



OFCCP's VEVRAA and Section 503 Enforcement:

What Federal Contractors Need to Know

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Introduction:

On September 24, 2013, Office of Federal Contract Compliance Programs (OFCCP) published a Final Rule in the Federal Register, making changes to the regulations of Section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). The new regulations went into effect March 24, 2014, and the highlights of the regulations included:

- Establishment of a 7% utilization goal for qualified Individuals with Disabilities (IWD)
- New recordkeeping requirements
- Hiring benchmark in the Protected Veterans (PV) affirmative action plan (AAP)
- Job posting language requirements
- EEO tagline
- Requirement of contractors to invite applicants to voluntarily self-identify

It's been over a year since the new regulations went into effect, and it's imperative organizations have an understanding of how OFCCP is enforcing these regulations. This white paper discusses OFCCP's new enforcement efforts, and shares valuable advice on how federal contractors can manage the new expectations during an audit.



Who's Required to do What, and When?

Contractors' affirmative action plan dates play a big role as to when requirements are enforced. Most contractors with a January 1 plan date are currently in a **"transition year"** with the new regulations. Those contractors are not required to report on the new analyses, however should update their postings and policies and have a system in place for collecting IWD and PV status pre- and post-offer.

On the other hand, contractors with a plan date after March 24 should include the following in their AAP:

- Hiring benchmark analysis for PV
- Utilization analysis for IWD
- Data and metrics for Section 44k, consisting of jobs opened, jobs filled, PV applicants, PV new hires, IWD applicants, and IWD new hires

It's also important to note the new hiring overview metrics are now being collected by many contractors, but most won't report on the data until their next plan year. Plans starting on March 24, 2015, are the first set of plans required to have this analysis. It then rolls forward to March 2016 when all contractors should have this done.



OFCCP's Requests During PV and IWD Audits:

The following are the most common requests contractors are being asked during PV and IWD audits:



Job Postings, Outreach, and Recruitment:

For both PV and IWD in audits, OFCCP is focused on job postings, outreach, and recruitment. The agency is now asking for copies of the postings, and how contractors communicate with their recruitment sources. OFCCP frequently compares contractors' postings with employment service delivery systems (ESDS) against what is submitted. Taking it one step further, OFCCP may request an evaluation of the effectiveness of these recruitment sources.



Copies of Policies:

OFCCP regularly requests copies of policies such as FMLA, reasonable accommodation, and ADA. Other areas scrutinized for compliance include template letters, job postings, applications, and purchase orders to ensure contractors have the required communication and language included.



Recent Assessments:

During audits, OFCCP is also asking for information on the most recent assessment of personnel processes, and physical and mental qualifications, including the dates of the last and next scheduled assessment. While submitting a brief description of how assessments were executed typically satisfies the request, contractors should prepare to handle requests for formal documentation of processes and procedures.



Self-Identifying Employees:

Additionally, OFCCP is requesting the number of employees self-identifying as an IWD at an organization. Those contractors with a January 1 plan can resurvey anytime between January 1 and December 31 to be technically compliant. To address this type of request, and if a survey has not been distributed, contractors can simply explain their plans to survey employees. If possible, contractors should include the date they plan to conduct the survey.



Common Questions During Audits

With all the regulatory updates, it's no surprise OFCCP audits are changing. Audit questions now cover outreach efforts, targeted recruitment, job postings, and frequent follow-up communications. Audit follow-up questions require qualitative and quantitative data review. While the enforcement piece is straightforward, if contractors cannot show compliance, a Conciliation Agreement for a technical violation is often issued. We have seen some clients being issued notices of compliance which include a cover letter indicating areas where they fell short of complying.

During audits, OFCCP will use responses contractors give to determine their level of compliance—and whether they need to ask additional questions.

Tips for Proving Compliance

Proving compliance may seem like a daunting task, but there are several ways to make this easier.

1. Track Activities:

Contractors can prove compliance efforts are in progress by effectively tracking their recruitment activities. It is especially important to track information as it relates to the new regulations. This involves a checklist and a rollout plan complete with actions, dates, and frequent monitoring to ensure the plan is progressing as intended.

2. Document Targeted Recruitment:

Another way to demonstrate compliance efforts is documenting the names of agencies or organizations used for targeted recruitment. Also, consider saving contact information and the group targeted through the agency.

3. Conduct Internal Reviews:

Contractors should also implement an internal review of referral data. Ask employees, “How did you hear about us?”

4. Assess Sources:

Another way to prove compliance is assessing sources to determine the ones that perform best. Documentation should also be kept to show a strong relationship between recruiting sources and the company. As a best practice, adopt fewer, more meaningful recruitment efforts that can be actively monitored.

5. Roll Out the Data:

To demonstrate efforts and track progress, contractors should start rolling out the data analysis for IWD and PV. Although collecting this data is an annual requirement, contractors may benefit from capturing the following IWD and PV data before it is required in their plan:

- | | |
|--------------------------------|------------------------------------|
| - Total number of job openings | - Total number of applicants |
| - Total number of jobs filled | - Number of IWD and PV applicants |
| - Number of IWD and PV hired | - Total number of applicants hired |

This way, when the AAP cycle starts, the information collected, stored, and analyzed will be accurate, timely, and appropriately tracked.

Conclusion

The months ahead should be interesting for audit enforcement as contractors move out of the “**transition year**” and into full compliance with the new regulations. It’s more important than ever for organizations to take the necessary steps to ensure compliance. By understanding what OFCCP is looking for, and taking proactive steps to meet the new requirements, contractors can be prepared.

Audit Support Information

Berkshire’s consulting team includes nationally-recognized AAP compliance specialists with extensive OFCCP audit experience. With Berkshire, you will have the support of expert representation that can evaluate your data the way OFCCP will, predict areas of possible follow-up by the agency, help you develop a strategic audit strategy, and offer guidance on best practices.

Our audit support services include:

- Audit plan preparation designed to limit corporate liability and OFCCP inquiry—including personnel activity analyses by favored group
- Review of recruitment and selection practices to help you identify areas of concern
- Follow-up statistical and cohort analyses for areas of potential adverse impact
- Proactive, salary equity analyses modeling current OFCCP practices
- Strategic advice about OFCCP follow-up requests
- Review of current practices, and recommendations for compliance
- Onsite preparation services, including mock audit
- Preparation of Conciliation Agreement Report requirements

For assistance with ensuring your efforts are meeting the latest VEVRAA and Section 503 enforcement requirements, contact a Berkshire compliance expert at **800.882.8904** or bai@berkshireassociates.com.



Additional Free Resources

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Webinars

[One Year Older: How OFCCP is Enforcing New 503 and VEVRAA Regulations.](#)

[What Federal Contractors Need to Know About the OFCCP's New LGBT Regulations](#)

[Big Company, Big Problems: Bridging the Gap Between Affirmative Action and Diversity](#)

[OFCCP Enforcement Trends: How to Survive an OFCCP Audit in 2015](#)

Presentations

[How to Survive an OFCCP Compliance Review Under the New Scheduling Letter](#)

[Federal Contractors' New Employment Realities in the Aftermath of Executive Orders](#)

[What You Need to Know to Hire and Retain Individuals with Disabilities](#)

White Papers

[2015 OFCCP Audit Trends](#)

[The OFCCP Horizon—a Guide to AA Policy Trends and Updates](#)

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