

## OVERVIEW

On September 24, 2013, the OFCCP published final revised regulations for the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act. The regulations are codified at 41 CFR 60-300 and 41 CFR 60-741. Click on this link to go to the Federal Register publication for Protected Veterans <http://www.gpo.gov/fdsys/pkg/FR-2013-09-24/pdf/2013-21227.pdf> and this link for the publication for Individuals with Disabilities <http://www.gpo.gov/fdsys/pkg/FR-2013-09-24/pdf/2013-21228.pdf>. A warning message may be displayed when following the links depending on computer security settings. The publications can also be accessed by going to the Government Printing Office (GPO) Federal Digital System website at <http://www.gpo.gov/fdsys>, selecting Federal Register from the browse section in the upper right, selecting 2013, selecting September, selecting Tuesday, September 24, and scrolling down and selecting Labor Department. The Federal Register publications include prefaces, in addition to the new regulations. This document includes regulatory citations and references to specific page numbers in the Federal Register Vol. 78 No. 185 for ease of use finding the referenced sections.

Although the final rules became effective on March 24, 2014, the OFCCP provided for "phased enforcement". See the "Compliance with the Final Rule" sections in the preface to both regulations - 78 FR 58618 and 78 FR 58685. The OFCCP states that:

Current contractors subject to subpart C of the existing 41 CFR part 60-300 (and 741) regulations that have written affirmative action programs (AAP) prepared pursuant to those regulations in place on the effective date of this final rule may maintain that AAP for the duration of their AAP year. Such contractors are required to update their affirmative action programs to come into compliance with the requirements of subpart C of this final rule at the start of their next standard 12-month AAP review and updating cycle.

The OFCCP did not, however, recommend that covered contractors delay compliance with Subpart C. FAQ 2, found in the Compliance Schedule sections of the regulations' FAQs states that, "[a]n early start implementing Subpart C's affirmative action program requirements gives contractors time to identify issues

or challenges, and to seek technical assistance from OFCCP prior to the due date of their first AAP under the new regulations”.

Many contractors with AAP years that began shortly after March 24, 2014 (e.g. April 1) changed their AAP years to begin on a date prior to March 24. The regulations did not prohibit this. A change in an AAP year has implications on the two look back portions of the AAP for minorities and women: the Review of Prior Year’s Performance and the Identification of Problem Areas analyses of personal activity data (applicants, hires, promotions, and terminations).

On December 11, 2013, the OFCCP announced a series of training webinars for federal contractors and subcontractors focusing on the new regulations. The audio and power point slides from each webinar can be found on the OFCCP’s website at [http://www.dol.gov/ofccp/regs/compliance/final\\_rules\\_webinars.htm](http://www.dol.gov/ofccp/regs/compliance/final_rules_webinars.htm).

## **HIGHLIGHTS OF THE REVISED VEVRAA REGULATIONS**

Following are highlights of the revised VEVRAA regulations which are explained in detail below. The new regulations:

- rescind the 41 CFR 60-250 regulations;
- require the establishment of hiring benchmarks;
- require specific data collection;
- revise the invitations to self-identify;
- modify the incorporation of the EO Clause;
- modify the job listing requirement;
- ensure notices to applicants and employees are provided in a form that is accessible and understandable;
- incorporate a means of accessing an electronic version of the "EEO is the Law" poster on applicant websites; and
- clarify the OFCCP’s access to records.

## **HIGHLIGHTS OF THE REVISED SECTION 503 OF THE REHABILITATION ACT REGULATIONS**

Following are highlights of the revised Section 503 of the Rehabilitation Act regulations which are explained in detail below. The new regulations:

- establish a nationwide 7 percent utilization goal;

- require specific data collection;
- revise the invitation to self-identify;
- modify the incorporation of the EO Clause;
- ensure notices to applicants and employees are provided in a form that is accessible and understandable;
- incorporate a means of accessing an electronic version of the "EEO is the Law" poster on applicant websites;
- clarify the OFCCP's access to records; and
- incorporate changes to conform to the ADA Amendments Act (ADAAA).

