

# The State of Affirmative Action Planning

How to Address Challenges  
and Boost the Quality of  
Affirmative Action Initiatives

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# EQUAL OPPORTUNITY



## Executive Summary

### The Survey Findings

In the spring of 2017, PeopleFluent and HR.com conducted a survey to examine current issues and practices around affirmative action compliance. The survey focused on organizations that were federal contractors or subcontractors and HR professionals involved in the management and/or preparation of AAPs.

Here is a quick overview of some of the findings:

- **Most responding firms that are federal contractors were engaged in AA plan preparation.** Among the firms required to have plans, 88% were engaged in preparing such AAPs when the survey was conducted.
- **Most participants from firms that submit AAPs said they are confident in their organization's ability to address upcoming changes** to the regulatory environment, and only 12% disagree with that proposition. This suggests that most current contractors and subcontractors believe their current systems and processes are adaptable enough to adjust to changes in affirmative action regulations.
- **Fewer than half, however, were engaged in risk mitigation or employee awareness training.** Only 46% were engaged in risk mitigation and just 44% in employee awareness training. This raises the question of whether some organizations are so focused with the task of Affirmative Action Plan preparation that they fail to take other important steps.
- **Many are concerned with aspects of reporting EEO-1 data.** The most challenging areas are identifying what data must be submitted and reconciling data from different systems.
- **Over a quarter do not conduct compensation/pay equity reviews regularly** but, rather, on an ad hoc basis (that is, when management requests it). Most conduct such reviews on an annual basis.
- **Nearly two thirds of organizations that submit AAPs also employ full-time AA administrators.** Among AAP-submitting organizations with 1,000 or more employees, 85% employ a full-time AA administrator.

### About Affirmative Action

Affirmative action (AA) refers to a complex and interrelated group of U.S. laws, policies, guidelines and practices intended to correct the effects of discrimination, especially in the areas of education and employment. It's important to recognize that the regulatory environment involving affirmative action is subject to change by legislative, regulatory and legal actions. One important tool for implementing affirmative action is the Affirmative Action Plan/Program (AAP). An AAP includes the policies, procedures and practices a federal contractor will execute to ensure all qualified applicants and employees receive an equal opportunity for recruitment, selection, advancement, and every other term and privilege associated with employment.

Therefore, AAPs are a central part of the business landscape for any organization doing business with the U.S. federal government. The law now requires any organization with 50 or more employees with at least one contract or subcontract for \$50,000 or more (\$150,000 or more for Protected Veterans), to prepare a written Affirmative Action Plan. Today the AAP reporting requirement covers race, gender, veteran status, and disability status.

*Please note that the findings and recommendations contained in this report are informational only. Nothing in this report should be construed to constitute legal opinions or legal advice. If you have questions about the legal requirements, rules or regulations surrounding affirmative action, please consult an attorney.*

## Affirmative Action in an Increasingly Diverse U.S. Workforce

Even as organizations struggle with the complexities of compliance, data suggests substantial financial benefits to organizations with strong commitments to diversity. According to an article in [Tech Crunch](#):

Early research reveals how significant this advantage can be. A 2015 McKinsey study found ethnically diverse companies were more than 35 percent more likely to outperform their industry counterparts. Even more significantly, each 10 percent increase in racial and ethnic diversity on the senior executive team yielded on average a rise of 0.8 percent in earnings before interest and taxes (EBIT).

Gender-diversity likewise is associated with substantial financial benefits to organizations. According to a study conducted by [Gallup](#) in 2014, gender-diverse business units in the retail industry have 14% higher average comparable revenue than less-diverse business units, and gender diversity in the hospitality industry yields 19% higher average net quarterly profit. Studies of other industries and organizations tend to arrive at similar findings. In short, demographic diversity tends to be good for [business](#).

AAP mandates can be used to help U.S. organizations move in the direction of greater workforce diversity. Executive Order 11246 states, “The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.”

Federal contractors must keep abreast of news from the Office of Federal Contract Compliance Programs (OFCCP), which holds those who do business with the federal government—contractors and subcontractors—responsible for complying with related legal requirements. Likewise, they should maintain awareness of developments at the U.S. Equal Employment Opportunity Commission (EEOC), which is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex, national origin, age, disability or genetic information.

Some organizations prepare multiple affirmative action plans each year, employ program administrators, and report an assortment of challenges ranging from data maintenance to vendor relations. This report delves into some of these differences and offers a few glimpses into some best practices that might improve the effectiveness of your efforts to manage and administer your AAP.

