

# Technical Affairs

by Mike Aamodt, Associate Editor

This month's technical affairs column contains an article by Dave Cohen discussing the definition of a job applicant. If your organization doesn't have formal criteria for what constitutes an applicant, or if you use the terms "applicant" and "candidate" interchangeably, the article is a must read. Dave is the resource person I have found to be the most knowledgeable about pay equity and dealing with the OFCCP. Following Dave's article is another piece of HR humor.

Several readers have contacted me regarding the status of *Applied HRM Research* and the short statistics book that were mentioned in the *ACN* about a year ago. *Applied HRM Research* is an on-line journal sponsored by IPMAAC and Radford University. We are behind in getting out the first issue, but we anticipate it being ready in September. You will be able to access the journal through the IPMAAC web page ([www.ipmaac.org](http://www.ipmaac.org)) or by going directly to the journal ([www.radford.edu/~applyhrm](http://www.radford.edu/~applyhrm)). Please visit the journal's web site and consider submitting an article or a brief validity study. If you are interested in reviewing articles for the journal, please let me know at [maamodt@radford.edu](mailto:maamodt@radford.edu).

The statistics book is also behind schedule, but we are getting close to completion. For those of you who volunteered to review drafts of the text, I hope to have those to you in September. Hopefully we will be able to give you ordering information in the October or December issue of the *ACN*.

## Who is Considered to be an Applicant When Conducting Adverse Impact Analyses?

by David B. Cohen, DCI Consulting Group

To conduct an adverse impact analysis, one needs the demographic information (race/ethnicity and gender) for each "applicant" who applies to the organization. A question asked by many organizations is "At what point does somebody become an applicant; and how do we collect the demographic data from him or her to conduct the adverse impact analysis?" This question has caused tremendous controversy between employers and federal civil rights agencies.

The federal government currently defines an applicant as any person who expresses an interest in an employment position, regardless of his/her qualifications. Because employers are required to solicit the race and sex of each individual deemed an applicant, they are being faced with impossible and unrealistic demands. With the inception of the internet and use of increasingly resourceful recruitment practices, an employer might receive expressions of interest from a multitude of sources. For example, an employer might get job seekers from Internet recruitment sites, a company web-site, email, faxes, snail mail, walk-ins, employee referrals, career fairs, university career centers, employment agencies, executive recruiters, and temporary placement firms. Because any given job opening could result in thousands of individuals who meet the federal government's definition of an applicant, the challenge is to develop policies and procedures that are both practical from an implementation standpoint as well as acceptable to government standards. Before meet-

ing such a challenge, it is important to understand why the demographic information of all applicants is of such importance to the Federal Government.

The Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is the federal agency that is at the forefront of this applicant issue. The OFCCP enforces federal contractor compliance under Executive Orders 11246 & 11375 that require federal contractors and subcontractors with 50 or more employees and a federal contract of \$50,000 or more to develop a written affirmative action compliance program for each of its establishments. These affirmative action plans and required data must be updated at least annually and findings of non-compliance or discrimination may result in federal contract debarment as well as hefty back-pay settlements.

As part of the affirmative action requirements, contractors must perform in-depth analyses of their total employment process to determine whether and where impediments to equal employment opportunity may exist (41CFR 60-2.17). At a minimum, the contractor must evaluate personnel activity (applicant flow) to determine whether it results in disparities in employment or advancement of minorities or women. Typically, adverse impact analyses are utilized to investigate these practices (the technical affairs column in the June, 1996 *ACN* contains a good discussion on computing adverse impact. You can access this article through the IPMAAC web — [www.ipmaac.org](http://www.ipmaac.org)).

Because there are no specific laws or regulations that detail the applicant process or identify how and when self-identification should occur, the OFCCP has historically referred to the *Uniform Guidelines on Employee Selection Procedures* — Question and Answer #15. The OFCCP and EEOC (Equal Employment Opportunity Commission) jointly published the *Uniform Guidelines on Employee Selection Procedures* on March 2, 1979. Although these procedures are not law, they are used as a reference by the courts and civil rights enforcement agencies when a case involves either selection or testing. Soon after these guidelines were published, the Office of Personnel Management and the United States Department of Justice published the *Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures* that specifically addressed the question of “Who is an Applicant.” The response in Question and Answer #15 is as follows:

**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.

Interestingly enough, the OFCCP has focused primarily on the second sentence while choosing to ignore the first.

The response continues:

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

Over time, the OFCCP began to realize that the definition of an applicant used by most organizations was limited to those individuals who had been selected for

an employment interview. Typically, when the individual shows up for the interview, he/she is given an employment application to fill out with a voluntary self-identification form. This self-identification form often indicates that the company is a federal contractor and is required to solicit the race/ethnicity and gender information of its applicants. This conservative applicant definition generated a very small applicant pool with a low ratio of applicants-to-hires. OFCCP routinely challenged contractors on this definition because it did not include all of the individuals who were screened out prior to the interview stage.

