basic qualifications for the position; and,
- The individual at no point in the contractor's selection process prior to receiving an offer of employment from the contractor, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

## What standard applies to the solicitation of demographic information if a contractor considers both electronic and traditional paper expressions of interest for the same position?

When a contractor considers expressions of interest for a position via both the Internet or related electronic data technologies and paper applications, the Internet Applicant standard applies to the solicitation of demographic information from all applicants for that position.

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### **What standard applies to the solicitation of demographic information from job applicants if a contractor does not consider electronic expressions of interest for a position?**

For those positions for which the contractor does not consider any electronic submissions, i.e., does not use the Internet or related electronic data technologies, the traditional OFCCP recordkeeping standards apply. That is, contractors must solicit demographic information from job seekers who are "applicants" under the definition of applicant contained in Question and Answer 15 of the Adoption of Questions and Answers to Clarify and Provide Common Interpretation of the Uniform Guidelines on Employee Selection Procedures:

15. Q. What is meant by the terms "applicant" and "candidate" as they are used in the Uniform Guidelines?

A. The precise definition of the term "applicant" depends upon the user's recruitment and selection 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" has been included to cover those situations where the initial step by the user involves consideration of current employees for promotion, or training, or other employment opportunities, without inviting applications. The procedure by which persons are identified as candidates is itself a selection procedure under the Guidelines.

A person who voluntarily withdraws formally or informally at any stage of the selection process is no longer an applicant or candidate for purposes of computing adverse impact. Employment standards imposed by the user which discourage disproportionately applicants of a race, sex or ethnic group may, however, require justification. Records should be kept for persons who were applicants or candidates at any stage of the process.

### **What is the definition of basic qualifications?**

The "basic qualifications" which an applicant must possess means qualifications that the contractor advertised to potential applicants or criteria which the contractor established in advance. In addition, the qualifications must be:

- Noncomparative features of a job seeker (e.g., three years' experience in a particular position, rather than a comparative requirement such as being one of the top five among the candidates in years of experience);
- Objective (e.g., a Bachelor's degree in accounting, but not a technical degree from a good school); and
- Relevant to performance of the particular position.

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## How would this work in practice?

Here is an example of how this would work: A contractor initially searches an external job database with 50,000 job seekers for 3 basic qualifications for a bi-lingual emergency room nursing supervisor job (a 4-year nursing degree, state certification as an RN, and fluency in English and Spanish). The initial screen for the first three basic qualifications narrows the pool to 10,000. The contractor then adds a fourth, pre-established, basic qualification, 3 years of emergency room nursing experience, and narrows the pool to 1,000. Finally, the contractor adds a fifth, pre-established, basic qualification, 2 years of supervisory experience, which results in a pool of 75 job seekers. Under the Internet Applicant rule, only the 75 job seekers meeting all five basic qualifications would be Internet Applicants, assuming the other three prongs of the "Internet Applicant" definition were met.

## Are employment tests considered basic qualifications?

No. Employment tests used as employee selection procedures, including on-line tests, are not considered basic qualifications under the Internet Applicant rule. Contractors are required to retain records about the gender, race, and ethnicity of individuals who take a test used to screen them for employment, regardless of whether the test takers are "Internet Applicants."

## How will OFCCP ensure that contractors do not use basic qualifications to discriminate?

Contractors will not be able to use basic qualifications in order to discriminate because:

- The rule requires a contractor to retain, for possible review, the expressions of interest it considered, even those of individuals who are not Internet Applicants, for possible OFCCP review.
- A contractor must similarly retain records of all the basic qualifications used to develop a pool of Internet Applicants.
- OFCCP will rely on Census and other labor market data to assess contractors' hiring practices for potential discrimination and will carefully review the basic qualifications.
- OFCCP's compliance evaluations will not be limited to an evaluation of those records produced by the contractor. During compliance evaluations OFCCP will continue to look broadly at all aspects of a contractor's compliance with its obligations to refrain from discrimination in recruitment, hiring, and other employment practices, including the possible adverse impact of screens for basic qualifications.