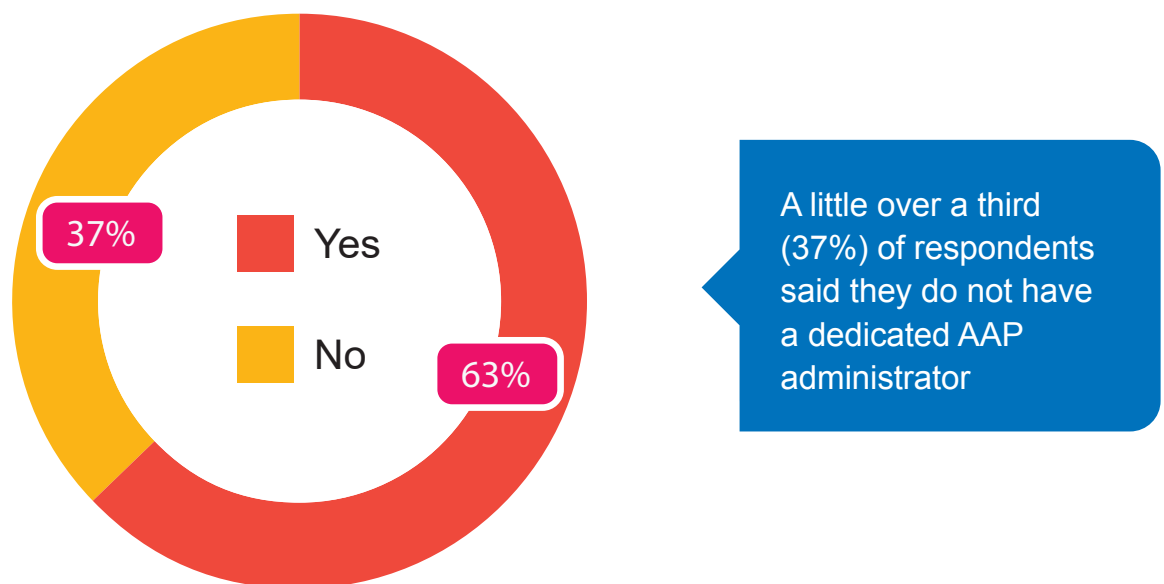
## The Role of an Affirmative Action Plan Administrator

The following data is based on responses from survey participants who indicated their organizations are federal contractors or subcontractors and, therefore, must develop Affirmative Action Plans. Participants whose organizations are not U.S. federal contractors are not included in these findings.

### Finding One: Nearly two-thirds of participants said they have a dedicated AAP administrator

Like any other strategic plan, affirmative action plans require administration and resources. Nearly two in three participants said they have a dedicated AAP administrator.

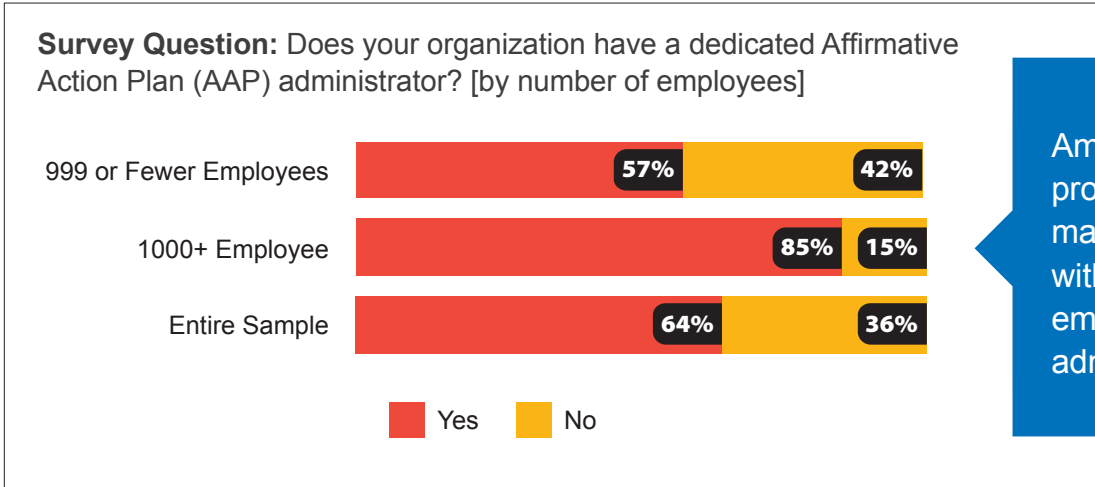
**Survey Question:** Does your organization have a dedicated Affirmative Action Plan (AAP) administrator?



