

## **LIST OF NEW OFCCP FAQs REGARDING INTERNET APPLICANT REQUIREMENTS**

### **Do contractors need to rewrite all their job descriptions to reference basic qualifications?**

No. Basic qualifications for a position could be, but are not required to be, stated in a job description. Under the Internet Applicant rule, basic qualifications 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.

### **A contractor uses software to search a large resume database for job seekers who are the "best fit" for the qualifications required for a particular position. The software uses a "hit" feature that identifies and ranks candidates who best match the job qualification search criteria. Is the software a data management technique such that resumes reviewed by the software have not been considered for a particular position?**

No. A job seeker is "considered" for employment in a particular position if the contractor assesses the substantive information provided in the resume with respect to any qualification involved with the particular position. The software reviews job seekers' qualifications and ranks job seekers based not merely on whether they possess the basic qualifications but on an assessment of the extent to which they possess those qualifications vis-à-vis other candidates. Consequently, the resumes of job seekers reviewed by the software have been considered for a particular position under the Internet Applicant rule. Section 60-1.3(3) of the Internet Applicant rule explains that only data techniques that do not depend on an assessment of qualifications, such as random selection, are treated as data management techniques rather than consideration under the Internet Applicant rule.

### **If a contractor believes that a search of a large external resume database will identify a large number of resumes meeting the basic qualifications for a position, how may the contractor reduce the number of resumes it will be required to retain as a result of the search?**

The Internet Applicant rule provides contractors with the flexibility to design search procedures that may significantly reduce the number of resumes they will need to retain from a search of a large external resume database. First, a contractor may implement data management techniques that do not depend on assessment of qualifications, such as random sampling, to reduce to a manageable number the resumes to be considered and, in turn, to be retained. Second, a contractor may establish a search protocol under which it initially searches the database for resumes indicating an interest in the position (e.g., type of position, location, or salary sought by the job seeker). OFCCP does not view use of information contained in a resume to gauge a job seeker's interest in a particular position to be "consideration" of a resume (that is, an assessment of the substantive information provided in the resume with respect to any qualification involved with the particular position) provided that the contractor has uniformly and consistently applied the same procedure to all similarly situated job seekers. The contractor could then "consider" the subset of job seekers indicating an interest in the position to identify those meeting the basic qualifications for the position. Under the Internet Applicant rule the contractor would need to retain only those resumes considered that meet the basic qualifications for the position. Either method would have the effect of reducing the number of resumes to be retained by initially reducing the number of resumes considered.

For example, assume a contractor is looking for someone with a Bachelor's degree in engineering to work as an engineer in Cleveland, Ohio for \$60,000 per year. The contractor would like to search ManyResumes.com for candidates. Also assume that a nationwide search of ManyResumes.com would produce 5000 resumes of job seekers with a B.S. in engineering, 200

job seekers interested in working as an engineer in Cleveland for \$60,000 a year, and 100 job seekers who both possess a B.S. in engineering and want to work as an engineer in Cleveland for \$60,000 per year. If the contractor's initial search of ManyResumes.com is for anyone meeting the basic qualification of a B.S. in engineering, the search will produce 5000 resumes, all of which would need to be retained under 41 C.F.R. 60-1.12(a). On the other hand, if the contractor initially searches ManyResumes.com for job seekers interested in working as an engineer in Cleveland for \$60,000, the search will produce 200 resumes. If the contractor searches the pool of 200 resumes for the basic qualification of a B.S. in engineering, the search will produce 100 resumes that must be retained.

**Section 60-1.3(5) of the Internet Applicant rule states that one way a contractor can conclude that a job seeker is not interested in a position is the individual's passive demonstration of disinterest shown through repeated non-responsiveness to inquiries from the contractor about interest in the position. How many times must a contractor attempt to contact an individual to conclude that he or she has shown disinterest through "repeated non-responsiveness to inquiries"?**

A contractor may conclude that an individual has shown disinterest after two or more non-responses to inquiries by the contractor. A contractor may also determine that a job seeker has withdrawn from further consideration for the position based on information the individual provided in the expression of interest, such as salary requirements or preferences as to type of work or location of work.

**Do contractors need to retain records of searches that do not produce any candidates with basic qualifications?**

No. Contractors need to maintain only those search criteria that produce job seekers to be considered further in the selection process, and they do not need to maintain records of futile search criteria.

**Some contractors search large, external resume databases that for a fee will maintain, on behalf of the contractor, copies of resumes identified by the contractor as meeting the basic qualifications for a particular position. Is it possible for contractors to comply with Internet Applicant recordkeeping without having resumes maintained on their behalf by the external resume database?**

Contractors have several options for retaining copies of resumes identified through large external databases, without having the database company maintain copies of resumes on their behalf. For example, the contractor could: (1) use data management techniques to substantially reduce the pool of resumes meeting basic qualifications that are considered, and download the manageable number of resumes into the contractor's internal resume database; (2) review resumes in the database to identify those meeting basic qualifications for a position and download those resumes into the contractor's internal resume database; or (3) review resumes in the database to identify those indicating an interest in the particular position the contractor is seeking to fill and invite those job seekers to submit their own resume directly to the contractor's internal resume database if the individual is interested in applying for the position. The contractor will need to maintain a record of all job seekers invited to apply for a position.

