

March 24, 2014 VEVRAA & Section 503 Changes

On August 27, 2013, the Office of Federal Contract Compliance Programs ("OFCCP") released long-awaited Final Rules that substantially impact federal contractor compliance obligations under the Vietnam Era Veterans' Readjustment Assistance Act, as amended ("VEVRAA") and Section 503 of the Rehabilitation Act of 1973, as amended ("Section 503").

VEVRAA and Section 503 Final Rules impose significant new reporting, records management, administrative and affirmative action obligations on contractors. Many of the key provisions of the Final Rules diverge significantly from the VEVRAA and Section 503 Notices of Proposed Rulemaking ("NPRM") issued on April 26, 2011 and December 9, 2011, respectively.

The effective date of these regulation changes is March 24, 2014. Government Contractors with existing Affirmative Action Plans in place by the effective date will be allowed to maintain their current AAP cycles and wait to come into compliance with Subpart C of the regulations when their AAPs renew after the effective date. Contractors must comply with the other revised requirements by the March 24, 2014 effective date.

Please note, although the OFCCP has stated that compliance of several of the obligations, contained with Subpart C of these new regulations, is based on the date of your next Affirmative Action Plan, the OFCCP still encourages contractors to begin taking steps to comply with all parts of the regulations "as soon as practicable" after March 24, 2014. However, the OFCCP has stated that they will not hold contractors in violation if they do not comply with Subpart C obligations until their next AAP.

VEVRAA (Veterans Regulations)

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), prohibits employment discrimination against protected veterans by covered Federal Contractors and subcontractors, and requires that they take affirmative action to employ and advance in employment these veterans.

The VEVRAA applies to all government contractors with contracts or subcontracts of \$100,000 or more that were entered into or modified on or after December 1, 2003. For contracts prior to December 1, 2003, and not modified since that date, the rule applies to contracts of \$25,000 or more.

VEVRAA Final Rule

<https://www.federalregister.gov/articles/2013/09/24/2013-21227/affirmative-action-and-nondiscrimination-obligations-of-contractors-and-subcontractors-regarding>

Highlights of VEVRAA Final Rule

- Rescission of 41 CFR Part 60-250 – Veterans protected under that part will still be protected under revised 41 CFR 60-300.
- Establishes hiring benchmarks for the first time for protected veterans.
- Requires that contractors permit OFCCP on-site or off-site access to documents for compliance and focused reviews, and permits OFCCP to extend the temporal scope of compliance evaluations beyond the current plan year.
- Requires that contractors invite applicants for employment to self-identify, both pre-offer and post-offer, as veterans protected under VEVRAA.
- Clarifies contractors' employment service delivery systems ("ESDS") obligations.
- Defines "Protected Veteran" as any veteran protected by VEVRAA.
- Replaces "Other Protected Veteran" with "Active Wartime or Campaign Badge Veteran".

Section 503

Section 503 prohibits employment discrimination on the basis of disability by Federal government contractors and subcontractors. Section 503 also requires that covered contractors take affirmative action to employ and advance in employment qualified individuals with disabilities. Section 503 applies to all government contractors with contracts/subcontracts of \$10,000 or more.

Section 503 Final Rule

<https://www.federalregister.gov/articles/2013/09/24/2013-21227/affirmative-action-and-nondiscrimination-obligations-of-contractors-and-subcontractors-regarding>

Highlights of Section 503 Final Rule

- Establishes an aspirational seven (7) percent utilization goal per "job group," except for contractors with less than 100 employees, for qualified individuals with disabilities.
- Requires that contractors invite applicants for employment to self-identify, both pre-offer and post-offer, as individuals with disabilities protected under Section 503.
- Provides best practices guidance concerning "reasonable accommodations" for qualified applicants and employees with disabilities.
- Requires that contractors permit OFCCP on-site or off-site access to documents for compliance and focused reviews, and permits OFCCP to extend the temporal scope of compliance evaluations beyond the current plan year.
- Establishes additional "invitation to self-identify" requirements, including requiring self-identification at the time of hire and every five years.
- Aligns the definition of "disability" and the other nondiscrimination provisions of Section 503 Regulations with the Americans with Disabilities Act Amendments Act of 2008 ("ADAAA").