As a practical matter, most organizations place AAP administration within the HR function. So, it's significant that so many organizations allocate a dedicated resource to their affirmative action efforts. But it's important not to read too much into this single data point. Affirmative action requires a broad, cross-functional approach to the challenges and compliance with federal law. Recruiting, promotions, pay equity, training and employee retention are all important strategic elements of most HR organizations, and each function plays a role in the successful implementation and execution of an AAP.

### Finding Two: This is an area where size matters

The participants from organizations with 1,000 or more employees said they have a dedicated affirmative action resource 33% more frequently than the entire sample and 49% more frequently than participants in organizations with 999 or fewer employees.



Among those that produce AAPs, a large majority of organizations with 1,000 or more employees have an AAP administrator

**Best Practices Tip:** Organizations without AA administrators should give serious consideration to designating one. The effort to develop and then execute effectively on affirmative action plans requires the coordination of many internal stakeholders, ranging from HR professionals to managers and employees. It may simply be a task too dispersed to leave in the hands of scattered managers and practitioners. A central administrator may be able to coordinate all activities and initiatives and work to develop a cohesive approach for everyone. Moreover, a central administrator could improve an employer’s audit readiness status to be better prepared to address an OFCCP Compliance Review.

Organizations with a dedicated affirmative action administrator tend to prepare more plans annually. Over half of the participants said their organization prepares just one plan a year. When organizations have a dedicated AAP administrator, however, 54% of them prepare multiple plans per year. Among organizations that do not have an administrator, 67% prepare just one plan annually.

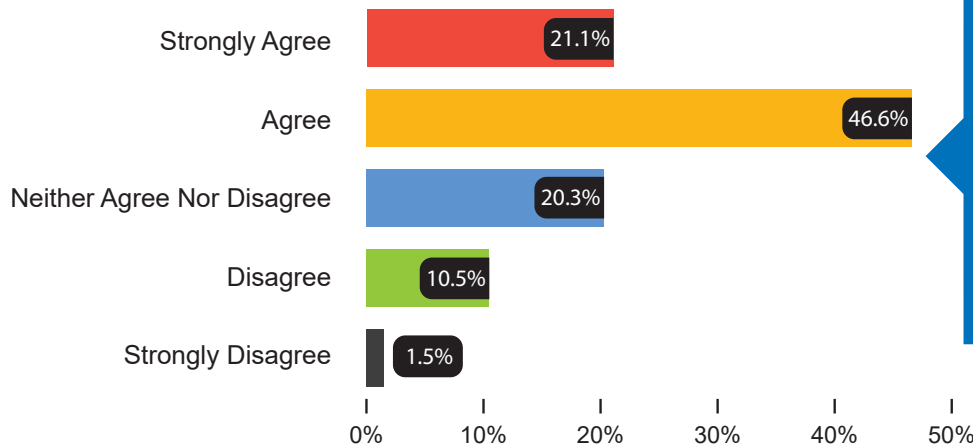
This data suggests that the role of the AAP administrator is, in many cases, to oversee the development of multiple plans. After all, about 9% of contracting companies prepare 25 or more AAPs annually.

## Confidence in Affirmative Action Planning

### Finding Three: Most respondents think their organizations are prepared for upcoming changes in federal law

There will likely be changes to the affirmative action environment over the next few years. With the current composition of the U.S. Supreme Court and the broadly conservative direction of the political branches of the federal government, we can expect some changes in policies and rules. But over two-thirds (68%) of our survey panel said they are confident or very confident they are ready to address changes in the law.