## **COVERAGE**

### **41 CFR 60-250 RESCINSION**

The new regulations rescinded the regulations previously codified at 41 CFR 60-250, which applied to contractors or subcontractors with a federal contract of \$25,000 or more entered into prior to December 1, 2003 and unmodified since. However, a provision was added to the new regulations at 41 CFR 60-300 to permit any "pre-JVA veteran" who would have been protected solely by Part 250 to file discrimination and retaliation complaints. See 41 CFR 60-300.2(o) - 78 FR 58664. This applies to federal contractors with a contract of \$25,000 or more entered into prior to December 1, 2003 and unmodified since to \$100,000 or more. We highly encourage any contractors who believe they have such contracts to review the dates and dollar amounts of their contracts.

### **41 CFR 60-300**

Contracts and subcontracts of \$100,000 or more are covered by the revised VEVRAA regulations. See 41 CFR 60-300.4 - 78 FR 58665. Contractors and subcontractors with 50 or more employees and a federal contract or subcontract of \$100,000 or more are subject to the Affirmative Action Program requirements found in Subpart C of the revised regulations. See 41 CFR 60-300.40 - 78 FR 58670.

### **41 CFR 60-741**

Contracts and subcontracts in excess of \$10,000 are covered by the revised regulations for individuals with disabilities. See 41 CFR 60-741.4 - 78 FR 58737. Contractors and subcontractors with 50 or more employees and a federal

contract or subcontract of \$50,000 or more are subject to the Affirmative Action Program requirements found in Subpart C of the revised regulations. See 41 CFR 60-741.40 - 78 FR 58742.

## **DEFINITION CHANGES**

The new 41 CFR 60-300 regulations use the term “protected veteran” to refer to the categories of veterans protected by the nondiscrimination and affirmative action provisions of VEVRAA and the regulations. See 41 CFR 60-300.2(q) - 78 FR 58664.

The former term “other protected veteran” is replaced with “active duty wartime or campaign badge veteran”. The definition remains the same. “*Active duty wartime or campaign badge veteran* means a veteran who served on active duty in the U.S. military, ground, naval or air service during a war or in a campaign or expedition for which a campaign badge has been authorized, under the laws administered by the Department of Defense.” See 41 CFR 60-300.2(b) - 78 FR 58663.

The term “pre-JVA veteran” was added to the 41 CFR 60-300 regulations. A pre-JVA veteran is defined as: “an individual who is an employee of or applicant to a contractor with a contract of \$25,000 or more entered into prior to December 1, 2003 and unmodified since to \$100,000 or more, and who is a special disabled veteran, veteran of the Vietnam era, pre-JVA recently separated veteran, or other protected veteran.” See 41 CFR 60-300-2(o) - 78 FR 58664. This will not apply to most covered contractors.

The new Section 503 regulations revised the definition of a disability to conform to the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which became effective on January 1, 2009. See 41 CFR 60-741.2(g) - 78 FR 58733. Additional information regarding the ADAAA can be found on the EEOC’s website at [http://www.eeoc.gov/laws/statutes/adaaa\\_info.cfm](http://www.eeoc.gov/laws/statutes/adaaa_info.cfm).

## **VEVRAA MANDATORY JOB LISTINGS**

The new VEVRAA regulations require listing job openings “in any manner and format” that the appropriate employment service delivery system (ESDS) permits that will allow the ESDS to provide priority referral of protected veterans. See 41 CFR 60-300.5(a)4 - 78 FR 58666. The ESDSs are unique for each state where job openings occur. [Click here to access the state workforce job banks website.](#)

The new regulations require covered contractors to provide additional information including the employer's status as a federal contractor and a request for priority referrals of protected veterans, along with the name, location, and hiring official contact information for each location within the state. This information must be provided simultaneously with the first job listing at each ESDS location after the effective date of the final rule, March 24, 2014, and anytime there is a change to the information. If an outside job search company is used, the contact information for those companies must also be provided. As in the past, documentation of the listings must be retained. It is typically requested during Compliance Evaluations.

Covered contractors will have to communicate with each ESDS where there are openings. Our sample communication with an employment service delivery system, which contains a line to be included in all job listings regarding VEVRAA Federal Contractor status, is found on our website. Contractors, who utilize the services of a third party vendor to list their jobs, should contact the vendor and review the steps the vendor will be taking regarding these changes. (COMMUNICATION WITH ESDS).

