



# OFCCP Compliance

*Understanding the OFCCP's new ruling on Internet Applicants*

## OFCCP Ruling at a Glance

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." As of February 6, 2006, contractors must keep records in compliance with these new OFCCP regulations.

## What is the OFCCP's new definition of an Internet Applicant?

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.

## Understanding the Regulations

### **1. The individual submits an expression of interest in employment through the Internet or related electronic data technologies.**

An individual is considered an Internet Applicant when he or she makes an expression of employment interest via the Internet or related electronic data technologies. Such expressions of interest may include a resume, cover letter, application, etc. Electronic data technologies include email, external resume databases (Monster, CareerBuilder, etc.), internal databases (an Applicant Tracking Solution), and job banks. The regulations' definition of an Internet Applicant applies only to those positions for which the contractor uses the Internet or related electronic technologies. If a contractor does not accept electronic submissions for a particular position, the traditional OFCCP recordkeeping regulations apply for that position.

### **2. The contractor considers the individual for employment in a particular position.**

Consideration occurs when the employer assesses the substantive information provided in the expression of interest. Unlike under the traditional definition of applicant, expressions of interest under the Internet or related electronic definition need **not** make the individual an applicant if the individual does not comply with pre-established policies set forth by the contractor. For example, if a contractor's protocol states that the organization will not consider unsolicited resumes or applications that are not position-specific, individuals not following these protocols would not be considered applicants. Note: Contractors must follow their recruitment and hiring policies and protocols consistently or risk losing the protocol as a method of determining who is an applicant. Additionally, contractors may use data management techniques to limit the number of considered candidates, as long as these practices do not depend on an assessment of qualification. Such techniques may include posting application cutoff dates or setting a specific limit to the number of applications the employer will accept.

### **3. The expression of interest indicates the individual meets the basic qualifications of the position.**

Basic qualifications are pre-determined candidate requirements advertised by the contractor via employment postings. Such qualifications must be *non-comparative* (for example, X years experience in a particular role, as opposed to being ranked in the top X% of the job applicants); *objective* (for example, a Bachelor's degree in a specific field, not a degree from a "top" school); and *relevant* (i.e.: skills applicable to the job to which the candidate is applying).

Contractors may screen for these basic qualifications through an online application off of their corporate website or a third-party job board as long as the screening process is uniform and consistent for all applications.

#### 4. No indication was received that the individual is no longer interested in the position.

An individual is no longer in consideration if he or she withdraws from the application process. Withdrawal may be conveyed through both active and passive measures, including:

- Declining an invitation for a job interview
- Declining a job offer
- Repeatedly failing to respond to a contractor's inquiries regarding the applicant's interest in a job

Contractors may also remove a candidate from consideration as a result of the individual's expression of interest. For example, if the individual's salary or relocation requirements do not match the specific position, the contractor may determine the individual is no longer interested in that particular position. The process of establishing this interest must be applied consistently to all job seekers.

#### **Recordkeeping Requirements:**

Under the new OFCCP regulations, contractors must maintain specific records for Internet Applicants. Such requirements include:

- Maintain any and all expressions of interest through the Internet or related electronic data technologies *if* the contractor considered the individual for a particular position.
- Maintain records identifying job seekers contacted regarding their interest in a particular position.
- *For internal resume databases* (Applicant Tracking Solutions, etc.): maintain records of each resume added, the date the resume was added, the position for which each search of the database was made, what criteria was used to search the resumes within the internal database, and when such criteria was used to search the resumes.
- *For external resume databases* (Monster, CareerBuilder, etc.): maintain a record of the position for which each search of the database was made, the search criteria used, the date of the search, as well as each resume returned from that search. Only the resumes of job seekers who meet the position's basic qualifications must be saved.

The length of time contractors are required to keep records is dependent upon the size of company and the contract it holds. Companies with fewer than 150 employees or a contract of at least \$150,000 must maintain records for one year. Companies with 150+ employees and a contract of \$150,000 must maintain records for a minimum of two years, beginning when the record was created or from the most recent personnel action associated with that record, whichever is later. Record retention for selected applicants begins when the applicant was selected rather than at the time of application. Multiple candidate considerations begin at the most recent consideration.

#### **Collection and storage of race, ethnicity, and gender data:**

The OFCCP does not specify when such data must be collected. The only requirement regarding this data is that the information solicited is consistent among all Internet Applicants. Contractors may include such solicitations in the employment application process, as long as such solicitations are clearly marked voluntary and those applicants who do not wish to submit such information may still apply. EEO information must be stored separately from the resume information reviewed during the evaluation process.

#### **How iCIMS Can Help:**

The standard functionality and inherent flexibility within iCIMS' solutions make it very easy for corporations to adapt their processes to meet these new compliance regulations. iCIMS' iRecruiter™ Applicant Tracking Solution can help your organization collect, search, store, and report upon EEO information while remaining in compliance with the new OFCCP regulations. To learn more about how iCIMS can help you achieve OFCCP compliance, call an iCIMS representative today at (800) 889 – 4422 or take a look at an online virtual tour of iRecruiter at: <http://www.icims.com/demo/>.