**Survey Statement:** Please state the degree to which you agree with the following: “As I look ahead to 2017, I am confident in my organization’s ability to fully address upcoming changes (for example, the Revised EEO-1 Pay Data Collection)”

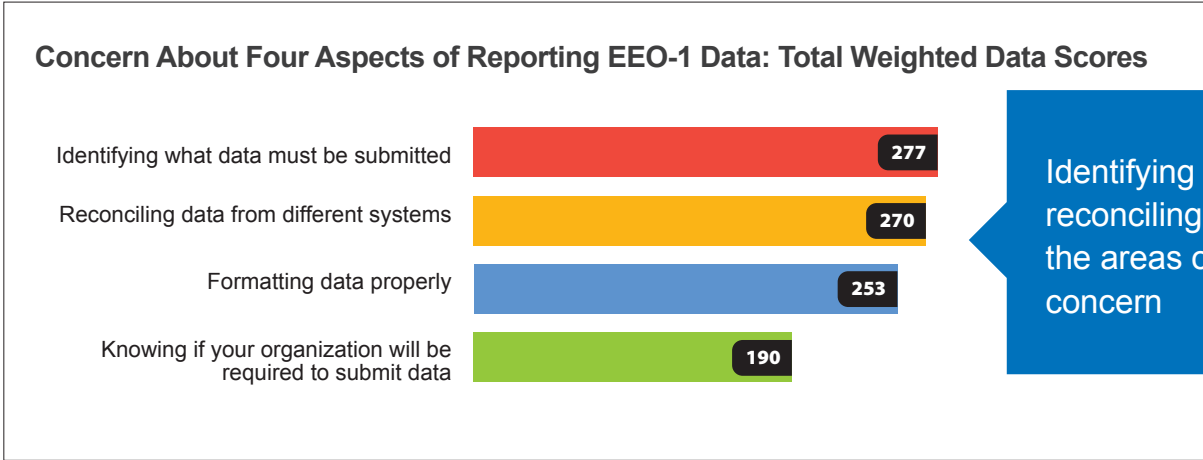


Just 12% of respondents were not yet confident in their organization’s capacity to address changes in federal affirmative action law

We can infer at least two things from the survey responses. First, most current contractors and subcontractors believe their current systems and processes are adaptable enough to adjust to changes in affirmative action regulations. Second, most respondents think they have the right personnel in place to make these processes work well. One inference is that many of today’s AAP administrators have a high level of expertise and experience in dealing with the details associated with AAPs.

### Finding Four: Most respondents are concerned about various aspects of data reporting

In any compliance area where data is critical, it's logical that HR practitioners remain vigilant and concerned about the quality of their data. With potential changes looming to the EEO-1 Pay Data Collection requirements, we asked our participants to force rank the level of their concern in four areas: dealing with different systems, formatting the data, identifying what data to report and knowing if their organization even had to submit data.



**Best Practices Tip:** Use the right tools. In today's market, the proliferation of technology vendors and solutions means every organization can select from a wide range to identify the tools that best suit its needs. Technology tools can facilitate and organize processes and systems, and they should give you real-time access to data you might need in the case of an audit.

The intensity of concern around the three data-quality issues is relatively close, but figuring out just what data must be submitted garnered the highest overall level of concern among our participants. Reconciling data from different systems had more responses at the highest level of concern. We conclude that getting the right data out of various internal systems represents a substantial concern among the participants.



## Pay Equity Issues

### Finding Five: Just over half of organizations currently conduct pay equity reviews

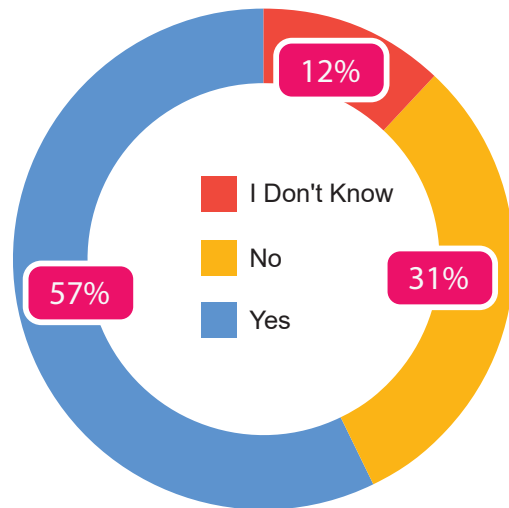
To meet affirmative action requirements, organizations must create and manage a compensation system that is fair and equitable. One of the biggest challenges with fairness and equity is simply defining the concepts. A compensation rate may appear equitable to one person but not to another.

A white paper published by PeopleFluent, [The Four Key Components of a Successful Affirmative Action Plan](#), notes that process is a crucial aspect of affirmative action, and the review of pay equity is a key process. After all, compensation is a measurable indicator of the success of diversity efforts. Therefore, we asked our participants about this important feature of AAPs.