This change was required to be implemented effective March 24, 2014 regardless of the dates of the AAP.

## **INCORPORATION OF THE EO CLAUSES BY REFERENCE**

The new VEVRAA and Section 503 regulations require modification to the incorporation of the equal opportunity clauses by reference in contracts, subcontracts, and purchase orders for goods or services that are necessary for the performance of a government contract. The incorporation of the equal opportunity clause by reference must be made by citing the specific sections of the regulations and must include specific language in **bold text**. See 41 CFR 60-300.5(d) - 78 FR 58667 and 41 CFR 60-741.5(d) - 78 FR 58739. Federal contractors may combine all of the Equal Opportunity (EO) clauses required by 41 CFR 60-1.4(a), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a) into a single, consolidated "incorporation by reference" clause. Recommended language, which is taken directly from the regulations, is available on our website. (CONTRACT CLAUSES). There are no requirements to revise contracts, subcontracts, and purchase orders entered into prior to March 24, 2014.

This change was required to be implemented effective March 24, 2014 regardless of the dates of the AAP.

### **VACANCY ANNOUNCEMENT LANGUAGE**

The new VEVRAA and Section 503 regulations require covered contractors to state that all qualified applicants will receive consideration for employment without regard to their protected veteran status and will not be discriminated against on the basis of disability in all solicitations and advertisements. This is often referred to as the EO “tag line”. The OFCCP has indicated in an FAQ that protected veteran and individual with a disability can be abbreviated, but simply using “V” and “D” are not adequate abbreviations. See 41 CFR 60-300.5(a)12 - 78 FR 58667 and 41 CFR 741.5(a)7 - 78 FR 58739. Please find our sample language for use in all solicitations and advertisements (VACANCY ANNOUNCEMENT LANGUAGE) on our website.

This change was required to be implemented effective March 24, 2014 regardless of the dates of the AAP.

### **PROVIDING NOTICES TO APPLICANTS AND EMPLOYEES**

The new VEVRAA and Section 503 regulations require covered contractors to ensure that applicants and employees with disabilities, including disabled veterans, are provided notices in a form that is accessible and understandable to the applicant or employee (e.g., providing copies in Braille or large print, rather than having the notice read to a person with a disability; posting the notice for visual accessibility to persons in wheelchairs; providing the notice on a computer disc; or other accessible formats). Contractors may use electronic posting for employees who do not work at the company’s physical location, if the contractor provides computers that can access the posting or the contractor has actual knowledge that the employees can access the posting. The electronic notices must be posted in a conspicuous location and format on the company’s intranet or sent by electronic mail to all employees.

If the contractor uses an electronic application process, it must use an electronic posting to notify job applicants of their rights. This notice, known as the “EEO is the Law” poster, must be conspicuously stored with, or as part of, the electronic application. An electronic version of the poster can be accessed on the EEOC’s website at: [http://www1.eeoc.gov/employers/upload/eeoc\\_self\\_print\\_poster.pdf](http://www1.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf). This version of the poster, which is from November 2009, will clearly have to be

updated by the EEOC and OFCCP to incorporate the renaming of one of the categories of protected veterans. Contractors can certainly provide a link to the poster on the EEOC website or provide a link to a copy of the poster maintained on its own applicant website. The second approach has the advantage of not bringing applicants to the EEOC website. The link needs to include a short description of the poster such as, "Please click on this link to view a federal government poster that explains your Equal Employment Opportunity rights". See 41 CFR 60-300.5(a)9 - 78 FR 58667 and 41 CFR 60-741.5(a)4 - 78 FR 58738.

This change was effective March 24, 2014 regardless of the dates of the AAP.

## **NOTICES TO LABOR ORGANIZATIONS**

The new VEVRAA and Section 503 regulations require covered contractors to notify labor organizations with which it has a collective bargaining agreement or other contract understanding of its affirmative action obligations regarding both protected veterans and individuals with disabilities. In addition, covered contractors will be required to notify union officials and/or employee representatives of their policy and request cooperation. See 41 CFR 60-300.5(a)10 - 78 FR 58667, 41 CFR 60-300.44(g) - 78 FR 58672, 41 CFR 741.5(a)5 - 78 FR 58739, and 41 CFR 60-741.44(g) - 78 FR 58744. These requirements are included in both, the EO Clause (Subpart A) and the internal dissemination of affirmative action policy (Subpart C). We recommend beginning to send the communication to labor organizations, union officials, and/or employee representatives beginning March 24, 2014. See our website for sample correspondence with labor organizations, along with other samples (SAMPLE LETTERS). Draft letters should be written and reviewed prior to that time.