In November of 1999, the OFCCP made an example of the Boeing Corporation, the largest federal contractor in the United States. Boeing, much like other companies, had been collecting the race/ethnicity data from only those applicants who were interviewed. In an attempt to modify this applicant procedure, the OFCCP required Boeing to enter into a four-year conciliation agreement in which they would adopt a definition of an applicant that was more in line with what the OFCCP had interpreted from the Questions and Answers section of the Uniform Guidelines. After a long heated battle, Boeing agreed to define an applicant as anybody who expresses an interest in an open position with the company. Specifically, the conciliation agreement spells out the applicant process as follows:

**Part V: General Prospective System Changes**

(2-(a)) Boeing agrees to maintain and have available for inspection all records, including written or electronic resumes, for each individual who expresses an interest in employment at Boeing. These records shall include any submissions by incumbent employees responding to the posting of a vacant position by Boeing. Boeing will consider these individuals as “Boeing Applicants” for purposes of studying the possible adverse impact of its selection criteria.

(2-(e)) Boeing agrees to make a good faith effort to track the race or ethnic group and gender of all individuals who express an interest in employment with the company. Boeing agrees that it will implement a procedure to seek such identification at the time an individual first expresses (emphasis added) an interest in employment at Boeing. The Self-Identification Procedure may employ an electronic or paper “tear-off” form, post-card survey, or other comparable method of soliciting race or ethnic group and gender identification.

In addition, Boeing agreed to develop and install an extensive electronic system to maintain the race/ethnicity and sex of each individual that expresses an interest in an open position. Prior to the Boeing conciliation agreement, the OFCCP attempted to revise the Executive Order regulations to include a definition of an applicant that fit more closely to the one imposed on Boeing. For the

OFCCP to make such changes to its regulations, approval is required from the Office of Management and Budget (OMB). The OMB reviews the request in accordance with the Paperwork Reduction Act and determines the amount of time and money this new requirement would impose on employers.

The OMB has repeatedly refused to endorse any interpretation of the Uniform Guidelines that would require contractors to solicit the gender, race/ethnicity of all job seekers. For example, in October 1999, the OFCCP formally proposed to explicitly require contractors to consider all job seekers as applicants when completing the new EO Survey. However, on July 31, 2000, the OMB formally rejected that interpretation of applicant and directed EEOC to study that issue and submit a proposal in that regard by December 2001. On January 5, 2001, OMB notified OFCCP in writing that "the issues of the definition of applicant and employer obligation to solicit race and gender information on applicants is still being discussed by OMB, DOL and EEOC" and thus refused to accept the OFCCP's efforts to expand the definition of an applicant.

Until the EEOC proposes, and OMB officially endorses, a definition of an applicant for purposes of requiring contractors to solicit gender/race/ethnicity of job seekers, OFCCP cannot reasonably require employers to make significant and costly changes in its applicant tracking procedures. Finally, the OFCCP made major revisions to its current regulations, which became effective on December 13, 2000. Within these new regulations the OFCCP codified a loose reference to the issue of an applicant. The new regulation states the following:

#### **(41 CFR - 60-1.12) Record Retention**

For any record the contractor maintains pursuant to this section, the contractor must identify: where possible (emphases added), the gender, race, and ethnicity of each applicant.

The term applicant has not been officially defined within the new regulations. In addition, the term "where possible" was a placeholder into the regulations until a final ruling by the Office of Management and Budget (OMB) was set. Therefore, we are still in a state of flux until a ruling on the applicant process is finalized.

### **A Proposed Definition of an Applicant**

As part of my consulting practice, I help employers develop applicant policies and procedures that not only comply with federal laws and regulations, but that are practical as well. Following is a "Definition of an Applicant" as well as policies and procedures that have been successfully implemented and that have been acceptable in OFCCP compliance reviews.

Definition of an Applicant: A job seeker is deemed an applicant and is solicited demographic data from when he/she:

- Expresses an interest,
- In an open position, and
- Meets the minimum qualifications for that position.

Those individuals who are not considered applicants and thus can be removed from the adverse impact analysis includes job seekers who:

- remove themselves from consideration (finds another job, withdraws application, finds pay too low, does not like the kind of work, etc.) is no longer an applicant for purposes of conducting adverse impact analyses. (Q&A #15 from the Uniform Guidelines)
- fail to complete all of the employer's application requirements, such as completing an application, appearing for interview, etc.
- apply after the active consideration period has expired
- specifically apply for a particular job (responds to specific openings, or states kind of position they want on the application or resume) other than the job in question
- express an interest in a position for which the organization has no current opening (unsolicited resumes)

### **Applicant Procedure**

Following is an applicant procedure developed for one organization.

