



Affirmative Action and Compliance

It's Official – New Regs Published

New VEVRAA and Section 503 Regulations

It is now official. On August 27th, the OFCCP released the final ruling on the new regulations for Section 503 of the Rehabilitation Act and VEVRAA (Vietnam Era Veterans' Readjustment Assistance Act). These changes were made to improve job opportunities for both protected veterans and individuals with disabilities (IWD). They become effective on March 24th, 2014. The passing of these new regulations impose considerable new reporting requirements, data collection, recordkeeping, and other affirmative action obligations on federal contractors.

What does this mean for you? As of March 24, 2014, contractors must have policies and procedures in place to be in compliance with both sets of rules. However, contractors who have completed their Affirmative Action Plan are allowed to delay implementing the changes into their plans until the start of their next affirmative action plan cycle. If your organization's AAP cycle begins on January 1, 2014, you have until 2015 to come into compliance with the new requirements. If your AAP cycle starts after March 24, 2014 and runs mid-year to mid-year (for example May 1, 2014 to April 30, 2015), then you must implement the changes into your next AAP cycle.

For more detail:

VEVRAA - <http://www.dol.gov/ofccp/regs/compliance/vevraa.htm>

Click [here](#) for a side-by-side chart of changes to VEVRAA

Section 503 - <http://www.dol.gov/ofccp/regs/compliance/section503.htm>

Click [here](#) for a side-by-side chart of changes to VEVRAA

Then go to our article entitled **"Making Sense of the New Regulations"** on the next page where we have created a "need-to-know" outline to assist you in taking the steps to comply with these new regulations.

Vets-100 and 100-A Deadline

The 2013 filing deadline for VETS 100 and 100A reports is October 31, 2013.

New Definitions

Together with the new regulations, the OFCCP updated two definitions. It defined "Protected Veteran" which was a frequently used term but did not previously have a regulatory definition. According to the final rule, a "protected veteran" is "a veteran who is protected under the non-discrimination and affirmative action provisions of [VEVRAA]; specifically, a veteran who may be classified as a 'disabled veteran,' 'recently separated veteran,' 'active duty wartime or campaign badge veteran,' or an 'Armed Forces service medal veteran,'

For the past several decades, there has been a long struggle with establishing a precise definition of "disability" in an effort to broaden protections for people with disabilities. The new regulations have revised the definition of "disability" to conform to changes made by the ADAAA in 2008.



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Making Sense of the New Regulations – What You Need to Know

The following chart provides highlights for each of the new rulings for VEVRAA and Section 503, as well as comments and suggested action items to guide you in your compliance efforts going forward.

1. Who is Affected?

- **VEVRAA** regulations apply to any/all government contractors/subcontractors with 50 or more employees and contracts of \$100,000 or more
- **Section 503** regulations apply to any/all government contractors/subcontractors with contracts of \$10,000 or more.

2. What is New?

New Regulation	Description	Comments
<p>Self-Identification for Veterans and Individuals with Disabilities</p> <p><i>Applies to VEVRAA and Section 503</i></p>	<p>The final ruling requires that contractors invite applicants to self-identify as protected status (Veteran or Individual with Disabilities) at both the pre-offer and post-offer phases of the application process.</p>	<ul style="list-style-type: none"> ▪ All applicants (not just applicants who receive employment offers) must be invited to self-identify.
<p><i>Applies to Section 503 Only</i></p>	<ul style="list-style-type: none"> ▪ The invitation to self-identify must use language prescribed by the OFCCP to be released on their website at a later date. ▪ Contractors must invite all employees to self-identify as disabled: <ul style="list-style-type: none"> – within first year – every 5 years – one interim reminder ▪ Important: Like race and gender information, information on disabilities must be maintained confidentially and should not be seen by those making hiring decisions. ▪ Employers are permitted to identify employee as disabled if obvious or known but guessing is not permitted. 	
<p>Equal Opportunity Clause</p> <p><i>Applies to VEVRAA and Section 503</i></p>	<p>Section 503</p> <p>The following language, verbatim and in bold, must be used when incorporating the EO clause into any contract, subcontract or purchase order <u>in excess of \$10,000.</u></p> <p>“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified protected Veterans, and requires affirmative action by covered prime contractors and sub-contractors to employ and advance in employment qualified protected Veterans.”</p>	<p>VEVRAA</p> <p>The following language, verbatim and in bold, must be used when incorporating the EO clause into any contract, subcontract or purchase order <u>in excess of \$100,000.</u></p> <p>“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 sub-contractors to employ and advance in employment qualified protected Veterans.”</p>
<p>Data Collection and Recordkeeping</p> <p><i>Applies to VEVRAA and Section 503</i></p>	<p>Contractors will be required to document and update annually two separate data sets for comparing the number of applicants and hires that fall under the category of: 1) veterans, and 2) individuals with disabilities.</p> <p>Records must be kept for 3 years including outreach and recruiting information and must be accessible to the OFCCP both on- or off-site.</p>	<ul style="list-style-type: none"> ▪ No differences except in types of protected status for each data set (i.e., veterans and individuals with disabilities). The data to be tracked includes: <ul style="list-style-type: none"> – # of protected veterans/ IWD applicants – Total # of applicants for all jobs – Total # of job openings and jobs filled – # of protected veterans/ IWD hired – Total # of applicants hired

