

Office of Federal Contract Compliance Programs (OFCCP)

Frequently Asked Questions New Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) Regulations

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On September 24, 2013, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published a Final Rule that makes changes to the regulations implementing the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA), at 41 CFR Part 60-300. These new regulations became effective on March 24, 2014. You can view the new regulations on the OFCCP Web site at www.dol.gov/ofccp/VEVRAARule, either as published in the *Federal Register* or as posted in the *Electronic Code of Federal Regulations*. Additional information about the new VEVRAA regulations is provided in the Frequently Asked Questions (FAQs), below.

General Information

1. Why did OFCCP revise its VEVRAA regulations?

OFCCP revised the VEVRAA regulations to update and strengthen contractors' affirmative action and nondiscrimination responsibilities. The framework articulating a contractor's responsibilities with respect to affirmative action has remained unchanged since the VEVRAA implementing rules were first published in 1976. Meanwhile, increasing numbers of veterans are returning from tours of duty in Iraq, Afghanistan, and other places around the world, and many face substantial obstacles to finding employment upon leaving the service. Gulf War-era II veterans, in particular, have an unemployment rate far higher than the national average.

- In 2012, according to BLS data on the employment situation of veterans for that year, about 2.6 million of the nation's veterans had served during Gulf War-era II. The unemployment rate for this category of veterans was 9.9 percent, compared to nonveterans at 7.9 percent.¹
- In this same year, the unemployment rate for male Gulf War-era II veterans age 18 to 24 was 20.0 percent, higher than the rate for nonveterans of the same age group (16.4 percent).²

Several factors contribute to limiting the ability of veterans to seek, find, keep, and thrive in jobs. The existence of an outdated framework that does not reflect the realities of today's workplace is one factor. Other factors include, bias or discrimination, the inability of employers to translate military skills and abilities, process and institutional barriers, and data collection issues. These all contribute to veterans being underutilized in the federal contractor workforce.

Addressing the barriers veterans face upon returning to civilian life is the focus of a number of federal efforts, including these revised VEVRAA regulations. The new regulations will help to ensure that contractors: list their jobs so that veterans can know about and apply for them; have the data they need to measure and tailor their outreach and recruitment of veterans; and take other necessary actions to employ and advance in employment these veterans. It also increases OFCCP's flexibility in how it conducts compliance evaluations, which will lead to more effective and efficient enforcement of VEVRAA.

2. Did OFCCP change all of the VEVRAA regulations?

No, several VEVRAA requirements remain unchanged in the new regulations. OFCCP republished all of the VEVRAA implementing regulations when it published the Final Rule in the *Federal Register*, whether or not the individual regulation changed, to make the Final Rule easier to read and understand.

3. Do the new VEVRAA regulations differ from the regulations proposed in the Notice of Proposed Rulemaking (NPRM)?

Yes. OFCCP received more than 100 comments on the NPRM from contractors, veterans' organizations, and others during the public comment period. In light of the comments, we made several changes to the proposed regulations. The resulting new regulations increase contractor accountability for compliance with their affirmative action obligations, but provide contractors with greater flexibility than the NPRM originally proposed.

4. Where can I get a copy of the new regulations?

The new VEVRAA regulations are available on the OFCCP Web site at www.dol.gov/ofccp/VEVRAARule, where you can read them as published in the *Federal Register* or as posted in the *Electronic Code of Federal Regulations (eCFR)*.

5. Will the "EEO is the Law" poster be revised in light of the new regulations? If so, should contractors stop using the current poster now that the new regulations are effective?

It is likely that the "EEO is the Law" poster will be revised in light of changes in the new regulations; for example, the new poster will reflect the change in the terminology used to describe the veterans protected by VEVRAA. Even though OFCCP is working with the Equal Employment Opportunity Commission (EEOC) to revise the poster, contractors should continue using the existing poster. OFCCP will post a notice on its Web site to let contractors know when the new poster is available for use.