Required Compliance by March 24, 2014

The OFCCP has stated that compliance is required on all non-Subpart C obligations in both the VEVRAA and Section 503 regulations by March 24, 2014. This compliance required by March 24, 2014 includes the following:

- Update of Equal Opportunity Clause in all contracts, purchase orders, etc.
- Online Job Postings – Display of "EEO is the Law" poster
- AA/EEO Policy updated with US company official support
- Update state employment agencies (ESDS)
- Modify EEO Tagline on all job postings (both paper and electronic)
- Send labor organizations notice of affirmative action commitment

Required Compliance by Next Affirmative Action Plan

The OFCCP has stated that compliance with the obligations outlined in Subpart C of the regulations is based on the date of the contractor's affirmative action plan. Any AAP plan date prior to March 24, 2014 is not required to implement the outlined changes; however, they will be required for the next AAP cycle. Any AAP date after March 24, 2014 is required to implement the new obligations and changes to their AAP.

Although the OFCCP will not hold the contractor in violation for not implementing these obligations prior to their next AAP, they encourage contractors to implement these changes "as soon as practicable."

- Self-Identification of veteran and disability status for applicants and employees
- Collection of applicant and hiring data for AAP analysis
- Assess effectiveness of external outreach and recruitment efforts
- External dissemination of AA Policy to vendors/subcontractors
- VEVRAA – Determine hiring benchmark and perform analysis of recruiting efforts
- Section 503 – Utilization Analysis
- Implement audit and reporting system
- Outline review of physical and mental qualifications

Equal Opportunity (EO) Clause – by March 24, 2014

Both Section 503 (41 CFR 60-741.5(a)) and VEVRAA (41 CFR 60-300.5(a)) require the incorporation of the Equal Opportunity (EO) Clause in all contracts, subcontracts, and purchase orders. Both regulations allow for the EO Clause to be included by reference, provided the following criteria is met.

Section 503 states that the EO Clause must be in all new contracts, subcontracts, and purchase orders in excess of \$10,000 that are signed on or after March 24, 2014. It must also be included in all modifications, renewals, and/or extensions signed on or after March 24, 2014. The EO Clause must be included in bold text and the reference must contain the following content.

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

VEVRAA states that the EO Clause must be included in all new contracts, subcontracts and purchase orders in excess of \$100,000 that are signed on or after March 24, 2014. It must also be included in all modifications, renewals, and/or extensions signed on or after March 24, 2014. The EO Clause must be include in bold text and the reference must contain the following content.

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.

The OFCCP has stated that contractors are permitted to combine the EO Clauses required by 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) into a single clause provided that the combined clause is set in bold text and the prescribed content of both clauses is preserved in the reference. The following example illustrates the combined clause.

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.

EEO Tagline in Job Postings – by March 24, 2014

Contractors and subcontractors are required to include an EEO Tagline at the bottom of all job listings, both paper and electronic. The March 24, 2014 VEVRAA and Section 503 changes require that the EEO Tagline must be expanded to reference protected veterans and individuals with disabilities. The OFFCP has stated that it is acceptable for contractors to refer to those protected by Section 503 or VEVRAA by abbreviation in the EEO Tagline for Job Postings, but the abbreviation used must be commonly understood by those seeking employment. The tagline must state, at minimum, “disability” and “vet” so that the tagline will be clearly understood by all jobseekers. The following are examples of acceptable EEO Taglines:

EOE/Minorities/Females/Vet/Disability

EOE/M/F/Vet/Disability

Online Job Postings - Display of “EEO is the Law” Poster – By March 24, 2014

The revised VEVRAA and Section 503 regulations state that contractors are required to “conspicuously store” the “EEO is the Law” poster with, or as part of’ and electronic application. The OFCCP provided additional guidance on this new requirement in their FAQ. The OFCCP has indicated that contractors may satisfy this requirement by displaying a prominent link to the “EEO is the Law” poster along with an explanation of what the link connects to as part of the online job postings. Here is a link to the OFCCP FAQ:

http://www.dol.gov/ofccp/regs/compliance/faqs/VEVRAA_faq.htm#Q27

Here is the link to the ‘EEO is the Law” poster from the EEOC website.

http://www1.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf

The poster is available in English, Spanish, Arabic, and Chinese.

<http://www1.eeoc.gov/employers/poster.cfm>

AA/EEO Policy Statement – By March 24, 2014

Contractors are required to update their AA/EEO policies statements to show that the top U.S. Executive of the contractor (i.e., CEO, President, etc.) support for the Affirmative Action Plans. The policy statement should be included in the Affirmative Action Plan and also posted on the company bulletin board. Contractors must provide the AA/EEO policy statement to applicants and employees with disabilities in a form that is accessible and understandable.