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### **What is the definition of "considers the individual for employment in a particular position," for purposes of the definition of "Internet Applicant"?**

The definition of "considers the individual for employment in a particular position" for purposes of paragraph 60-1.3 (1)(ii) of this definition means that the contractor assesses the substantive information provided in the expression of interest with respect to any qualifications involved with a particular position.

A contractor may establish a protocol under which it refrains from considering expressions of interest that are not submitted in accordance with standard procedures the contractor establishes.

Likewise, a contractor may establish a protocol under which it refrains from considering expressions of interest, such as unsolicited resumes, that are not submitted with respect to a particular position. If there are a large number of expressions of interest, the contractor does not "consider the individual for employment in a particular position" by using data management techniques that do not depend on assessment of qualifications, such as random sampling or absolute numerical limits, to reduce the number of expressions of interest to be considered, provided that the sample is appropriate in terms of the pool of those submitting expressions of interest.

### **How can a contractor determine that an individual has indicated that he or she is no longer interested in the position?**

The Internet Applicant rule explains that a contractor may conclude that an individual has removed himself or herself from the selection process or has otherwise indicated lack of interest in the position based on the individual's express statement or on the individual's passive demonstration of disinterest. For example, passive disinterest may be shown by:

- Declining a contractor's invitation for a job interview;
- Declining a job offer; or
- Repeatedly failing to respond to a contractor's telephone inquiries or emails asking about his or her interest in a job.

A contractor may also presume a lack of continuing interest based on a review of the job seeker's expression of interest. For example, statements pertaining to (1) the individual's interest in the specific position or type of position at issue, (2) the location of work, or (3) his or her salary requirements, may provide the basis for determining the individual is no longer interested in the position, provided that the contractor has a uniformly and consistently applied policy or procedure of not considering similarly situated job seekers.

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### **What does the term "Internet or related electronic data technologies" refer to?**

While OFCCP will not provide a precise definition of the term "Internet or related electronic data technologies" in recognition of rapid changes in technology in this area, OFCCP does intend this term to include the types of technologies referenced in the preamble to the proposed UGESP Additional Questions and Answers. Those six types of Internet-related technologies and applications that are widely used in recruitment and selection today include:

- Electronic mail/email
- Resume databases
- Job banks
- Electronic scanning technology
- Applicant tracking systems/Applicant service providers
- Applicant screeners

### **Is a contractor required to consider for employment every job seeker who expresses an interest in employment through the Internet and possesses the basic qualifications for a particular position?**

No. OFCCP does not provide a blanket requirement that contractors must consider any and all expressions of interest they receive, regardless of the manner or nature of the expression of interest - even if the job seeker possesses the basic qualifications. If the contractor has established standard procedures that job seekers must follow in order to express an interest in employment, the contractor does not have to consider those individuals who do not follow those procedures. Similarly, the contractor does not have to consider for employment individuals who do not specify a particular position, so long as that is the contractor's consistent practice. Additionally, if there are a large number of expressions of interest, the contractor may limit the number of individuals it considers by using random sampling, absolute numerical ceilings, or other data management techniques, provided the sampling procedure is appropriate.

### **Must a contractor maintain expressions of interest in employment made through the Internet that do not meet the other three criteria contained in the definition of "Internet Applicant?"**

No. Under section 60-1.12(a), contractors avoid this burden even if there are large numbers of expressions of interest, because contractors are not required to retain records regarding individuals who were never considered for a particular position. The rule generally requires a contractor to retain all the expressions of interest it considered, even those of individuals who are not Internet Applicants. However, when a contractor searches an external database, it is required to maintain only copies of resumes of those job seekers who met the basic qualifications for the position and who are considered by the contractor. Further, a contractor must retain records of all the basic qualifications used to develop a pool of Internet Applicants.