Effective Date and Compliance Schedule

When did the new VEVRAA regulations become effective?

The new regulations became effective on March 24, 2014. Contractors should be in compliance with all elements of the new regulations, except for the new Affirmative Action Program requirements in Subpart C, as of this date. OFCCP is providing contractors with additional time to come into compliance with these Affirmative Action Program requirements, during which it will provide technical assistance to facilitate the transition for contractors.

March 24, 2014 fell in the middle of my company's AAP year. When are we required to put in place a new AAP that complies with Subpart C of the new regulations?

Contractors with an AAP in place as of the effective date of the new regulations (March 24, 2014) may maintain that AAP until the end of their AAP year and delay their compliance with the AAP requirements of Subpart C of the new regulations until the start of their next AAP cycle. Contractors are nevertheless encouraged to begin updating their employment practices and IT systems to come into compliance with the revised requirements of Subpart C of the new regulations as soon as possible. In addition, contractors are reminded that they must be in compliance with the other requirements of the new regulations, in subparts A, B, D and E, as of the effective date.

Overview of the New VEVRAA Regulations

1. Why did OFCCP rescind the VEVRAA regulations in 41 CFR Part 60-250?

The Part 60-250 regulations applied only to contracts entered into before December 1, 2003, and not since modified. OFCCP believes that all such contracts have either expired, or been modified so that they are now covered under the 41 CFR Part 60-300 regulations. There is, therefore, no longer a need for the Part 60-250 regulations.

However, out of an abundance of caution that a contract falling under Part 60-250 coverage may still exist, the new VEVRAA regulations provide for the continuing protection from discrimination for any veteran who would have been protected under Part 60-250 had it not been rescinded, but is not currently protected under Part 60-300. The new regulations refer to these veterans as "pre-JVA veterans," and permit them to file discrimination complaints under the Part 60-300 regulations.

2. What changes do the new VEVRAA regulations make to the definitions section of the regulations?

The new VEVRAA regulations make several changes to the definitions section of the regulations:

- A definition of "protected veteran" has been added to provide a comprehensive term to refer to any veteran that is protected under the VEVRAA regulations;
 - The term "other protected veteran" has been replaced with the more accurate and specific term "active duty wartime or campaign badge veteran" to describe that group of protected veterans. These are veterans that 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;
 - A definition of "pre-JVA veteran" has been added to denote the groups of veterans previously protected under the now rescinded Part 60-250;
 - "Director" replaces the term "Deputy Assistant Secretary" to reflect the current title of the head of OFCCP;
 - Additional information regarding the Wagner-Peyser Act has been added to the definition of "employment service delivery system" for clarification; and
 - The definitions have been rearranged into alphabetical order, which will make the definitions section easier to use.
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3. Tell me more about the new requirement to establish a hiring benchmark. What does my company have to do to establish its benchmark?

The new VEVRAA regulations require that each contractor who is required to develop a written affirmative action program (AAP) also establish a hiring benchmark for protected veterans each year. This benchmark is a tool to help contractors assess the effectiveness of their efforts to recruit and employ protected veterans. A contractor may establish its hiring benchmark 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; or
- 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 assessments 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.

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.

4. Does my company have to apply our hiring benchmark to each of our Executive Order job groups?

No. Contractors may apply their hiring benchmark to each of their job groups, but the new VEVRAA regulations do not require them to do so.

5. Is the hiring benchmark a "goal"

No, the hiring benchmark in VEVRAA functions differently from the "goals" expressed in the Executive Order 11246 regulations and the new Section 503 regulations. The hiring benchmark in VEVRAA provides a yardstick against which contractors can measure the success of their efforts to recruit and employ qualified protected veterans. A goal, on the other hand, not only serves as a yardstick to measure the success of outreach and recruitment efforts, but it also provides an equal opportunity objective, based on the availability of members of the protected group in the labor force, that should be attainable if the contractor complies with its affirmative action program. In contrast, the only data regarding veteran availability in the labor force encompasses all veterans, and is broader than the subset of veterans who are protected by VEVRAA. Therefore, such data could not be used as the basis for establishing an availability-based goal.

