

## **OFCCP PROVIDES SIGNIFICANT GUIDANCE REGARDING “INTERNET APPLICANT” QUESTIONS**

### **New FAQs Published on OFCCP’s Website Address Database Searches, Job Fairs, and Recruiting Agencies**

**November 1, 2006**

On Friday, October 27, 2006, OFCCP published an additional series of FAQs that answer several questions contractors frequently ask about Internet Applicant requirements. The new FAQs can be obtained by [clicking here](#). The following is a summary of the new FAQs:

#### **Basic Qualifications**

Basic qualifications do not need to be included in job descriptions. However, basic qualifications do need to be advertised to potential applicants or, if the contractor does not advertise for the position, need to be established in advance by making and maintaining a record of such qualifications prior to considering candidates for the position.

#### **External Resume Database Searches and “Considered for Employment in a Particular Position”**

Under OFCCP’s new guidance, a contractor “considers” all of the job seekers with a resume in an external resume database by running a search that ranks the candidates based on their qualifications. This guidance implicitly sanctions the use of search engines that rank candidates by the relevancy of the information on their resumes. However, a search engine that ranks a candidate’s qualifications vis-à-vis other candidates would constitute consideration of all the candidates.

OFCCP’s distinction between ranking of relevance and ranking of qualifications among candidates may be difficult to apply because it requires an understanding of complex search engine technology. Nor is it clear under the guidance whether a ranking of relevancy that has the effect of ranking of qualifications would be permissible. For example, in a search for a B.S. in chemical engineering, the relevance ranking may rank job seekers with M.S. or Ph.D. degrees higher than those with B.S. degrees because their resumes contain multiple references to “chemical engineering,” implying a higher likelihood that the resume matches the search criteria.

OFCCP also explained that a contractor does not consider job seekers simply by searching a resume database to determine which job seekers would be interested in a position. This may help contractors reduce recordkeeping burdens imposed by the obligation to retain all resumes from external database

searches of those meeting the basic qualifications who are considered for a position. Under this new guidance, contractors can run searches to identify a pool of candidates with compatible preferences regarding the location of the position, the type or nature of the work involved, and/or salary requirements. After identifying this pool of candidates, the contractor can run a search to identify those job seekers who meet the basic qualifications of the position. However, the contractor can only reduce the number of resumes it must retain by running the determination of interest search before the basic qualifications search.

### **Determining Interest in the Position**

New guidance provides that a contractor need make only two attempts to contact a job seeker before concluding that the job seeker is not interested in the position.

### **Record Retention and Database Searches**

Under other new guidance, contractors have no obligation to retain records of searches that failed to produce job seekers meeting the basic qualifications of the position. Contractors are now permitted to search an external resume database to identify job seekers who may be interested in a position without thereby considering those job seekers. The contractor can send those identified job seekers an email inviting them to apply for the position on the contractor's website. The contractor must retain a copy of the emails sent to the job seekers inviting them to apply on its website, but it does not have to retain the resume of any job seekers that did not apply on its website. We have confirmed that this same approach can be used for a basic qualifications search. In such a case, the contractor must retain only the resumes of the job seekers who apply on the contractor's website, in addition to the emails sent to the job seekers inviting them to apply to the website.

### **Use of Recruiting Agencies**

One of the most frequent questions contractors ask pertains to the use of recruiting agencies. If the contractor uses a recruiter to conduct recruiting and screening activities for a particular position, the contractor must require the recruiter to obtain the same data and keep the same records as if the contractor had conducted the recruiting and screening activities itself. Recruiters must make the data available to the contractor, and any failure to obtain or retain required data or records by the recruiter will result in a finding of noncompliance against the contractor.

### **Job Fairs**

A contractor need not retain resumes obtained from job seekers during a job fair if the contractor has a uniform and consistent practice of not considering such resumes and if the contractor directs all job seekers to apply to the contractor's website to be considered for employment. The contractor's representative does not engage in considering a job seeker simply by discussing generally the types of positions for which the contractor is seeking candidates.

If you have any questions regarding Internet Applicant obligations under OFCCP's new guidance or any other OFCCP compliance question, please feel free to contact either of the following Morgan Lewis lawyers:

**Washington, D.C.**

Robert J. Smith

William E. Doyle, Jr.

202.739.5065

202.739.5208

[rsmith@morganlewis.com](mailto:rsmith@morganlewis.com)

[wdoyle@morganlewis.com](mailto:wdoyle@morganlewis.com)

**About Morgan, Lewis & Bockius LLP**

Morgan Lewis is a global law firm with more than 1,300 lawyers in 21 offices located in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Irvine, London, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, and Washington, D.C. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as imparting legal advice on any specific matter.

**© 2006 Morgan, Lewis & Bockius LLP. All Rights Reserved.**