## **INVITATIONS TO SELF-IDENTIFY AS A PROTECTED VETERAN**

The new regulations require covered contractors to make an invitation to self-identify as a protected veteran at both the applicant pre-offer and post-offer stages.

At the pre-offer stage, covered contractors must invite applicants to self-identify as a "protected veteran". The invitation may be made at the same time race/ethnicity and gender information is requested in accordance with the OFCCP's Internet Applicant Rule. See 41 CFR 60-300.42(a) - 78 FR 58670 and

41 CFR 60-60-1.3 for the definition of an Internet Applicant. Also, see FAQ 7 in the 'Overview of the Final Rule' section on the OFCCP's website. A sample invitation is included in Appendix B of the regulations - 78 FR 58678. The sample is an acceptable form, but not wording that is required verbatim. Our sample pre-offer invitation to self-identify as a protected veteran is available on our website (PRE-OFFER AND OPTIONAL POST-OFFER INVITATION TO IDENTIFY AS A PROTECTED VETERAN).

Contractors will need to revise their applicant tracking systems in order to record the responses to the pre-offer invitation. Contractors need to contact their IT staff and/or vendors and find out the timetable for implementing a field for retaining responses from applicants to the pre-offer invitation.

In addition, covered contractors must also invite applicants to self-identify as a protected veteran at the post-offer stage. The regulations state, that this invitation shall be made at any time after the offer of employment is made, but before the applicant begins his or her job duties. See 41 CFR 60-300.42(b) - 78 FR 58670. Most contractors make this invitation as part of a first day package which includes other forms, such as tax forms.

The OFCCP regulations found at 41 CFR 60-300.42(b) that require the post-offer invitation are tied, however, to the Veterans' Employment and Training Service (VETS) regulations found in 41 CFR 61-300. These regulations require covered federal contractors to file annual reports regarding protected veterans. In November 2015, these regulations were changed and the VETS-100 and VETS-100A reports were replaced by a new VETS-4212 report. This new report does not require reporting on specific categories of protected veterans. (See our News and Development article dated December 31, 2014).

On January 20, 2015, the Office of Federal Contract Compliance Programs (OFCCP) posted two new Frequently Asked Questions (FAQs) clarifying that, due to the requirements of the new VETS-4212 form, contractors are no longer required to invite applicants to self-identify by the individual protected veteran categories at the post-offer stage. The FAQs are as follows:

2. The Veterans' Employment and Training Service (VETS) replaced the VETS-100A form with a new VETS-4212 form. The new form requires federal contractors to report aggregate data on the number of protected veterans that were newly hired and the number they employed. This is different from the previous requirement that contractors report the data by

the number of veterans in each of the individual categories for protected veterans. To comply with OFCCP's VEVRAA requirements, must contractors continue to invite applicants to self-identify using the individual categories at the post-offer stage?

No. The VEVRAA requirement, at 41 CFR 60-300.42(b), mandates that contractors invite post-offer self-identification as a protected veteran. This provision is specifically linked to the scope of the VETS reporting requirement. Accordingly, since the new VETS-4212 report no longer requires contractors to provide this information by the individual protected veteran categories, contractors are not required to invite self-identification by category in order to comply with VEVRAA's post-offer invitation requirement. Rather, contractors need only invite those offered a job to indicate whether they are protected veterans under any of the VEVRAA categories.

3. May a contractor continue to invite applicants to voluntarily self-identify as a protected veteran using the individual categories for protected veterans even though the new VETS-4212 form asks only for aggregated protected veteran data?

Yes. Though not required, contractors may choose to continue to invite applicants to voluntarily self-identify the specific category or categories of protected veteran to which they belong at the post-offer stage, so long as the contractor also provides VETS with the aggregate protected veteran data required by the VETS-4212 form.