6. What changes do the new VEVRAA regulations make to the contractor's obligations to invite applicants to self-identify as a protected veteran?

The new VEVRAA regulations require contractors to invite applicants to self-identify as a protected veteran prior to making a job offer, in addition to the post-offer self-identification that is already required. OFCCP added this requirement so that contractors can track the number of protected veterans who apply for jobs and use this data to assess the effectiveness of their outreach and recruitment efforts. The pre-offer invitation to self-identify may be included in the contractors' application materials. After making a job offer to an applicant, the new regulations retain the obligation that contractors invite applicants to voluntarily self-identify as belonging to any of the specific categories of protected veteran (e.g., recently separated veteran; disabled veteran) on which the contractor is required to report by the Veterans Employment and Training Service (VETS). Appendix B of the new VEVRAA regulations includes a sample invitation to self-identify that contractors may choose to use. You can find the sample invitations on the OFCCP Web site.

7. When should my company invite pre-offer self-identification from applicants? Is the timing the same for Internet applicants?

The new VEVRAA regulations permit contractors to invite applicants to self-identify as a protected veteran at the same time that the contractor collects demographic data regarding race, gender, and ethnicity from applicants, as required by Executive Order 11246. Under Executive Order 11246, the Internet Applicant Rule generally allows contractors to screen out individuals whom they believe do not meet the basic qualifications for the position prior to collecting demographic data regarding race, gender, and ethnicity. In order to harmonize VEVRAA's pre-offer invitation to self-identify requirement with Executive Order 11246's Internet Applicant recordkeeping provisions, OFCCP will permit contractors to invite applicants to self-identify after they meet the Internet Applicant requirements, including the basic qualification screen.

When designing basic qualification screens, contractors should be mindful of the requirements that VEVRAA places on the use of qualification standards and selection criteria, including the use of "basic qualification" screens. VEVRAA prohibits contractors from using qualification standards and selection criteria that screen out or tend to screen out a disabled or other protected veteran or a class of disabled or other protected veterans unless the contractor can show that the standards or criteria are job-related for the position in question and consistent with business necessity. Moreover, contractors may not use selection criteria that relate to the performance of an essential function of the job to exclude a disabled veteran if that person could satisfy the criteria with a reasonable accommodation.

8. Do the new VEVRAA regulations make changes to the mandatory job listing requirement?

The new regulations clarify what contractors must do to satisfy the job listing requirement set forth in the VEVRAA statute. They require the contractor to provide additional identifying information to the appropriate employment service delivery system (ESDS) when listing its job openings. Specifically, the new regulations codify OFCCP's longstanding policy that the contractor must provide its job listing information in a format that is permitted by the appropriate employment ESDS. This means, for example, that if the ESDS requires electronic transmission through a Web-based form, the contractor must provide its job listings in this way. If the ESDS will accept job listings electronically, by facsimile or by mail, then the contractor may provide its job listings in any of these formats. In addition, a contractor must indicate on its job listings that it is a federal contractor – for example by noting "VEVRAA Federal Contractor" on its listing – and its desire for priority referrals of protected veterans for its openings. The contractor must also provide the contact information for the contractor official responsible for hiring at each hiring location who can verify the information in the job listing. This official may be a chief hiring official, an HR contact, a senior management contact, or any other appropriate official.

9. Do the new VEVRAA regulations still permit my company to incorporate the Equal Opportunity (EO) Clause into subcontracts by reference?

Yes. Contractors can incorporate the EO Clause into subcontracts by reference but only by citing the regulations, 41 CFR 60-300.5(a), **AND** including the following sentences in bold text immediately following the citation:

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

10. Can a contractor satisfy its obligation to post a notice informing applicants and employees of their EEO rights by posting the notice electronically?