**Best Practices Tip:** Ask the right questions. Asking your organization some basic questions regarding compensation structures and practices is often the first step in pay equity reviews. Below are some possible questions:

- “When was the last time our company analyzed its compensation practices for gender- or race-based pay disparities?”
- “Are any groups of employees by gender or race voicing complaints about how starting pay rates, merit increases, or bonuses are determined?”
- “How similar is our company’s compensation philosophy and pay structure to competitors who have recently lost or settled a pay discrimination lawsuit?”
- “Would our company’s compensation practices withstand scrutiny by anti-discrimination enforcement agencies?”

**Survey Question:** Is your organization currently doing employee-compensation/ pay-equity reviews?



Fewer than a third of participants are not conducting pay equity reviews

Over half of organizations said they were currently engaged in pay-equity reviews. Two-thirds of those conducting pay equity reviews were using internal resources, and the rest used external sources such as consultants and law firms. Organizations that utilize an independent perspective might receive a more objective view of pay equity, but the data tells us participants tend to rely on their own resources and judgment. This might be another reflection of the high levels of confidence participants have in their internal affirmative action systems and processes.

**Best Practices Tip:** Gather the right information. Appreciating the different legal theories of discrimination is a must for organizations. They include the following:

- **Disparate treatment** - intentionally treating employees of some protected status differently
- **Disparate impact** - a policy or practice that appears neutral on its face but has the effect of disproportionately placing many people of some protected status at a disadvantage
- **Repeated violation theory of pay discrimination** - each paycheck that delivers compensation is tainted by a past discriminatory decision that repeats the original discriminatory decision, even if that initial decision was made many years ago

Gathering the information needed for a meaningful pay equity analysis is the next requirement. Below is an outline of some of the most important types of information:

- Job-related fields such as job title, job family and job function that are useful in forming employee comparison groups,
- Job-related fields such as job title, job family and job function that are useful in forming employee comparison groups,
- Important dates such as service date and job entry date for computing years of service and time in job,

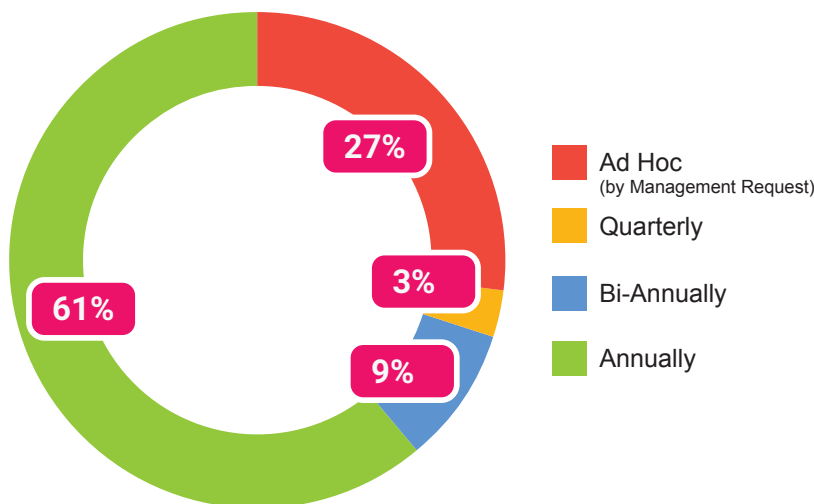
- Compensation structure fields such as pay grade and salary administration plan that help explain differences in pay,
- Other explanatory factors such as performance ratings, educational attainment, and prior work experience, and
- Organizational fields such as business unit and department for which patterns of pay disparity may be assessed.

Pay equity analyses need to identify any patterns of pay disparity across the organization that may support class action claims by the EEOC or plaintiff. Additional studies would help a federal contractor anticipate what the OFCCP may find in an audit, by adopting an OFCCP-style methodology that compares employees at the level of the affirmative action program. Lastly, be aware that a growing number of states are revising their equal pay laws. Therefore, it is necessary to also conduct state-based analyses, particularly for employees in California, New York, Maryland and Massachusetts. Additional states have pending legislation on equal pay.

By combining a solid understanding of the legal foundations for pay discrimination claims with meaningful data and a comprehensive investigation, your firm may help mitigate potential enforcement actions by the EEOC and OFCCP and costly pay discrimination lawsuits.

The frequency of compensation and equity reviews is another element of the processes that are important to effective affirmative action plans. With the average annual pay raise hovering at 3% for the past two years (2015 and 2016), pay shouldn't move out of acceptable ranges too quickly. However, those organizations that review pay equity on an ad hoc basis might be creating unnecessary risk for themselves.