Therefore, contractors may use a post-offer Invitation to Identify that is identical to the pre-offer Invitation to Identify, or use a post-offer Invitation to Identify that asks the specific category or categories of protected veteran. Contractors that are concerned with asking for more than is necessary should use the pre-offer format at both stages. Contractors that do not request the specific category of protected veteran at the post-offer stage may have inflated figures, as an individual who is a recently separated veteran only remains so for three years following the date of discharge. If the post-offer Invitation to Identify using individual protected veteran categories is used, contractors should also maintain the date of discharge when it is applicable so employees that identify as a recently separated veteran are only included as protected veterans for three years following the date of discharge if they do not belong to another category.

Our optional post-offer invitation to self-identify as one or more category of protected veteran (i.e. disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces service medal veteran) is available on our website (OPTIONAL POST-OFFER INVITATION TO IDENTIFY AS A PROTECTED VETERAN).

The requirement for covered contractors to make an invitation to self-identify as a protected veteran at both the applicant pre-offer and post-offer stages is part of the phased enforcement provisions of Subpart C. Covered contractors that already had an AAP in place on March 24, 2014 were able to delay compliance with this requirement until their next plan year began. See FAQ 2 in the Compliance Schedule section. Draft invitations should be developed and reviewed prior to that time.

### **INVITATION TO SELF-IDENTIFY AS AN INDIVIDUAL WITH A DISABILITY**

The new regulations also require covered contractors to make an invitation to self-identify as an individual with a disability at both the applicant pre-offer and post-offer stages.

The pre-offer invitation may be made at the same time race/ethnicity and gender information is requested in accordance with the OFCCP's Internet Applicant Rule. See 41 CFR 60-741.42(a) - 78 FR 58742 and 41 CFR 60-60-1.3 for the definition of an Internet Applicant. Also, see FAQ 9 on the OFCCP's website. The regulations require that the invitation be made "using the language and manner prescribed by the Director and published on the OFCCP Web site". The post-offer invitation may be made "[a]t any time after the offer of employment, but before the applicant begins his or her job duties". The post-offer invitation also needs to be made "using the language and manner prescribed by the Director and published on the OFCCP Web site." See 41 CFR 60-741.42(b) - 78 FR 58742. On January 29, 2014, the finalized version of the pre- and post-offer Voluntary Self-Identification of Disability was posted on the OFCCP website for contractor use after March 24, 2014. The pre- and post-offer self-identification is available on our website (VOLUNTARY SELF-IDENTIFICATION OF DISABILITY).

In addition, covered contractors must invite all employees to voluntarily self-identify during the first year they are subject to Subpart C of the new regulations and then again every five years. At least once during the five year intervals,

covered contractors are required to remind employees that they may change their disability status at any time.

The requirement for covered contractors to make an invitation to self-identify as an individual with a disability is part of the phased enforcement provisions of Subpart C. Covered contractors that already had an AAP in place on March 24, 2014 were able to delay compliance with this requirement until their next plan year began. See FAQ 2 in the Compliance Schedule section.

## **HIRING BENCHMARKS FOR PROTECTED VETERANS**

One of the most significant sections of the new regulations for protected veterans requires covered contractors to establish an annual hiring benchmark for protected veterans each year that will be used to measure the progress toward achieving equal employment opportunity for protected veterans. See 41 CFR 60-300.45 - 78 FR 58673. Covered contractors were required to establish hiring benchmarks in one of two ways:

A contractor may establish a benchmark equal to the national percentage of veterans in the civilian labor force, as posted in the Benchmark Database on the OFCCP Web site. We highly recommend this approach. The national percentage of veterans in the civilian labor force on the OFCCP's website was initially posted at 7.2 percent. The percentage will be updated annually, based on Census Population Survey Table 1, provided by The Bureau of Labor Statistics, and is currently 7 percent. The national percentage can be found on the OFCCP website at [www.dol-esa.gov/errd/VEVRAA.jsp](http://www.dol-esa.gov/errd/VEVRAA.jsp).