When a contractor has employees who do not work at its physical location, the contractor can satisfy its posting obligation by posting the EEO notice in electronic format. To have the ability to use electronic postings to satisfy this obligation, a contractor must either provide these employees with computers that can access the electronic posting or the contractor must have actual knowledge that the electronically posted notice is otherwise accessible to these employees. Contractors must post electronic notices for employees in a conspicuous location and format on the company's Intranet or send them to employees by electronic mail (i.e., email). If the contractor uses an electronic application process, it must post an electronic notice to inform job applicants of their EEO rights. Electronic notices for applicants must be conspicuously stored with, or as part of, the electronic application. In addition, in individual instances, a contractor may have to provide a notice of EEO rights electronically as a form of reasonable accommodation for a disabled employee, even if the employee works at the contractor's physical location.

11. Do the new VEVRAA regulations change the requirements concerning the equal opportunity employer statement that is included in all solicitations and advertisements for employees?

Yes. The new regulations require a contractor to state in its solicitations and advertisements that it is an equal opportunity employer of protected veterans. Contractors can do this by simply adding "veteran status" or something similar to its existing equal opportunity employer statement.

12. What changes do the new VEVRAA regulations make to the VEVRAA data collection requirements?

The previous VEVRAA regulations did not provide for any structured collection of data regarding the number of protected veteran who apply for jobs. This lack of data made it nearly impossible for a contractor to evaluate the availability of protected veterans in its applicant pool or workforce, or to assess the effectiveness of its outreach and recruitment efforts at attracting protected veteran candidates. To fill this data void, the new regulations require contractors to document and update the following comparisons and information regarding applicants and employees annually.

With respect to applicants:

- the number of protected veteran applicants;
- the total number of job openings and the number of jobs filled; and
- the total number of applicants for all jobs.

With respect to employees:

- the total number of protected veteran applicants hired; and
- the total number of applicants hired

This will provide contractors with meaningful data to use in evaluating and tailoring their recruitment and outreach efforts. Contractors must maintain this information for three years, to allow them to assess the success of their outreach and recruitment efforts for veterans over time.

13. Do the new VEVRAA regulations change the requirement that contractors design and implement an audit and reporting system for their affirmative action program?

OFCCP always intended that contractors document the actions they take to comply with the requirement to design and implement an audit and reporting system. The new regulations make this intention explicit by requiring that contractors document these actions and retain these documents as employment records.

14. Do the new VEVRAA regulations change the requirements for conducting outreach and recruitment?

The new regulations provide examples of outreach and recruitment activities, but retain the flexibility for contractors to choose and utilize the outreach and recruitment activities that work best for them. To determine whether the chosen methods of outreach and recruitment have been successful, the new regulations require that contractors annually assess their outreach and recruitment efforts and document this evaluation. The evaluation must include the criteria the contractor used to evaluate the effectiveness of each effort and the contractor's conclusion as to whether each effort was effective. If the contractor concludes that totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it must implement alternative outreach and recruitment methods. Contractors must retain their evaluations for three years, to allow them to assess the success of their outreach and recruitment efforts for veterans over time.

15. How do the new regulations change the VEVRAA recordkeeping requirements?

To enable contractors to assess the effectiveness of their outreach and recruitment activities over time, the new regulations add a requirement that certain types of records are to be maintained for three years.

These records are:

- Evaluations of outreach and recruitment efforts (41 CFR 60-300.44(f));
 - Records pertaining to the data collection of comparisons regarding applicants and employees (41 CFR 60-300.44(k)); and
 - Records related to the hiring benchmark requirement (41 CFR 60-300.45).
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16. Do the new VEVRAA regulations change the contractor's obligation to conduct a review of physical and mental job qualification standards?

