

# Developing a Strategic Applicant Tracking Process

Lynn Clements, Esq.  
Director of Regulatory Affairs,  
Berkshire Associates



**BERKSHIRE ASSOCIATES INC.**  
*Your Partner in Human Resources and Affirmative Action*

## Legal Disclaimer

This presentation was prepared for participants' educational use. Participants should consult with their AAP provider and/or legal counsel before implementing any strategies or actions discussed in this presentation and should not consider this presentation, or related materials, to be legal advice.

# Agenda

- Why It Matters Who An “Applicant” Is
- Screening Candidates Smartly
- Strategic Disposition Codes
- Managing Common, But Risky, Recruitment Practices
- Auditing Recruitment Practices



# *Why It Matters Who An “Applicant” Is*



**BERKSHIRE ASSOCIATES INC.**  
*Your Partner in Human Resources and Affirmative Action*

# Why Should You Care About Applicant Data?

- *We have to:* Required by law to maintain applicant records
- Technology makes applicant data easier to maintain (and analyze)
- Enforcement agencies use data to evaluate hiring
  - **EEOC 2013–2016 Strategic Enforcement Plan:** “will target class-based recruitment practices”
  - **OFCCP’s “bread and butter”** is hiring discrimination

# Why Should You Care About Applicant Data?

- Revised requirements in Scheduling Letter
  - Individual race, not just total minority, data must now be submitted for all personnel actions
  - Allows OFCCP to examine applicant data multiple different ways
- OFCCP is asking to speak with recruiters and hiring managers as part of audit
- Increased scrutiny by OFCCP on how contractors are defining an “applicant” versus “job seeker”



# Adverse Impact Analysis in the Past and Today

	Minorities vs. Whites	Hispanics vs. Asians
Rate for Minorities (protected) or Hispanics (favored)	$6/50 = .12$	$5/10 = .50$
Rate for Whites (non protected) or Asians (non favored)	$10/100 = .10$	$1/40 = .025$
80% Rule	120%	20%
Standard Deviation		4.13
Shortfall		2



## Why the Internet Applicant Rule Matters?

- Only those who meet the Internet Applicant definition must be included statistical analyses of hiring practices
- Under the Internet Applicant Rule, you can exclude candidates who do not meet the four prong definition:
  - Were never considered
  - Don't meet basic qualifications
  - Withdrew from the process





# Why Does it Really Matter: Big Numbers are Bad Numbers

Analysis	Rate for Women	Rate for Men	80% Rule	Standard Deviation	Shortfall
Women vs. Men	1/10 .10	20/100 .20	50%	0.77	0
Women vs. Men	10/100 .10	200/1000 .20	50%	2.43	9
Women vs. Men	100/1000 0.10	2000/10000 0.20	50%	7.67	90

# OFCCP Enforcement of the Internet Applicant Rule

- Agency is asking for all “expressions of interest” even without statistical indicators or placement goals
- Area of risk for contractors
  - Expressions of interest much broader than summary applicant data submitted with Itemized Listing

## Signs This May Be an Issue

- **OFCCP may ask:**
  - Was Internet Applicant Rule applied?
  - Does data include all expressions of interest?
  - Were individuals removed from applicant data based on Internet Applicant Rule?
  - Provide a written description of the hiring process
  - Provide all expressions of interest

# How to Handle OFCCP Requests for All Expressions of Interest

- Ask OFCCP to explain basis for its request
- Review your own data to figure out why OFCCP may be asking for this information
- Explore whether alternative data could be provided to address the agency's concern
- If all expressions of interest will be provided, analyze the data prior to submission

## Enforcement Implications

- OFCCP may independently evaluate contractor disposition codes and determine which candidates should be considered applicants
- **Key Take-Aways for Contractors:**
  - **Strategic applicant tracking is key**
  - **Re-examine disposition codes**
  - **Re-evaluate how and when you are applying the Internet Applicant Rule**
  - **Refine utilization analyses**

# *Screening Candidates Smartly*



**BERKSHIRE ASSOCIATES INC.**  
*Your Partner in Human Resources and Affirmative Action*

# Using Strategic Recruitment Workflow Models

- How candidates are moved through your recruitment process directly impacts how many applicants you report
- Make sure your ATS fits your recruitment model; do not simply adopt ATS default steps and disposition codes
- Best systems are online, requisition-based systems
  - Require candidates apply for each specific position
  - Do not consider candidates who do not follow or complete entire process
  - Do not move candidates among requisitions

# The Power of Prescreening

- Follow a strategic process using the elements of the IAR
  - **Step 1:** Assess candidate willingness to do job tasks
  - **Step 2:** Ask questions that allow candidates to remove themselves from consideration
  - **Step 3:** Assess basic qualifications
- Tailor to the job—this may mean different questions for different jobs, job families, etc.
- Be consistent—don't let recruiters change from opening to opening