State Employment Services (ESDS) – By March 24, 2014

As with the previous VEVRAA and Section 503 regulations, contractors are required to list their job openings with corresponding state and/or local employment service delivery systems (ESDS). This requirement has not changed and is intended as a means to attract more qualified protected veteran and individuals with disability applicants. Contractors must provide the job listings in the format that is permitted by the appropriate employment ESDS. For example, if the ESDS requires submission of job posting using a specific web-based form, the contractor must provide the postings in that same format.

Beginning March 24, 2014, the new regulations require contractors to advise each appropriate ESDS that it is a contractor complying with VEVRAA and Section 503 requirements. As part of this notification process, the contractor must provide the ESDS with the following information and update the information annually with the ESDS.

- Notification that contractor is a Federal Contractor complying with VEVRAA/Section 503
- Desire for priority referrals of qualified “protected veterans”.
- Contact information for the contractor hiring official at each location in the state with openings. The hiring official must be able to verify the information of the job positing. This can be a chief hiring official, HR contact, senior management contact, or other appropriate official.
- If the Contractor uses outside recruiting firms, the contact information for those companies must be provided to the state as well.

Speediware has developed a sample letter that can be provided to each ESDS with the contractor information.

<http://www.speedeoo.com/Library/StateESDSNotification.doc>

Notification to Labor Organizations of AA Commitment– By March 24, 2014

As part of the EO Clause, CFR 60-300.5(a) and (41 CFR 60-741.5(a)), contractors are required to notify labor organizations about their non-discrimination obligations.

Speediware Corporation has developed a sample letter that can be provided to each Labor Organization.

<http://www.speedeoo.com/Library/AgencyNotification.doc>

Self-Identification of Veteran and Disability Status

Section 503 and VEVRAA require contractors to solicit self-identification from both applicants and employees starting March 24, 2014. The regulations clearly define the requirements for self-identification pre-offer, post-offer, and of existing workforce. The OFCCP has stated that this collection of self-identification should start after March 24, 2014 or the start of their first AAP cycle after that date. Although the date of implementation is based on their AAP plan year, the OFCCP strongly encourages all contractors to begin implementation of the process after March 24, 2014. The OFCCP has indicated that they will be looking for efforts to begin implementation of these processes for any AAPs that were started before the March 24th date.

- Contractors with AAP plan year start dates between January 1 and March 23, need to begin soliciting the self-identification of veteran and disability information prior to the beginning of the 2015 AAP plan year.
- Contractors with AAP plan year start dates on or after March 24 are required to solicit self-identification of veteran and disability information prior to the start of the 2014 AAP plan year.

Note

[SpeediARMS](#) (Applicant Tracking and Recruiting Management System) offers the new self-identification options for protected veterans and individuals with disabilities as required by the new VEVRAA (pre-offer and post-offer) / Section 503 regulations.

Contact Speediware Corporation for more information

SECTION 503 – SELF-IDENTIFICATION OF DISABILITY STATUS

Section 503 requires contractors to invite all applicants to self-identify as an individual with a disability both pre- and post-offer. The pre-offer invitation may occur at the same time as the invitation to self-identify race and gender, provided the required OFCCP voluntary self-identification form is used. Contractors must also invite all employees to self-identify as an Individual with Disabilities within 12 months of becoming subject to the Section 503 regulations and every five years thereafter. Contractors must also provide employees with notification, at least once during the five years, reminding them of their ability to change their disability status at any time.

Contractors may not compel or coerce individuals to self-identify their disability status. Contractors may identify Individuals with Disabilities who do not self-identify only if the disability is obvious or known to the contractor. Contractors may not guess an individual's disability status.

All disability self-identification information collected must be maintained in a confidential data analysis file.

All invitations for self-identification as an individual with disability must use the form posted on the OFCCP website. The form may be made available in an electronically fillable version as part of a contractors online Applicant Tracking System (ATS), provided that it meets the following requirements:

- Display the OMB number and expiration date
- Contain the text of the form without alteration
- Use a sans-serif font, such as Calibri or Arial
- Use at least 11—pitch for font size (with the exception of the footnote and burden statement, which must be at least 10-pitch in size.)

Note: Because the OFCCP has stated that the Voluntary Self-Identification of Disability form cannot be altered, contractors should not combine this form with self-identification forms for race, gender, or veteran status.