No. The new regulations retain the regulatory requirement for "periodic" reviews so no new or different obligations are created for contractors. OFCCP has identified some best practices, or examples, for reviewing job qualification standards. One example is reviewing physical and mental qualification standards prior to posting or filling a job position/opening, if the contractor has not reviewed the standards for that job within the past year; and whenever the physical or mental qualifications standards of a job change, regardless of when the contractor last reviewed that position's standards.

17. Do the new VEVRAA regulations update how compliance officers conduct compliance evaluations?

Yes. It has long been OFCCP's practice to obtain information pertinent to the evaluation for periods after the date of the scheduling letter. The new regulations codify this position by stating that OFCCP may extend the temporal scope of an evaluation and examine information after the date of the compliance evaluation scheduling letter, if OFCCP deems it necessary to carry out its investigation of potential VEVRAA violations. The new regulations also state that, upon request, the contractor must inform OFCCP of the format(s) in which it maintains its records and other information (e.g., Word; pdf; Excel), and provide the records and information to OFCCP in the available format(s) OFCCP selects. In addition, the new regulations state that OFCCP may request that the contractor provide documents either on-site or off-site during compliance checks and that OFCCP may conduct focused reviews both on-site and off-site. Finally, the new regulations add a pre-award compliance evaluation procedure like the one contained in the Executive Order 11246 regulations.

Compliance Assistance and Education

1. How can I contact OFCCP if I have questions about the new VEVRAA regulations?

You may call OFCCP Toll-Free at 1-800-397-6251 (TTY: 1-877-889-5627) or contact us by email at OFCCP-Public@dol.gov. You may also contact the field office nearest you for assistance. To locate your nearest office visit our on-line OFCCP office directory at <http://www.dol.gov/ofccp/contacts/ofnation2.htm>.

2. Does OFCCP provide technical assistance for contractors on the new VEVRAA requirements?

Yes. OFCCP conducted a series of training webinars to help federal contractors comply with the new regulations, the recordings of which are available on the OFCCP website at www.dol.gov/ofccp/regs/compliance/final_rules_webinars.htm. Future training webinars on the new regulations will also be announced on this webpage.

In addition, OFCCP has compiled resources to support federal contractor compliance with the new regulations, which are available on the OFCCP website at www.dol.gov/ofccp/regs/compliance/Resources.htm.

Implementation Questions

In General

1. Does the revised Scheduling Letter request data and information required in the new VEVRAA regulations?

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Yes. Effective October 1, 2014, OMB approved a revised Scheduling Letter and Itemized Listing specifying the documents and data that a contractor must provide to OFCCP when selected for a compliance evaluation. These include the contractor's VEVRAA Affirmative Action Program (AAP), and the documentation and information required by Subpart C of the new regulations, including but not limited to the contractor's annually established hiring benchmark, evaluation of outreach and recruitment efforts, and the data described in § 60-300.44(k).

2. The revised regulations require that the "EEO is the Law" poster be made available in a "form that is accessible and understandable" to individuals with disabilities and disabled veterans, such as Braille or large print. Must contractors maintain Braille and/or large print versions of the poster at all locations?

Providing the "EEO is the Law" poster in an alternate format, such as large print or Braille, is a form of reasonable accommodation. Therefore, contractors must make the poster available in such an alternate format only when an applicant or employee requests the poster in an alternate format, or when the contractor knows that an applicant or employee is unable to read the poster because of a disability. Contractors may also provide the poster to an applicant or employee with a disability in other alternate formats, such as on disc or in an audio recording, so long as the format provided enables the individual with a disability to access the contents of the poster.

3. The revised regulations require contractors to "conspicuously store" the "EEO is the Law" poster with, or as part of, an electronic application. Does this mean that an actual physical or electronic copy of the poster must be individually stored with each application?

The purpose of this requirement is to ensure that applicants who apply for jobs electronically are informed of their equal employment opportunity protections as part of the application process. Although including a copy of the poster with every electronic application will satisfy the requirement, the regulations do not require contractors to do this. Rather, a contractor may choose to satisfy this requirement in any way that ensures that every electronic applicant has the opportunity to view the poster during the application process, such as by displaying a prominent link to the poster, along with a brief explanation of what the link connects to, as part of their electronic application.