## Willingness Questions

- Are you willing to (what the job requires)...
  - Travel \_\_%
  - Work in a cold environment
  - Wear \_\_\_ safety gear
  - Relocate
  - Work overtime
  - Work night shift



## Removal from Consideration

- Use screening questions to allow candidates to opt out of the process/not interested in job:
  - What are your minimum salary requirements?
  - FT/PT
  - Days/shifts available
  - Location preference

## Basic Qualification Questions

- Ask basic (more basic than minimum) qualification questions
- **Best practice:** Do not ask preferred qualifications
  - Now considered substantive qualifications
  - Must retain
- Should change from job to job
- **Tip:** If you want the same questions across all jobs, do not ask BQs

# Prescreening Question Don'ts

- Do not do the following and why not:
  - Ask for preferred qualifications (in online ATS, has been considered, is an applicant if meets willingness and basic qualification questions, even if recruiter never opens)
  - Ask about ability (ability is not the same as willingness and may get to disability issues)
  - Be careful using a system that ranks, scores, or stacks candidates (could be seen as a test that must be validated)
  - Reject candidates as “overqualified” in prescreen (same reasoning as first)

# *Strategic Disposition Codes*



**BERKSHIRE ASSOCIATES INC.**  
*Your Partner in Human Resources and Affirmative Action*

# Why Use Strategic Disposition Codes?

- Now, more than ever, employers must use strategic disposition codes to:
  - Defend and explain indicators of adverse impact (why candidates were not selected)
  - Determine who **IS** an “applicant” under the Rule
  - Determine who is **NOT** an “applicant” (should be taken out of data analyses)

## Strategic Disposition Codes

Strategic disposition codes should state the reason the candidate “fell out,” such as:

- Candidate withdrew
- Did not consider
- Does not meet basic qualifications
- Did not return calls
- Offer rescinded — did not pass background check
- Presumed disinterest  
(Salary/Location/Shift)

## What Are Some Not So Strategic Disposition Codes?

- Examples of Codes that are **Not** Helpful

- Not Selected
- Applicant Disqualified
- Better Candidate Chosen
- Blank/No Reason
- Interviewed/Screened

- These codes do not explain *why* the candidate was not chosen *compared to* the hire
- These codes do not use the Internet Applicant Rule to identify candidates who should not be included in data analyses



# Tracking “Steps”

**We must also track the “step”** — the stage of the recruitment process where each candidate “fell out” and who made the decision (some examples below)

- Prescreen
- Résumé Review by Recruiter
- Phone Screen by Recruiter
- Manager Review
- HR Interview/First Interview
- Manager Interview/Second Interview
- Individual Post-Offer Steps (drug screen, background check, physical, etc.)

## Using Strategic Disposition Codes in Audits

Analysis	Rate for Females	Rate for Males	Standard Deviation	Shortfall
Unrefined— All Candidates	20/1000 .02	40/1000 .04	2.622	10
Minus Never Considered	20/800 .03	40/900 .04	2.169	8
And Minus Does Not Meet Basic Qualifications	20/725 .03	40/850 .05	2.012	7
And Minus Withdrew	20/675 .03	40/825 .05	1.854	7

*Managing Common, But  
Risky, Recruitment  
Practices*



BERKSHIRE ASSOCIATES INC.  
*Your Partner in Human Resources and Affirmative Action*

# The No Hire Requisition

## What's the problem?

- Including applicant data for requisitions where there was no hire during the plan year increases the applicant pool (or denominator of adverse impact calculations) without a corresponding selection (the numerator)

## How to handle strategically?

- Code all candidates as “No Hire–Requisition Cancelled”
- Remove all candidates with this code from annual personnel activity analyses since point of applicant data submission is to evaluate selection decisions

# Evergreen and Never Closed Requisitions

## What's the problem?

- Leaving requisitions open for long periods of time creates bigger candidate pools
- Unclear which candidates were considered for each hire; allows agencies to argue that same candidate should be counted as an applicant multiple times



# Evergreen and Never Closed Requisitions *(cont.)*

## How to handle strategically?

- Determine recruitment needs first and how to explain specific selections second
- Place limits on number of days/weeks requisition may be opened
- Place requisition on hold and then reopen
- Move candidates through process in batches
- Use available information, such as date applied, to create pools
- Monitor for patterns, such as consistent favored or non-favored group across plans

# Cross-Over Requisitions

## What's the problem?

- Moving even a single candidate between requisitions allows agencies to argue that other candidates were also considered for more than one position—this equals large applicant pools

## How to handle strategically?

- Best practice is to invite candidate to apply for the other requisition; if he/she doesn't apply, move on
- Audit applicant data to find patterns in recruitment behavior and then build applicant tracking processes around those practices
- Retain data that allows you to show other candidates would not have been qualified for any higher level cross-over requisitions

# Access to Candidate Data

## What's the problem?

- Allows recruiter to develop diverse pool (**affirmative action**) **BUT** increases danger that protected status is used in impermissible way (**discrimination**)

## How to handle strategically?

- Best practice is to hide specific candidate data but provide access to summary information:

