

Management Alert

OFCCP Publishes Proposed Vets Regulations in Federal Register

On Tuesday, April 26, 2011, the Office of Federal Contract Compliance Programs (OFCCP) published for public comment a Notice of Proposed Rulemaking (NPRM) titled "Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Protected Veterans." The NPRM proposes revisions to the regulations at 41 CFR Part 60-300 and rescission of the regulations at 41 CFR Part 60-250, both of which interpret the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. The proposed rule strengthens affirmative action obligations for veterans, increases data collection obligations, and requires federal contractors and subcontractors to establish hiring benchmarks. The most significant proposed changes are outlined below.

Listing Job Vacancies With State Employment Service Delivery System

Contractors will be required to provide job vacancy information to the appropriate employment service delivery system in the manner required by the service. Contractors will not be permitted to rely on third party listing services and will have to ensure posting information actually reaches the state employment service. They also will be required to provide information about their status as federal contractors and contact information for the hiring official at each establishment in the state, and specifically request priority referrals of protected veterans job openings.

Linkage Agreements & Recruitment Efforts

The proposed regulations will require contractors to enter into signed "linkage agreements" with appropriate recruitment and/or training sources including, at a minimum, each of the following: (1) the local veterans' employment representative at the state employment service; (2) at least one veterans' service organization listed on the Employee Resources section of the National Resource Directory, a partnership with an online collaboration among Departments of Labor, Defense and Veterans Affairs; and (3) at least one of a list of other organizations. Other suggestions for veterans outreach are provided as well.

Data Collection, Analysis and Recordkeeping

The proposed rule requires contractors to maintain quantitative measurements and comparisons related to veterans each year, including the following: (1) the number of referrals from state employment services, the number of priority referrals of protected veterans, and the "referral ratio" of protected veteran referrals to total referrals; (2) the number of applicants for employment, the number of protected veteran applicants, and the "applicant ratio" of protected veterans applicants to total

applicants; (3) the number of job openings, the number of jobs filled, the number of protected veterans hired, and the “hiring ratio” of protected veteran hires to total hires; and (4) the number of job openings, the number of filled openings, and the “job fill” ratio of openings to filled openings.

Establish Hiring Benchmarks

One of the most significant changes in the proposed rule is the requirement that contractors establish hiring benchmarks; specifically, a percentage of total hires who are protected veterans the contractor seeks to hire during the year. Contractors will be required to consult various sources to set benchmarks including: (1) the percentage of veterans in the civilian labor force (from the Bureau of Labor Statistics); (2) the number of veterans who participated in the appropriate state employment service (from the Department of Veterans' Employment and Training Service; (3) the referral, applicant, and hiring ratios; (4) the effectiveness of the contractor's external outreach and recruitment efforts; and (5) any other factors that would tend to affect the availability of qualified protected veterans.

Other Affirmative Action Program Changes

The proposed regulations also strengthen other aspects of the affirmative action program requirements for protected veterans at 41 CFR § 60-300.44, including specific action items contractors must undertake annually to review personnel processes (providing written reasons for each decision to reject a veteran for employment, promotions, or training opportunities, a description of accommodations that were considered for a rejected disabled veteran, and a description of accommodations provided for disabled veterans who were selected for hire, promotion or training); communicate about affirmative action with employees (include affirmative action in policy manuals; meet with employees to discuss the policy, contractor and individual responsibilities and opportunities for advancement; meet with executives, managers and supervisors to explain the policy and responsibility for implementation; discuss the policy in orientation and management training; and meet with union officials and representatives to explain the policy and seek cooperation); and train all personnel involved in personnel transactions and decisions on the benefits of employing protected veterans, sensitivity toward protected veteran applicants and employees, and legal responsibilities of the contractor regarding protected veterans generally and disabled veterans specifically.

Reasonable Accommodations

The proposed regulations impose additional obligations regarding reasonable accommodations for disabled veterans. The most notable change is that if an accommodation would constitute an undue hardship, disabled veterans must be given the option of providing the accommodation themselves or paying the portion of the expense that constitutes an undue hardship.

Other Proposed Changes

The proposed rule contains a number of other proposed changes, including, without limitation, that contractors will be required to: (1) invite applicants to self-identify veteran status generally at the pre-offer stage; (2) include the entire veterans EO Clause verbatim in subcontracts and purchase orders; (3) retain many records for five (5) years; and (4) send written notification of their affirmative action policies and efforts to subcontractors, including vendors and suppliers, to request appropriate action on their parts. The proposed rule also modifies the four categories of “covered veterans” (currently

recently separated veterans, Armed Forces service medal veterans, disabled veterans, and other protected veterans) to four categories of “protected veterans” (recently separated veterans, Armed Forces service medal veterans, disabled veterans and “active duty wartime or campaign badge veterans”). And it proposes changes related to the scope of compliance evaluations and OFCCP methodologies. For more detailed information about the proposed changes to the veterans’ regulations, click [here](#).

What Contractors and Subcontractors Should Do Now

Interested contractors and subcontractors should review the proposed rule, which can be accessed [here](#), and assess the possible implications of the new, proposed requirements. Comments to the Notice of Proposed Rulemaking are due on or before June 27, 2011.

If you have questions about the proposed regulations or this One Minute Memo, or if you are interested in submitting comments to the NPRM, please contact the Seyfarth attorney with whom you work or any attorney on our [OFCCP & Affirmative Action Compliance Team](#).



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