**Survey Question:** Is your organization currently doing employee-compensation/pay-equity reviews?



About a quarter of organizations do not have a systematic compensation/pay equity review cycle

**Best Practices Tip:** Analyze your compensation and pay equity review system. If reviews are not part of a systematic process or not conducted at least annually, then consider revising the system. Compensation is an easy-to-compare metric among and between employees, so getting pay equity right is crucial. Keep in mind that conducting reviews on an ad hoc basis might create unnecessary risks, especially when you can implement a regular review process with the assistance of current technology tools on the market.

Participants that conduct pay reviews annually or more frequently appear to have the processes and methodologies in place to demonstrate good faith efforts to produce workplace diversity. In this way, they seem to be doing a good job of mitigating risks. In case the government does an audit of compensation practices and good faith efforts, the review documentation might help provide evidence of your organization's commitment to the principles of affirmative action.

In contrast are the 27% of organizations that conduct compensation and pay equity reviews on an ad hoc basis. Such organizations might consult legal counsel to ensure that the ad hoc nature of their reviews does not appear to indicate the following:

- Lack of systematic methodology to ensure equitable treatment of all employees
- Lack of documentation of good faith compliance efforts
- Inability to measure the effectiveness of outreach efforts and other good faith effort activities
- Failure to discover issues in time to execute timely remediation
- The appearance to employees that the organization is not fully committed to affirmative action principles

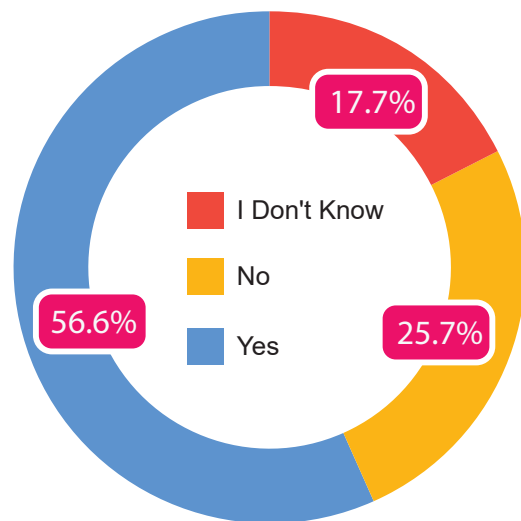


## Good Faith Efforts and Risk Mitigation

### Finding Seven: Most organizations can provide evidence of good faith efforts

Good faith efforts (GFE) to comply with affirmative action mandates are a crucial aspect of any effective effort. So, it's important that organizations can document their efforts and show the effectiveness of various initiatives.

**Survey Question:** Right now could you provide a list of all of your Good Faith Efforts and their effectiveness for women and minorities?



Over a quarter said they could not currently provide a list of their GFE for women and minorities

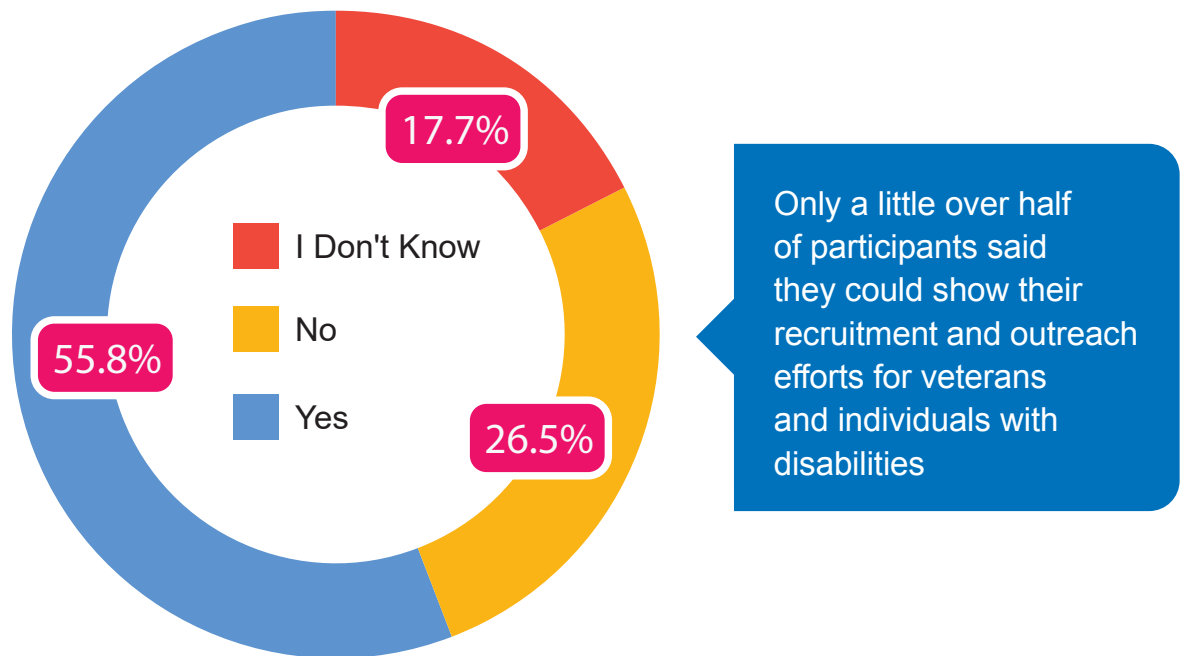
Over two-fifths of the participants either could not immediately provide such information or didn't know if they could. This is a clear area for improvement among practitioners.