#### **Step 1: Notify Human Resources Department**

The Human Resources Department is notified that a position has become available in the Company.

#### **Step 2: Complete Requisition Form**

The human resources department/department manager fills out a requisition form that lists the knowledge, skills, abilities, educational requirements and other specific background required to perform the job as well as a brief overview of the position.

#### **Step 3: Internal/External Job Posting**

The organization posts the job internally so that internal candidates may formally apply for the open requisition. A job posting form is utilized which lists the required knowledge, skills, and abilities needed to perform the job. The job posting forms are put on internal bulletin boards, which are strategically placed within the facility. All internal job seekers that are interested in being considered for the position must complete an inter-

nal job bid within 7 days of the posting. If the position cannot be filled internally, the organization will search externally for a viable candidate. Alternatively, an external search may be initiated during the internal posting period.

#### Step 4: Posting with State Job Service

Once an external search is initiated, a job posting listing the required knowledge, skills, and abilities needed to perform the job is then sent to the state job-service, which then lists a brief job description and the skills required to fill the position. The HR department may enter individual job openings on America's Job Bank directly over the Internet. Information entered in this way will be sent directly to the appropriate State Job Service local office. America's Job Bank and instructions on entering job openings is located at the following web address: <http://www.ajb.org>. All jobs are posted with the exception of positions lasting three days or less, certain executive and top management positions, and those expected to be filled from within the organization.

#### Step 5: Recruitment Sources

The organization then utilizes its external recruiting sources to advertise for the open position. This may include, but is not limited to, the local paper, the Internet, career fairs, and targeted recruitment resources. All external advertisements require applicants to reference the requisition code for the open position. In addition, applicants are notified that they must apply for the position by a specified date. All expressions of interest after the specified date will not be considered for employment.

#### Step 6: Self Identification

All applicants that send in a resume that reference a specific requisition number and are deemed minimally qualified are then sent, via mail or email, a self-identification card. In order for an applicant to be deemed minimally qualified, he/she must possess the required knowledge; skills, and abilities needed to perform the job. These requirements will be listed on a detailed job posting form. Self-identification cards that are completed and returned to the HR department will be logged into an applicant tracking spreadsheet. In addition, all job seekers that fill out an application as a walk in will be given an application form that has a self-identification form enclosed.

If you have any comments or questions about this article, you can contact Dave at: DCI Consulting Group Inc., 1405 Rhode Island Ave NW, Washington, DC 20002; Phone: 202-265-2753; Email: [david.cohen@dciconsult.com](mailto:david.cohen@dciconsult.com); Website: [dciconsult.com](http://dciconsult.com)

## HR Humor

### Downsizing at the North Pole

Donner and Blitzen have decided to take advantage of Santa's early retirement program. They will not be replaced due to the enhanced performance by Dasher and Dancer, as well as the opportunity to reduce airborne environmental emission for which the North Pole has been receiving unfavorable press.

The retirement of Donner and Blitzen comes at a particularly good time as the North Pole has been losing market share in the gift distribution business. The home shopping channels along with enhanced efforts by many in catalogue sales have resulted in increased competition and an erosion of the North Pole profit picture.

Therefore, in addition to the departure of Donner and Blitzen, the following changes to the Twelve Days of Christmas Subsidiary will be effective immediately:

- One of the two turtle doves must go. The redundancy is not cost effective and we cannot encourage office romances.
- To increase diversity, we will recruit a bird from an Asian country to replace one of the three French hens.
- The four calling birds will be replaced by an automated voice mail system, with a call waiting option. We are currently analyzing who the birds have been calling, how often they have been calling, and how long they have stayed on the phone. Further efficiencies are anticipated.
- The five golden rings are likely to change since holding one commodity in today's fluctuating market is a bad idea.
- The ten geese-a-laying will be asked to contribute more to their own medical plan as maternity expenses and FMLA costs have skyrocketed.
- Eleven pipers piping and twelve drummers drumming is a simple case of the band getting too big. They will be replaced by a string trio.

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*Mike Aamodt, a Professor of Psychology at Radford University serves as our Associate Editor for the Technical Affairs column and as our unofficial humor editor. If you have a technical question you want answered/discussed, wish to comment on this month's article, or want to share a humor item please contact Mike. He may be reached by email ([maamodt@runet.edu](mailto:maamodt@runet.edu)), phone 540-831-5513 or fax 540-831-6113.—ACN*