A contractor may establish its own benchmark by taking into account the following five factors:

1. The average percentage of veterans in the civilian labor force in the state where the contractor is located over the preceding three years, as posted in the Benchmark Database on the OFCCP Web site;
2. The number of veterans, over the previous four quarters, who participated in the employment service delivery system in the state where the contractor is located, as posted in the Benchmark Database on the OFCCP Web site;
3. The applicant and hiring ratios for the previous year;
4. The contractor's recent assessment of the effectiveness of its outreach and recruitment efforts; and

5. Any other factors, such as the nature of the job or its location, that would affect the availability of qualified protected veterans.

The data for factors 1 and 2 above is posted on the OFCCP website at <http://www.dol-esa.gov/errd/VEVRAA.jsp>.

Contractors must maintain records related to their benchmark for three years, allowing them to assess the success of their outreach and recruitment efforts for veterans over time.

The new regulations require that covered contractors document the hiring benchmark set each year. If the contractor establishes an individual benchmark, it must also document the factors considered and the relative significance of each. Contractors will have the discretion to apply the benchmark to its job groups, EEO-1 categories, or to its entire workforce. All records pertaining to the benchmark must be retained for 3 years.

The new regulations clearly state that the benchmark is not a rigid and inflexible quota which must be met, nor is it a ceiling or a floor for the employment of particular groups. Failure to meet the benchmark is not a violation of VEVRAA. In light of this and the immense amount of additional work that would be involved in creating a benchmark based on the five factors, it does not appear practical to use the second option provided in the new regulations.

In an FAQ published on the OFCCP's website, the agency stated that the annual hiring benchmarks should be applied to the total workforce at each establishment. In another FAQ published on the OFCCP's website, the agency stated that "Contractors may apply their hiring benchmark to each of their job groups, but the Final Rule does not require them to do so." In the VEVRAA Crosswalk published on the OFCCP website the agency stated that contractors have discretion whether to apply the benchmark to EO 11246 job groups, EEO-1 Categories, or to an entire workforce.

The hiring benchmarks for protected veterans requirement is part of the phased enforcement provisions of Subpart C. Covered contractors that already had an AAP in place on March 24, 2014 were able to delay compliance with this requirement until their next plan year began.

## **UTILIZATION GOALS FOR INDIVIDUALS WITH DISABILITIES**

One of the most significant sections of the new regulations for individuals with disabilities requires covered contractors to establish a utilization goal of 7 percent for employment of qualified individuals with disabilities for each job group in the contractor's workforce. See 41 CFR 60-741.45 - 78 FR 58745. If a contractor has a total workforce of 100 or fewer employees, it need not use job groups and has the option to measure the representation of individuals with disabilities in its entire workforce with the utilization goal.

When the percentage of individuals with disabilities in one or more job groups is less than the utilization goal, the contractor must take steps to determine whether and where impediments to equal opportunity exist. Contractors must assess their personnel processes, the effectiveness of outreach and recruitment efforts, the results of the AAP audit, and any other areas that might affect the success of the AAP.

The regulations require the development and execution of action-oriented programs designed to correct any identified problem areas. These programs may include modification of personnel processes to ensure equal employment opportunity for individuals with disabilities, alternative or additional outreach and recruitment efforts, and/or other actions designed to correct the identified problem areas and attain the established goal. Failure to meet the utilization goals established does not constitute a finding or admission of discrimination. The utilization should not be used as a quota or ceiling that limits or restricts employment of individuals with disabilities.

The utilization goals for individuals with disabilities requirement is part of Subpart C and is covered by the phased enforcement provisions. Covered contractors that already had an AAP in place on March 24, 2014 were able to delay compliance with this requirement until their next plan year began.

## **ACCESS TO RECORDS**

The new VEVRAA and Section 503 regulations require covered contractors to provide off-site access to materials to the OFCCP, if requested. In addition, if requested, contractors must specify all formats in which records are available, including electronic formats, and provide the records to OFCCP in the format(s) they request. See 41 CFR 60-300.81 - 78 FR 58676 and 41 CFR 60-741.81 - 78 FR 58749.

These revised regulations apply to covered contractors subject to a Compliance Evaluation on or after March 24, 2014.

## **RECORDKEEPING**

The new VEVRAA and Section 503 regulations require records to be retained for three years. See 41 CFR 60-300.80(b) - 78 FR 58676 and 41 CFR 741.80(b) - 78 FR 58749.