The news wasn't any better when it comes to recruiting veterans or individuals with disabilities. This could also be an area where a large cohort of organizations is unprepared for potential audits.

**Best Practices Tip:** Consider going above and beyond. There is a distinction between federal law, which sets the bare legal minimum effort organizations must make around affirmative action, and best practices in the area of diversity. Organizations are always free to take more aggressive steps to develop and maintain workplace diversity.

*Only a little over half of participants said they could show their recruitment and outreach efforts for veterans and individuals with disabilities*

**Survey Question:** Could you show all of your engaged outreach and recruitment efforts and their effectiveness for Veterans and Individuals with Disabilities?



**Best Practices Tip:** Make Good Faith Efforts plans. Through a Good Faith Efforts plan, in which decisions are based on quantitative goals regarding the availability of targeted qualified applicants or current employees, you can ensure you are preventing and removing any discrimination from hiring and talent management processes. In doing so, you are providing individuals with an equal opportunity to showcase their skills and competencies and find employment.

It should be noted that Affirmative Action efforts, including Good Faith Efforts, are not about setting aside certain positions for a specific group or working to meet hiring quotas. Rather, it should be about finding those high-potential individuals who might not otherwise be considered for a position. An effective Affirmative Action plan can help you and others in your organization understand how the company benefits from the range of new ideas and experiences a diverse workforce can bring.

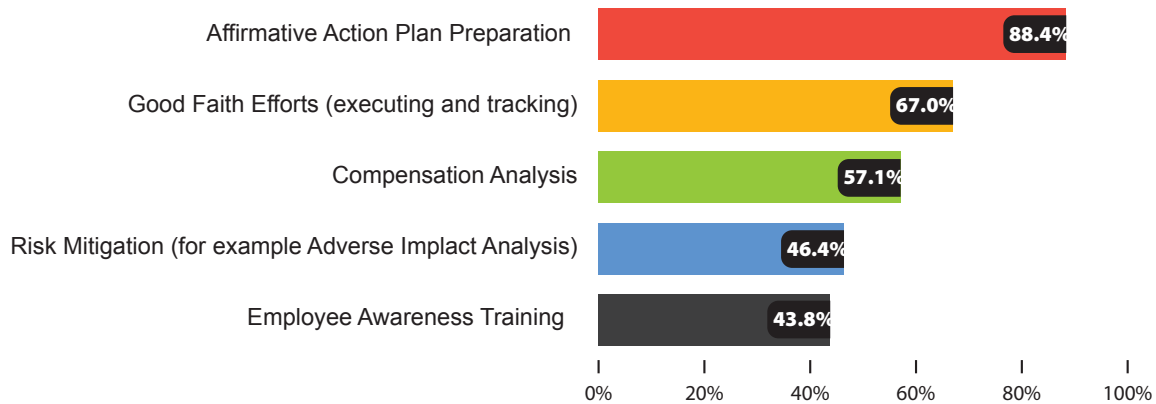
Federal contractors must remember that a Good Faith Efforts program is required as part of their Affirmative Action Program for women and minorities. As the audit process of the Office of Federal Contract Compliance Programs (OFCCP) expands to the AAPs for Individuals with Disabilities and Protected Veterans, contractors must go beyond simply reaching out to key groups and produce measurable results and documentation of their good faith efforts to avoid violations.