4. When will the Federal Acquisition Regulation (FAR) be updated to reflect the new Section 503 and VEVRAA requirements?

Updating the FAR is a separate process that is currently underway through the FAR Council. OFCCP is being consulted during that process and is working to ensure that updates to the FAR reflect Section 503 and VEVRAA requirements. It is not yet clear when these FAR revisions will be completed and the new FAR will be published. You may want to check with the Federal Acquisition Regulatory Council at <https://acquisition.gov/far/>.

Compliance Schedule

1. What do contractors with AAPs in place under the old regulations need to do as of the effective date of the new VEVRAA regulations (March 24, 2014) to ensure that their first AAPs under the new regulations are as compliant as possible?

As a contractor, you may delay compliance with the AAP requirements of Subpart C until your first AAP is due following the March 24, 2014, effective date. This includes the revised self-identification elements in 60-300.42. While you are allowed to delay compliance with Subpart C until the start of your first post-effective date AAP, OFCCP does not encourage this approach. However, should you choose not to comply with Subpart C until your first post-effective date AAP, you must ensure that your existing AAP complies with all the requirements of the old regulations, including the self-identification requirements of the previous regulations.

OFCCP recommends that all contractors begin complying with Subpart C of the new regulations **prior** to the issuance of their first AAP under the new rules, and strongly encourages contractors to take these steps as soon as practicable. To begin coming into compliance, OFCCP recommends that, to the extent practicable, contractors:

- Invite applicants to voluntarily self-identify as being a protected veteran at the pre-offer stage, and as belonging to one or more of the specific categories of protected veteran the contractor is required to report pursuant to 41 CFR 61-300 (60-741.42);
- Include an EO policy statement in the AAP that shows top executive support for their AAPs (60-300.44(a));
- Assess and document the effectiveness of their outreach and recruitment efforts annually (60-300.44(f)(3));
- Ensure that outreach and recruitment efforts are documented and retained (60-300.44(f)(4));

- Document actions taken to comply with the audit and reporting system obligations (60-300.44(h));
- Train employees engaged in key personnel activities (60-300.44(j));
- Conduct data analysis by calculating data related to applicants and hires (60-300.44(k)); and
- Establish, document and begin applying an annual hiring benchmark for each establishment (60-300.45).

In addition, contractors must ensure **full compliance** with the requirements under the old regulations, including reviewing personnel practices (60-300.44(b)), reviewing job qualifications (60-300.44(c)), making reasonable accommodations available (60-300.44(d)), developing harassment policies (60-300.44(e)), engaging in outreach (60-300.44(f)), and having procedures for distributing information on EO and affirmative action efforts (60-300.44(g)).

An early start implementing the new regulations' Subpart C 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. This makes for a more robust first year AAP plan under the new regulations.

2. What new elements should be included in the first AAP under the new VEVRAA regulations, that is, after the effective date (March 24, 2014)?

Your first AAP under the new regulations should address all elements of Subpart C. Ideally, **a contractor's first AAP under the new rules should include, as best as possible, all of the elements of Subpart C, including:**

- Evidence that the contractor is complying with the requirements to invite voluntary self-identification per 60-300.42;
- The inclusion of an equal opportunity policy statement per 60-300.44(a);
- A review of the contractor's personnel processes per 60-300.44(b);
- A schedule for the review of all physical and mental job qualification standards and evidence that it adheres to that schedule per 60-300.44(c);
- Information relating to the procedures developed and implemented ensuring that employees are not harassed because of their protected veteran status per 60-300.44(e);
- A review and assessment of the contractor's outreach and recruitment efforts per 60-300.44(f);
- Documentation of all activities taken to comply with the obligations of 60-300.44 per 60-300.44(f)(4);
- Documentation that the contractor has implemented and disseminated its commitment to affirmative action to employ and advance in employment qualified protected veterans per 60-300.44(g);
- Evidence that the contractor has designed and implemented an audit and reporting system per 60-300.44(h);
- Identification of the individual assigned responsibility for the implementation of the contractor's AAP and evidence of compliance with 60-300.44(i);
- Data collection pursuant to 60-300.44(k);
- Documentation that it established and applied an annual hiring benchmark per 60-300.45.