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### **What records must be maintained from internal and external resume databases?**

The Internet Applicant rule requires contractors to maintain any and all expressions of interest through the Internet or related electronic data technologies as to which the contractor considered the individual for a particular position, except for searches of external resume data bases discussed below. Contractors also are to maintain records identifying job seekers contacted regarding their interest in a particular position. In addition, for internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added to the database, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search. Also, for external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of any job seekers who met the basic qualifications for the particular position who are considered by the contractor. These records must be maintained regardless of whether the individual qualifies as an "Internet Applicant" under 60-1.3.

### **Is there a new requirement under the Internet Applicant rule that the contractor must be able to identify, where possible, the gender, race, and ethnicity of each Internet Applicant?**

The obligation to solicit demographic information from job applicants is not new. The Internet Applicant rule adds that a contractor is required to solicit and collect such data from each applicant or Internet Applicant, whichever is applicable to the particular position. Voluntary self-reporting or self-identification is still generally the preferred method for collecting data on race, ethnicity, and gender, but in situations where self-reporting is not practicable or feasible, observer information may be used to identify race, ethnicity, and gender.

### **When should contractors collect race, ethnicity, and gender data?**

Under the Internet Applicant rule, contractors are required to solicit race, ethnicity, and gender data from all individuals who meet the definition of "Internet Applicant" or the traditional definition of "applicant" depending upon which standard is applicable to the particular position. OFCCP does not mandate a specific time or point in the selection process that contractors must solicit this information, so long as the information is solicited from all Internet Applicants or traditional applicants, as appropriate.

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### **What do the Uniform Guidelines on Employee Selection Procedures (UGESP) have to do with the Internet Applicant final rule?**

Nondiscrimination laws require employers to solicit race, gender, and ethnicity data from "applicants" under the Uniform Guidelines on Employee Selection Procedures (UGESP). UGESP Q&As assist employers in implementing UGESP. On March 4, 2004, the four UGESP agencies (the Equal Employment Opportunities Commission, the Department of Labor, the Department of Justice, and the Office of Personnel Management) published a proposed supplemental Q&A document in the Federal Register seeking comments under the Paperwork Reduction Act (69 FR 10152). That document has not been finalized and is still under consideration. In the coming months, the UGESP signatory agencies will continue to coordinate interagency discussions concerning the Q&As. In the Preamble to the March 4, 2004 document, the UGESP agencies expressly contemplated that "each agency may provide further information, as appropriate, through the issuance of additional guidance or regulations that will allow each agency to carry out its specific enforcement responsibilities." (69 FR 10153).

### **Does the Internet Applicant final rule change the text of the UGESP or Executive Order 11246, as amended?**

No. The Internet Applicant final rule does not change either the UGESP or the Executive Order 11246, as amended. Contractors have an obligation to refrain from unlawful employment practices regardless of how the term "Internet Applicant" is defined. The final rule only clarifies OFCCP's regulations and procedures implementing recordkeeping under Executive Order 11246, as amended.

### **What are OFCCP's procedures for evaluating Internet Applicant recordkeeping under the final rule (section 60-1.12) and UGESP?**

To make clear OFCCP's procedures regarding "Internet Applicant" recordkeeping under both rules, OFCCP has added a new regulatory provision, section 60-1.12(d). This provision explains that when evaluating whether a contractor has maintained information on impact and conducted an adverse impact analysis under UGESP (41 CFR Part 60-3) with respect to Internet hiring procedures, OFCCP will require only those records relating to the analyses of the impact of employee selection procedures on "Internet Applicants" as defined in the Internet Applicant final rule (and the impact of employment tests).

### **Where can I read or download a copy of the Internet Applicant final rule?**

A Copy of this Final Rule is available on the Internet at <http://www.dol.gov/esa/regs/fedreg/final/2005020176.htm> or in PDF format at <http://www.dol.gov/esa/regs/fedreg/final/2005020176.pdf>. Copies in alternative formats may be obtained by calling OFCCP at (202) 693-0102 (voice) or (202) 693-1337 (TDD/TTY). The alternate formats available are large print, electronic file on computer disk, and audiotape.