**If a covered employer contracts with an employment agency to screen and refer job seekers using the employer's selection procedures, what records must be maintained?**

The contractor's recordkeeping obligations are the same whether it screens job seekers itself or whether it contracts with an employment agency to screen job seekers on its behalf with the employer's selection procedures. If an employer contracts with an employment agency to screen

job seekers on its behalf, it would be prudent to address expressly in its contract with the employment agency the records the agency will be expected to maintain regarding searches made on the employer's behalf. The Executive Order recordkeeping obligation belongs to the Federal contractor, not the retained employment agency, and it is the contractor's responsibility to ensure that the agency keeps for it whatever records the contractor will be expected to have.

### **Can a contractor ask a recruiting firm to keep, on its behalf, the records required by the Internet Applicant Final Rule?**

OFCCP's recordkeeping rules, including the new Internet Applicant Final Rule, require Federal contractors and subcontractors to keep and maintain records regarding their selection process, including information about applicants and hires. The use of a recruiting firm in the hiring process does not relieve a contractor of its recordkeeping obligations under 41 CFR 60-1.12; the contractor will be held accountable if the specified records are not maintained.

A contractor may ask that a recruiting firm keep records on its behalf so that the contractor can use the records to monitor its personnel practices and demonstrate compliance to OFCCP. Keep in mind, however, that under the Internet Applicant Final Rule, the recordkeeping obligations belong to the Federal contractor or subcontractor. A contractor cannot delegate its obligations to another firm and would be held accountable if required records were not maintained. The Executive Order does not impose separate recordkeeping obligations upon recruitment firms with respect to their referral practices to Federal contractors and subcontractors. Accordingly, under the Executive Order, a recruiting firm's obligations to retain records about referrals of job candidates to Federal contractor or subcontractor clients arise out of its agreements with those clients. Because contractors will be held accountable for keeping the required records, we suggest that recruiting firms and Federal contractors and subcontractors have a specific discussion about recordkeeping practices so that both parties understand what records must be retained, and by whom.

### **How can a recruiting firm that is not a federal contractor or subcontractor obtain a certificate indicating that its practices are in compliance with OFCCP's recordkeeping requirements?**

OFCCP does not issue compliance certificates. OFCCP determines whether Federal contractors and subcontractors are in compliance with laws enforced by OFCCP through compliance evaluations. OFCCP does not conduct compliance evaluations of companies that are not Federal contractors or subcontractors. OFCCP is available to offer compliance assistance on specific recordkeeping obligations. Interested individuals may contact OFCCP by email at [OFCCP-Public@dol.gov](mailto:OFCCP-Public@dol.gov).

### **If the Internet Applicant recordkeeping standards apply to hiring for a particular position and the contractor receives paper resumes for the position from job seekers at a career or job fair, does the contractor need to retain the paper resumes received?**

The contractor needs to retain resumes only if it considers resumes received at the job fair for a particular position. The contractor need not retain any resumes if its consistently applied practice is not to consider paper resumes received at a career or job fair. For example, the contractor would not need to retain paper resumes offered at a job fair if it does not consider them and instructs all job seekers to post their resumes on the contractor's web site and/or apply for particular positions on the web site. The contractor should take care to apply such a protocol in a uniform and consistent fashion. It is the contractor's actual practice that determines whether the contractor has considered a resume. For example, if a contractor's policy is to accept resumes only through its website, but its actual practice is to consider resumes received at a career or job

fair as well, the contractor will be expected to retain both the resumes collected at job fairs as well as those submitted through the contractor's website.

**Must a contractor retain resumes when the contractor's representative meets with students on campus recruiting trips to discuss general jobs for which a student may be qualified if the contractor advises all students they must apply through the contractor's web site to be considered for a particular position?**

A contractor must retain resumes for any job seeker it considered for a particular position. If a contractor's representative meets with students to generally discuss the types of positions available with the contractor and advises all students that job seekers must apply through the contractor's web site to be considered for particular positions, then the contractor is not considering the students for a particular position during the college recruiting visit and their resumes need not be retained. The contractor should take care to apply such a protocol in a uniform and consistent manner. It is the contractor's actual practice that determines whether a contractor has considered a resume.

**Some contractors search small, external "niche" or "diversity" resume databases that do not have the resources to maintain, on behalf of contractors, copies of resumes identified by contractors as meeting the basic qualifications for a particular position. How can contractors use these databases and comply with the resume retention requirement of the Internet Applicant rule?**

Contractors have several options for retaining copies of resumes identified through small external databases. For example, the contractor could: (1) review all resumes in the database to identify those meeting basic qualifications for a position and download copies to an internal resume database maintained by the contractor; (2) invite all job seekers in the small external database to post their own resume in the contractor's internal resume database through the contractor's website; or (3) review resumes in the external database to identify those indicating an interest in the positions the contractor is seeking to fill and invite those job seekers to submit their own resume directly to the contractor's internal resume database through the contractor's website.