So how can you ensure that your good faith efforts will keep you from an OFCCP violation? Track and record your Good Faith Efforts plan, and make sure that you maintain that record with the actions you take to execute on that plan. After all, the most common OFCCP violation is failure to keep proper records. There are very specific recordkeeping requirements specified of AAPs for Individuals with Disabilities and Protected Veterans. In addition to recordkeeping requirements, OFCCP is also expecting an assessment of the result of your efforts for effectiveness. Contractors must consistently evaluate their GFEs for effectiveness and adjust or change them if they're ineffective.

Keeping proper records is crucial not just to ensure compliance, but also to defend employment decisions in the case of lawsuits. For instance, without a proper record of why a certain person wasn't hired, it will be easier for that individual to accuse the organization of discrimination.



**Survey question:** Which components of an Affirmative Action Program are your organization currently engaged with (check all that apply)?



We do not intend to diminish the importance of AAP preparation. It's critical and required by law. However, this may be an area where the outcomes of the regulatory environment have unintended consequences. That is, by focusing on AAPs, some companies may be ignoring other key programs.

Risk mitigation is a case in point. Organizations should mitigate risks by conducting inquiries such as Adverse Impact Analyses, yet only 46% of responding organizations are currently doing so. This often goes hand-in-hand with the creation and maintenance of a good AAP.

Your data, statistical reports, analysis of these reports, policies, procedures, GFEs, and employee training sessions are all part of risk mitigation. Additionally, conducting an Adverse Impact Analysis on selection decisions is key to staying compliant. When adverse impact exists, reviewing the individual components of the selection process is a regulatory requirement.

Throughout the year, you should monitor your progress toward your goals and prepare Adverse Impact Analysis to catch problems early. We recommend that you conduct this review quarterly or semiannually. If you do find an issue, adding a GFE or conducting additional training can help you mitigate risk when faced with an audit.

Nearly 90% of participants say they are involved with AAP preparation, yet less than half are involved with risk mitigation



**Best Practices Tip:** Conduct training. You can have an Affirmative Action Plan that conforms to every best practice in the profession, but if your managers and employees do not behave in ways that reflect and promote the values of your affirmative action efforts, your plans could be futile. Choose the best training methods for your organization, whether it is instructor-led, online, or some combination. Online employee training might serve as a cost-effective and trackable education resource that helps to make sure employees understand your expectations for them.

Whether you conduct in-house or online training sessions, compliance training is more than just checking a box. When taken seriously, employees will develop a deeper understanding of not only the guidelines of compliance, but also the value of their fellow employees' unique characteristics and experiences.

If you need help getting started in this area, there are resources available that offer content and services to help you conduct trainings. When preparing for this component of your program, you'll also need to proactively think about how you'll record employee progress and completion of your trainings, so make sure to look into that when selecting your resources.



## Key Takeaways

When creating Affirmative Action plans, organizations must consider a number of issues, such as whether to hire a dedicated AAP administrator, how to prepare for changes to key regulations, how to identify and reconcile key data, and how to conduct pay equity reviews.

Throughout the report, we have identified what we consider key practices for boosting the quality of affirmative action initiatives:

- Consider designating an AA administrator
- Analyze your compensation and pay equity review system
- Make Good Faith Efforts plans and assessments
- Engage in disciplined recordkeeping
- Ask the right questions
- Gather the right information
- Use the right tools
- Conduct adverse impact analysis on selection decisions
- Conduct training
- Consider going above and beyond

Of course, no research report can or should be a substitute for advice from legal experts. In an era when laws, regulations and enforcement efforts are in flux, organizations should consult such experts on a periodical basis.

Although this study indicates that various organizations are doing a good job of formulating Affirmative Action Plans and staying in compliance, it also suggests that many organizations could do better on various issues. Given today's changes, we believe that this is a good time to review such issues and, if necessary, take steps to redress potential deficiencies.

### About PeopleFluent:

PeopleFluent is a leading provider of workforce compliance, diversity, integrated recruiting, talent management, and compensation planning solutions. PeopleFluent has worked with thousands of organizations in 214 countries and territories to engage employees to drive better business results. Today, 80 percent of the Fortune 100 relies on PeopleFluent as part of their talent management delivery strategy, helping them successfully achieve their talent aspirations. <http://www.peoplefluent.com/>