Covered contractors need to advise staff responsible for record retention that these changes were effective March 24, 2014 regardless of dates of the AAP year prior to that date.

## **COMPLIANCE EVALUATIONS**

The new VEVRAA and Section 503 regulations codify the OFCCP's position that it may extend the temporal scope of an evaluation and examine information after the date of a compliance evaluation scheduling letter, if the OFCCP deems it necessary to carry out its investigation of possible violations. See 41 CFR 60-300.60(a)(1)(i) - 78 FR 58673 and 41 CFR 60-741.60(a)(1)(i) - 78 FR 58746.

These revised regulations apply to covered contractors subject to a Compliance Evaluation on or after March 24, 2014.

## **AAP ELEMENTS**

The new VEVRAA and Section 503 regulations make a number of changes and modifications to the required contents of affirmative action programs for protected veterans and individuals with disabilities. See 41 CFR 60-300.44 - 78 FR 58670 and 41 CFR 60-741.44 - 78 FR 58743. These changes and modifications are subject to the "phased enforcement" described above and did not have to be implemented until the first AAP following March 24, 2014.

## **POLICY STATEMENT**

The new VEVRAA and Section 503 regulations require that the policy statement indicate "the top U.S. executive's (such as the CEO or the President of the U.S. Division of a foreign company) support for the contractor's affirmative action program". See 41 CFR 60-300.44(a) - 78 FR 58670 and 41 CFR 60-741.44(a) -

78 FR 58743. It is important to make the top U.S. executive aware of this requirement along with the other changes in the regulations

The new VEVRAA and Section 503 regulations also require covered contractors to ensure that applicants and employees who are disabled veterans or individuals with disabilities are provided the notice in a form that is accessible and understandable to the disabled veteran or individual with a disability (e.g., providing Braille or large print versions of the notice, or posting the notice for visual accessibility to persons in wheelchairs). See 41 CFR 60-300.44(a) - 78 FR 58670 and 41 CFR 60-741.44(a) - 78 FR 58743.

## **EXTERNAL DISSEMINATION OF POLICY, OUTREACH, AND POSITIVE RECRUITMENT**

The new regulations require covered contractors to send written notification of their affirmative action policy to all subcontractors, and subcontracting vendors and suppliers, and request their cooperation. See 41 CFR 60-300.44(f) - 78 FR 58671 and 41 CFR 60-741.44(f) - 78 FR 58744. Our website has available our sample letters that include the sample letter to subcontractors, vendors, and suppliers (SAMPLE LETTERS).

The new regulations contain an expanded list of examples of outreach and recruitment activities. Although the regulations require covered contractors to undertake appropriate outreach and positive recruitment activities, contractors are not required to undertake all of the activities or limit their efforts to those listed. See 41 CFR 60-300.44(f)(2) - 78 FR 58671 and 41 CFR 60-741(f)(2) - 78 FR 58744.

The OFCCP has supplemented the agency's Employment Resource Referral Directory (ERRD) with a new database to help contractors find qualified workers with disabilities and veterans. The resource can be accessed on the OFCCP's website at <http://www.dol-esa.gov/errd/index.html>. It can also be accessed by going to the OFCCP home page <http://www.dol.gov/ofccp/>, scrolling down the right side to the Federal Contractor Corner, and clicking on the link for the Employment Resource Referral Directory in the Other Resources section. We encourage you to utilize this resource along with those referenced in the OFCCP's March 6, 2014 webinar.

The new regulations require covered contractors to document and review their outreach and recruitment efforts on an annual basis to evaluate their

effectiveness in identifying and recruiting qualified protected veterans and individuals with disabilities. These evaluations must also be documented and must include the criteria used to evaluate the effectiveness of each effort and the conclusion of whether it was effective or not. If the totality of the efforts is not effective, alternative efforts must be identified and implemented. Contractors are required to retain documentation of outreach for the current year and the two most recent previous years. See 41 CFR 60-300.44(f)(4) - 78 FR 58672 and 41 CFR 60-741(f)(4) - 78 FR 58744.