OFCCP Voluntary Self-Identification of Disability Form

http://www.dol.gov/ofccp/regs/compliance/sec503/Voluntary_Self-Identification_of_Disability_CC-305_SD_Edit1.24.14.pdf

VEVRAA – SELF-IDENTIFICATION OF VETERAN STATUS

The VEVRAA regulation changes require contractors to collect self-identification of veteran status from applicants both pre- and post-offer. The required language for the pre- and post-offer invitations is slightly different. The OFCCP has provided sample self-identification invitations that contractors can use as part of Appendix B.

<https://www.federalregister.gov/articles/2013/09/24/2013-21227/affirmative-action-and-nondiscrimination-obligations-of-contractors-and-subcontractors-regarding#h-128>

The OFCCP allows contractors to combine the pre- and post-offer self-identification forms with the self-identification of race/gender, provided the required language for veterans is used.

Pre-Offer Self-Identification

During the application process (pre-offer), contractors are required to provide an invitation to self-identify as a “protected veteran”. This invitation to self-identify can be made at the same time as the race/gender identification is requested.

Speediware Corporation has developed a sample pre-offer self-identification form based on the sample invitation provided in Appendix B that can be used during the pre-offer stage for self-identification as a “protected veteran”.

<http://www.speedeoo.com/Library/applicantVeteranSelfIdentification.doc>

Post-Offer Self-Identification

Post-offer self-identification can be done to capture the specific veteran categories needed by the contractor to file the required Vets-100A report. This solicitation of self-identification should follow the sample invitation provided by the OFCCP in Appendix B. If the applicant identifies as “Disabled Veteran” the contractor must inquire as to reasonable accommodation.

Speediware Corporation has developed a sample post-offer self-identification form based on the sample invitation provided in Appendix B that can be used during the post-offer stage.

<http://www.speedeoo.com/Library/employeeVeteranSelfIdentification.doc>

Collection of Applicant and Hiring Data for AAP Analysis

CFR 60-741.44(k) (Section 503) and CFR 60-300.44(k) (VEVRAA) require contractors to capture and maintain data on applicants and hires for three (3) years. This data is captured as part of the applicant tracking data for the AAP and reported on as part of the monitoring process. These reports will be required starting with the first AAP developed after March 24, 2014.

VEVRAA Data Collection

- Number of protected veteran applicants
- Total number of applicants for all jobs
- Total number of job openings and jobs filled
- Number of protected veterans hired
- Total number of applicants hired

Section 503 Data Collection

- Number of individuals with disability applicants
- Total number of applicants for all jobs
- Total number of job openings and jobs filled
- Number of individuals with disability hired
- Total number of applicants hired

SpeedEEO will provide reports to show the results of the data collection as part of the Monitoring report package.

Outreach and Positive Recruitment Efforts

41 CFR 60-300.44(f)(3) and 41 CFR 60-741.44(f)(3) now require contractors to conduct annual self-assessments of its outreach and recruitment efforts to attract more qualified applicants who are protected veterans and/or individuals with disabilities. This assessments should be documented and included as part of the AAP.

Samples of outreach and recruitment activities include:

- Postings positions on state job boards
- Participating in Veteran job fairs
- Listing job openings with local Veteran groups
- Meeting with career centers at local campuses

VEVRAA Assessment of Outreach and Recruitment

When creating the assessment of outreach and recruitment efforts for protected veterans during the plan year, the following criteria should be used for the evaluation:

- Did the activity attract qualified applicants who are protected veterans?
- Did the activity result in hiring of protected veterans?
- Did the activity expand the contractor's outreach to protected veterans within the community?

Speediware Corporation has developed a sample form that can be used to track outreach and recruitment efforts for protected veterans.

<http://www.speedeoo.com/Library/VEVRAAOutreachRecruit.xls>

Section 503 Assessment of Outreach and Recruitment

When creating the assessment of outreach and recruitment efforts for individuals with disabilities during the plan year, the following criteria should be used for the evaluation:

- Did the activity attract qualified applicants with disabilities?
- Did the activity result in hiring of qualified individuals with disabilities?
- Did the activity expand the contractor's outreach to individuals with disabilities within the community?
- Did the activity increase the contractor's capacity/capability to include individuals with disabilities in the community?

Speediware Corporation has developed a sample form that can be used to track outreach and recruitment efforts for Individuals with disabilities.

<http://www.speedeoo.com/Library/Section503OutreachRecruit.xls>

External Dissemination of AA Policy

As noted in 41 CFR 60-300.44(f)(1)(ii) and 41 CFR 60-44(f)(1)(ii), Contractors are required to send written notification of the company policy related to its affirmative action efforts to all subcontractors, vendors, and suppliers and request that they take appropriate action. Contactors must document that they have provided the required written notification to each subcontractor.