### EEO Counts by Requisition Number

#### 4000-2015-11-TST001 Basic Tester

Applicant Stage / Disposition Code	Race	Gender	# of Job Seekers
Not Assigned / Not Assigned	Choose Not To Disclose	Choose Not to Disclose	2
Not Assigned / Not Assigned	Native American	Female	1
Not Assigned / Not Assigned	White	Male	1
Not Assigned / Incomplete application (NC-Inc)	Black	Female	1
Not Assigned / Incomplete application (NC-Inc)	Pacific Islander	Male	1
Not Assigned / Incomplete application (NC-Inc)	White	Male	2
Group Totals			8



# The Too Much or Too Little Data Problem

## What's the problem?

- Different recordkeeping obligations depending on data and state
  - Race and gender data = minimum two years
  - Vets and disabled data = minimum three years
- Some ATS systems will store indefinitely – check your contract
- Access to data if you change vendors
- Why does it matter?
  - EEOC RFIs: “Provide applicants for all positions from **1/1/10 – present...**”

# The Too Much or Too Little Data Problem

## How to handle strategically?

- Maintain enough data to defend your decisions in audits (two years back from date of scheduling letter)
  - Ensure litigation hold when audit starts
- Understand vendor document retention policies
- Develop proactive plan when switching vendors
  - Keep all data during relevant period when switching systems
  - Maintain in an accessible format

# The Hard to Hire Requisition

## What's the problem?

- Sourcing incorrectly may create significant recordkeeping issues
- Many companies are not keeping adequate records
  - Search records
  - 1 applicant to 1 hire ratios

## How to handle strategically?

- Distinguish between passive recruitment and recruitment for specific positions
- Keep search records; automate
- Invite candidates to apply when specific position is available and/or email request for self-ID data and add to ATS

## Know Why You Are Searching

- Distinguish between sourcing, recruitment, and selection for specific positions
  - **Sourcing** is the finding and initial engagement of passive candidates for positions that are not yet open; few recordkeeping requirements if done correctly
  - **Recruitment** activities can create recordkeeping obligations, such as when external or internal databases are searched for particular positions
  - Particular **selection decisions** must be documented

# What Records to Keep

## External Database Searches for Specific Position

- Date of search
- Search criteria used
- Position for which search was conducted
- Résumés of those who met basic qualifications and were considered

## Internal Database Searches for Specific Position

- Above data
- All résumés added to the database and date added



## How to Search

- Build a passive candidate pipeline using integrated talent recruitment model
- Automate logging of all searches
- Develop protocols about manner in which potential candidates are made aware of openings
- Have passive candidates apply for particular positions through ATS and only consider those that do

# *Auditing Your Recruitment Practices*



**BERKSHIRE ASSOCIATES INC.**  
*Your Partner in Human Resources and Affirmative Action*

# Audit Your Recruitment Practices

## Know what data you need and how to retrieve it

- All applicants who applied during plan year?
- Only requisitions opened during plan year?
- Only data for jobs filled during the plan year?
- What about internal selections?
- Cancelled reqs?
- Reqs with no hire?

## Best Practice: Reverse Engineer your data!

- Identify hires made during plan year first and then gather applicant pools for those hires



## Annual Audits

- Map out current recruitment process on annual basis and update steps in ATS to reflect your actual process
- Evaluate use of data management techniques and ranking/scoring functionality
- Review prescreening questions to confirm they are valid and working as intended
- Use annual AAP data to evaluate use of disposition codes



## Quarterly Check-Ups

Perform quarterly checks to confirm applicant data is being collected correctly

- How many candidates have unknown race, gender, IWD, or PV status?
- Are requisitions with a hire still open?
- Do all candidates have a step and status?
- Do any requisitions have a 1:1 applicant to hire ratio?

# Questions?

**Lynn A. Clements, Esq.**  
**Director, Regulatory Affairs**  
**Berkshire Associates Inc.**

800.882.8904, ext. 1246

[lynnc@berkshireassociates.com](mailto:lynnc@berkshireassociates.com)

# *Additional Resources*

*For a copy of this presentation, please visit:*

[www.berkshireassociates.com/presenters/topic/lynn-clements](http://www.berkshireassociates.com/presenters/topic/lynn-clements)

*Visit Berkshire's HR and  
Affirmative Action Blog:*

[info.berkshireassociates.com/balanceview](http://info.berkshireassociates.com/balanceview)



# About Berkshire Associates

For over 30 years Berkshire has offered services and software to overcome HR challenges.

## Affirmative Action

- Plan Preparation Services
  - OFCCP Audit Support
- Adverse Impact Analyses
- BALANCEaap Software

## Applicant Management

- Compliance Assessment
- BALANCEtrak Software

## Compensation

- Base Pay Structures
  - Market Analysis
- Salary Equity Analyses

## Training

- Affirmative Action
  - BALANCEaap
- Collaborative Plan
- Webinars & Private Training