New Regulation	Description	Comments
Annual Assessment of Outreach <i>Applies to VEVRAA and Section 503</i>	Contractors must annually assess their outreach and recruitment efforts as to veterans and individuals with disabilities. Documentation must be maintained for 3 years.	Documentation must be maintained demonstrating that effectiveness of outreach and recruitment efforts have been evaluated and adjusted where necessary.
Hiring Goal – Section 503 <i>Applies to Section 503 Only</i>	A utilization goal has been set for the representation of Individuals with Disabilities (IWD) at 7%. This will serve to measure the success of outreach and recruitment efforts by federal contractors. The OFCCP dropped its requirement that contractors establish three "linkage agreements" with referral sources for disabled and veteran applicants.	Federal contractors with more than 100 employees are required to apply the goal to each job group while those with a workforce of 100 or fewer employees are required to apply the 7 percent goal to their entire workforce, rather than to each job group. It is not a violation to fail to meet the goal. It is, however, a violation to not develop action-oriented programs to remove barriers to EEO for Individuals with Disabilities.
Hiring Benchmark – VEVRAA <i>Applies to VEVRAA Only</i>	Federal contractors must set an annual "benchmark" for veterans. It can be based on: 1. the national percentage of veterans in the civilian labor force (currently 8%) which will be published and updated annually by the OFCCP, or 2. by establishing their own benchmark data using five specific and detailed factors including data from the Bureau of Labor Statistics and Veterans' Employment and Training Service/Employment and Training Administration calculations, which will be also be published by OFCCP, and/or other factors that reflect the contractor's unique hiring circumstances.	The benchmark is not a goal. Failing to reach the benchmark is not a violation. Failing to SET a benchmark is. There is a 3-year recordkeeping requirement. This benchmark is set on a facility-wide basis.
Job Postings <i>Applies to VEVRAA and Section 503</i>	EEO taglines in future job postings must include "Protected Veterans" and "Individual with Disability"	References to veteran and disability status may no longer be abbreviated.
Job Listings <i>Applies to VEVRAA Only</i>	Contractors or their third party service) must provide information about job openings in the format (fax, email, hardcopy, database format, follow-up calls, etc.) permitted by the appropriate State or local job service.	Contractors must include "VEVRA Federal Contractor" on all job listings when posting to local employment services offices.

3. What Should We Do Now to Prepare for March 24, 2014?

Although the changes clearly increase a federal contractor's compliance obligations, there is a window of time to incorporate the necessary changes into your affirmative action plan program. So where should you start?

- Read to fully understand the final regulations using the links on the previous page and this newsletter as a starting point but not the only resource.
- Meet with decision-makers (HR, Finance, IT, Recruitment, and senior leadership team) to get buy-in and understanding for impact on budget and workload.
- Create an action item checklist and get started today (see suggested checklist on next page).
- Determine your priorities.
- Call us if you have questions or concerns.

Suggested "NEW REG'S" Action Item Checklist

Start Now to Strategize

- Determine the impact on resources and staff to undertake the new compliance requirements.
- Get buy-in and understanding from management for impact on 2014 budget and workloads.
- Determine responsible parties for each new major compliance requirement (e.g., new processes, training, policies and forms, recordkeeping, job postings, contract/subcontract/purchase order revisions, evaluation of outreach, etc.).
- Meet and work with all system stakeholders [e.g., applicant tracking systems, AAP provider, HR Information Systems (HRIS)] to make necessary changes.
- Review your organization's reasonable accommodations policy/process.
- Determine "complete-by" dates for required changes.

Best Practice Tip

- Make sure self-identification forms are voluntary.
- Provide check-off boxes for applicants and employees to decline to self-identify their gender/race/veteran/disability status.

Items to Be Implemented Now or No Later Than March 24, 2014

- Post notices prescribed by the OFCCP in conspicuous places, available to employees and applicants.
- Update EEO policy and language in contracts, subcontracts and purchase orders to include required language.
- State in all job solicitations and advertisements that the contractor is an equal employment opportunity employer of individuals with disabilities and protected veterans. You can do so by simply adding "veteran status" and "individuals with disabilities" to your existing EEO statement.
- Address the following technical compliance aspects:
 - Implement pre-, post-offer and interim survey process for self-identification as protected status; ensure that responses are maintained confidentially away from hiring decision-makers.
 - Update EEO rights language in electronic employment application.
- Determine what needs to be documented to be in compliance with the new regulations

Items to be Implemented in the "Next Standard 12-Month AAP Review and Updating Cycle"

- Meet with your recruitment and IT staff, as well as any recruiting vendors to ensure that necessary changes to the applicant tracking system and HRIS are made.
- Create processes to ensure compliance with:
 - 3-year document and data recordkeeping and retention requirements, including tracking protected veteran and IWD applicant and hire data
 - Annual tracking and evaluation, including review documentation, of outreach program and good faith efforts
 - Providing job vacancy information to local job service or private staffing agencies
 - Providing accommodations to qualified applicants and individuals with disabilities
 - Annual review of physical and mental requirements of positions
- Develop a comprehensive plan for meeting the newly established 7% goal for IWD and 8% benchmark for protected veterans. The plan should include programs for recruiting, training, retaining and promoting protected status applicants and employees.
 - Establish recordkeeping related to the goal/benchmark be maintained for 3 years
 - Review and start growing your list of current referral sources for IWDs and Veterans
- Make the AAP (without the data analysis) available to employees for inspection, including the location and hours of availability.