Speediware has developed a sample notification letter that can be used to provide this notification to each subcontractor. The letter includes the option for the subcontractor to provide written acknowledgement that they have received notification.

<http://www.speedeoo.com/Library/SubContractorNotification.doc>

VEVRAA – Application of Hiring Benchmark – First AAP after March 24, 2014

As indicated in 41 CFR 60-300.45 contractors are required set a hiring benchmark for protected veterans to measure success of outreach and recruitment efforts. The OFCCP allows benchmarks to be set in either of two ways:

1. Contractors may set the benchmark using the national percentage of veterans in the civilian labor force. This percentage is posted on the OFCCP's Web site. SpeedEEO will have this percentage available to use as the benchmark for analysis.
2. Contractors may establish an individual benchmark using the five-factor approach. If this method is used, the contractor must take into account the following five factors:
 - 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
 - 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
 - The applicant and hiring ratios for the previous year
 - The contractor's recent assessments of the effectiveness of its outreach and recruitment efforts
 - Any other factors, such as the nature of the job or its location, that would affect the availability of qualified protected veterans

If a contractor chooses to set the hiring benchmark using the five-factor approach. All records related to the hiring benchmark must be maintained for three (3) years. Maintenance of the records allows the contractor to assess the success of their outreach and recruitment efforts for protected veterans over time.

Speediware is recommending to its customers they use the OFCCP provided benchmark vs. the five-factor benchmark. The five-factor benchmark must be defensible to the OFCCP and opens the contractor up to further investigation in audits with little benefit. Unless a contractor is in an area that has few qualified protected veterans and legitimately cannot achieve the OFCCP benchmark, there is no benefit to using the five-factor benchmark. The OFCCP has stated that the benchmark is a goal and NOT a quota. Contractors that fall short of the goal will not face penalties as long as they make good faith efforts and can show effective outreach programs along with fair recruiting and hiring practices.

SpeedEEO will provide the report to show the results of the hiring benchmark as part of the annual report package.

Section 503 –Utilization Analysis – First AAP after March 24, 2014

As indicated in 41 CFR 60-741.45, contractors are required to conduct an annual Utilization Analysis to determine the utilization of Individuals with Disabilities within their current workforce. The current national utilization analysis goal is 7%. This goal is set by the OFCCP and the Director of the OFCCP will periodically review and update the goal as appropriate.

This goal is applied differently depending upon total number of employees in the contractor's workforce.

- Contractors with 100 or fewer employees may apply the 7% goal to the entire workforce
- Contractors with more than 100 employees must apply the 7% goal to each EO 11246 job group within their workforce

FAILURE TO MEET THE UTILIZATION GOAL(S) IS NOT A VIOLATION. If utilization goals exist, contractors must take steps to determine whether or where impediments to equal employment exist. If problem areas are found, contractors must develop and execute action-oriented programs to correct identified problems. Utilization goals should NOT be used as a quota or ceiling that limits the employment of individuals with disabilities.

SpeedEEO will provide the report to show the results of the 7% utilization analysis as part of the annual report package.

Audit and Reporting System – First AAP after March 24, 2014

41 CFR 60-300.44(h) and 41 CFR 60-44(h) require contractors to implement a self-audit and reporting system as part of the Affirmative Action Plan process. Contractors are required to document all actions taken to comply with the audit and reporting requirements and retain such documentation as employment records. This self-audit should include the following:

- Measure the effectiveness of the AAP
- Indicate any need for remedial action
- Determine the degree to which the contractor's objectives have been reached
- Determine whether know protected veterans and individuals with disabilities have had the opportunity to participate in company sponsored educational, training, recreational, and social activities
- Measure the contractor's compliance with the AAP's specific obligations

Speediware has developed a sample AAP Self-Audit Table that can be customized for each contractor to monitor actions taken to audit the AAP process.

<http://www.speedeeo.com/Library/SampleSelfAudit.xls>

Outline Review of Physical and Mental Qualifications – First AAP after March 24, 2014

41 CFR 60-300.44(c) and 41 CFR 60-44(c) review contractors to review the physical and mental qualification standards used by the contractor. Contractors need to ensure that any qualification that tends to screen out Individuals with Disabilities or Disabled Veterans is job-related to the position in question and consistent with business necessity.

This review of the physical and mental qualifications should be done on a regular basis, such as annually, as noted in the Affirmative Action Plan to ensure compliance.