For each element required by Subpart C, the contractor's first AAP should:

- Address everything that the contractor has done to comply with the elements of Subpart C that are not new;
- Address everything that the contractor has done to come into compliance with the new provisions of Subpart C that took effect on March 24, 2014; and
- To the extent that the contractor is not yet in full compliance with the new provisions of Subpart C, discuss the steps that it plans to take to come into compliance.

OFCCP understands that the first AAP is a transitional one for contractors.

Therefore, a contractor will **NOT** be found in violation of the new Subpart C, so long as it can demonstrate that it has acted reasonably, in light of its particular circumstances.

Data Collection Analysis

1. The data collection requirements in section 60-300.44(k)(2) of the new VEVRAA regulations require contractors to document "the total number of job openings and total number of jobs filled." Does the "total number of openings" refer to the number of requisitions or job vacancy announcements, or to the number of individual open positions referenced in the requisitions or announcements?

The 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.

2. The data collection requirements in section 60-300.44(k) also ask contractors to report the number of jobs "filled" (60-300.44(k)(2)) and those "hired" (60-300.44(k)(4) and (5)). How does the number of "jobs filled" differ from the number of people "hired?"

In 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.

3. Does the number of "jobs filled" include step or ladder movements that are automatically attained upon completion of a stated event, such as time in the job or attainment of a particular certification?

Both competitive and non-competitive movements may qualify as "jobs filled," so long as the movement is one into a different position, rather than simply a movement within the same position. This will necessarily be a fact-based determination. So, for example, a time-driven salary increase from one "step" to the next within the same position would not be a "job filled," since there was not any movement into a new position. By contrast, if an apprentice completes a certification program and moves into a journeyman position, then such movement would be a "job filled," since it is a movement from one position to another.

4. Can a contractor's existing human resources information system (HRIS) and/or applicant tracking system (ATS) serve as the "data analysis file" in which veteran self-identification must be stored?

Contractors may use their existing human resources information systems or applicant tracking systems as the data analysis file repositories for the veteran self-identification data collected pursuant to the new regulations, provided that certain criteria are met. Specifically, the veteran status-related data must be stored securely, apart from other personnel information, so that confidentiality is maintained, and access to this data must be limited solely to contractor personnel who have a need to know the information for the purpose of complying with OFCCP's regulations. Veteran self-identification data must not be kept with the employee's confidential medical file.

Job Listing

◀ NEW

1. How should contractors list job openings for "remote jobs," that is, jobs that are full-time telework positions from any location, in order to comply with VEVRAA's job listing requirement?

VEVRAA requires that contractors list all employment openings which exist at the time of the execution of the contract, and which occur during the performance of the contract, with the appropriate employment service delivery system (ESDS) where the opening occurs. Typically, the location of a job opening, or where a job opening "occurs," is the location to which the employee must report for work. For a job opening that does not require the employee to report to, or work from, a specific location, a contractor may satisfy the job listing requirement by listing the job opening with the state or local ESDS where the work unit, division, department or supervisor to which the employee will report or be assigned is located.

Self-Identification

1. If an individual self-identifies as a protected veteran at the pre-offer stage of the application process, but does not self-identify again at the post-offer stage, may a contractor still count the individual as a protected veteran for purposes of applying the hiring benchmark and performing the required data collection analysis?