### **INTERNAL DISSEMINATION OF AFFIRMATIVE ACTION POLICY**

The new regulations require covered contractors to include the contractor's policy in its policy manual. In addition, if the contractor is party to a collective bargaining agreement, it shall notify union officials and/or employee representatives to inform them of the contractor's policy, and request their cooperation. See 41 CFR 60-300.5(a)10 - 78 FR 58667, 41 CFR 60-300.44(g) - 78 FR 58672, 41 CFR 741.5(a)5 - 78 FR 58739, and 41 CFR 60-741.44(g) - 78 FR 58744. As previously stated, this requirement is included in both the EO Clause and internal dissemination of affirmative action policy.

### **DATA COLLECTION ANALYSIS FOR PROTECTED VETERANS**

Another significant section of the new regulations for protected veterans is the data collection analysis section found in 41 CFR 60-300.44(k) - 78 FR 58672. The new regulations require covered contractors to document the following computations or comparisons pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years:

1. the number of applicants who self-identified as protected veterans or who are otherwise known as protected veterans;
2. the total number of job openings and total number of jobs filled;
3. the total number of applicants for all jobs;
4. the number of protected veteran applicants hired; and
5. the total number of applicants hired.

In an FAQ posted on its website, the OFCCP stated "[t]he total number of job openings refers to the number of individual positions advertised as open in a job vacancy announcement or requisition. For example, if one job vacancy announcement or requisition includes 5 open positions and results in 4 hires, the contractor would document this as 5 job openings and 4 jobs filled".

In another FAQ posted on its website, the OFCCP stated “[i]n the context of the data collection requirements of 60-300.44(k), jobs "filled" refers to all jobs the company filled by any means, be it through a competitive process or non-competitively, e.g., through reassignment or merit promotion. It, therefore, should take into account both new hires into the company and those employees who were placed into new positions via promotions, transfers, and reassignments. In contrast, the number of those "hired" refers solely to those applicants (both internal and external to the contractor) who are hired through a competitive process, including promotions”.

Covered contractors should have worked with their IT staff or vendors to make sure the system changes were in place to comply with the provisions of this section of the regulations.

## **DATA COLLECTION ANALYSIS FOR INDIVIDUALS WITH DISABILITIES**

Another significant section of the new regulations for individuals with disabilities is the data collection analysis section found in 41 CFR 60-741.44(k) - 78 FR 58745. The new regulations require covered contractors to document the following computations or comparisons pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years:

1. the number of applicants who self-identified as individuals with disabilities or who are otherwise known as individuals with disabilities;
2. the total number of job openings and total number of jobs filled;
3. the total number of applicants for all jobs;
4. the number of protected veteran applicants hired; and
5. the total number of applicants hired.

In an FAQ posted on its website, the OFCCP stated “[t]he total number of job openings refers to the number of individual positions advertised as open in a job vacancy announcement or requisition. For example, if one job vacancy announcement or requisition includes 5 open positions and results in 4 hires, the contractor would document this as 5 job openings and 4 jobs filled”.

In another FAQ posted on its website, the OFCCP stated “[i]n the context of the data collection requirements of 60-741.44(k), jobs "filled" refers to all jobs the company filled by any means, be it through a competitive process or non-competitively, e.g., through reassignment or merit promotion. It, therefore, should

take into account both new hires into the company and those employees who were placed into new positions via promotions, transfers, and reassignments. In contrast, the number of those "hired" refers solely to those applicants (both internal and external to the contractor) who are hired through a competitive process, including promotions."

Covered contractors should have worked with their IT staff or vendors to make sure the system changes were in place to comply with the provisions of this section of the regulations.

## **SUMMARY**

Much has been written about the revised VEVRAA and Section 503 of the Rehabilitation Act regulations since Vice President Biden announced them at the American Legion's National Convention on August 27, 2013. Most of the comments have focused on the amount of time the new regulations will take to implement. Most of the changes, however, should not have been that difficult to implement. The data collection requirements of the new regulations were most likely the changes requiring the most time and effort. Covered contractors should have reviewed the changes and determined the appropriate staff in their organizations responsible for implementing the changes.

If you have questions regarding any aspects of the new regulations, please do not hesitate to contact us at (732) 446-2529 or [glennbarlett@gbcs.net](mailto:glennbarlett@gbcs.net). We look forward to working with you to implement the changes.