Section 60-300.42 of the new VEVRAA regulations requires contractors to invite applicants to self-identify as "protected veterans" at both the pre-offer and post-offer stages of the application process. If an applicant self-identifies as a "protected veteran" at the pre-offer stage but not at the post-offer stage, the contractor may identify the new hire as a "protected veteran" for purposes of compliance with the new VEVRAA regulations.

Hiring Benchmarks

1. Should a contractor apply the VEVRAA hiring benchmark to all of its establishments, to each establishment separately, or to each job group at each establishment?

The VEVRAA hiring benchmark – whether based on the national percentage of veterans per 60-300.45(b)(1) or the five-factor approach in 60-300.45(b)(2) – should be applied to hiring for each establishment separately.

2. Is it acceptable for a contractor to set different benchmarks for each of its establishments? For example, may a contractor set the benchmark for one of its establishments using the national percentage of veterans (per 60-300.45(b)(1)) and for another of its establishments using the five-factor analysis (per 60-300.45(b)(2))?

Yes. Each contractor is free to use either of the two methods specified in the Final Rule to establish the benchmark for each of its establishments.

3. When applying the hiring benchmark, should contractors use the same definition of "hires" that is used for purposes of the data collection analysis required by 60-300.44(k)?

Yes. Since neither the new regulations, nor its preamble, specify a different definition of "hires" for the VEVRAA hiring benchmark, contractors should use the definition of hires that is applicable to the data collection analysis obligation. That definition encompasses those applicants (both internal and external to the contractor) who are hired through a competitive process, including promotions. This will ensure consistency in the interpretations of these key provisions of the new regulations.

Vacancy Announcement Tagline

May contractors satisfy the EEO tagline requirement by abbreviating "disability" and "protected veteran status" as "D" and "V," respectively?

Contractors may refer to those protected by Section 503 or VEVRAA by abbreviation, but such abbreviations must be commonly understood by those seeking employment. Simply using "D" and "V" are not adequate abbreviations for this reason. For those protected by Section 503 or VEVRAA, the tagline should at a minimum state "disability" and "vet" so that the tagline will be clearly understood by jobseekers.

Equal Opportunity Clause

1. For those contractors that elect to incorporate the required Equal Opportunity (EO) clauses by reference, may the "incorporation by reference" clause required by 41 CFR 60-300.5(a) be combined with the "incorporation by reference" clause required by 41 CFR 60-741.5(a)?

Yes, contractors may combine these two EO "incorporation by reference" clauses provided that the combined clause is set in bold text and the prescribed content of both clauses is preserved. The following example provides one illustration of how this might be done:

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

2. Are federal contractors permitted to combine all of the Equal Opportunity (EO) clauses required by 41 CFR 60-300.5(a), 41 CFR 60-741.5(a), and 41 CFR 60-1.4(a) (or for construction contractors, 41 CFR 60-4.3(a)) into a single, consolidated "incorporation by reference" clause?

Yes, contractors may combine all of their required EO clauses into a single "incorporation by reference" clause, provided that the entire combined clause is set in bold text and the prescribed content of the veteran and disability EO "incorporation by reference" clauses is preserved. The following example provides one illustration of how this might be done for a supply and service contractor:

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

Footnotes:

¹ U.S Bureau of Labor Statistics, Economic News Release: Employment Situation of Veterans Summary, Table A: Employment status of the civilian noninstitutional population 18 years and over by veteran status, period of service, and sex, 2011-2012 annual averages, available online at <http://www.bls.gov/news.release/vet.nr0.htm>. In July 2013, the unemployment rate for Gulf War-era II veterans age 18 to 24 was 7.7 percent, higher than the rate for nonveterans of the same age group (7.3 percent), <http://www.bls.gov/news.release/vet.nr0.htm>.

² Id. In July 2013, the unemployment rate for male Gulf War-era II veterans age 18 to 24 was 17.4 percent, higher than the rate for nonveterans of the same age group (14.1 percent), <http://www.bls.gov/news.release/pdf/empst.pdf>.