



SMALL FEDERAL CONTRACTOR TECHNICAL ASSISTANCE GUIDE





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Introduction

The Office of Federal Contract Compliance Programs (OFCCP) places a strong emphasis on providing compliance assistance for federal government contractors. OFCCP's compliance assistance comes in many forms. To name a few, OFCCP produces infographics, develops quick reference guides, answers frequently asked questions, and regularly participates in educational seminars. All of the agency's compliance assistance efforts help contractors strive for equal employment opportunity (EEO), as mandated by the laws and regulations that OFCCP enforces.

OFCCP developed this Technical Assistance Guide (guide) specifically for small federal contractors. Although OFCCP does not have a threshold that defines a small contractor, we have taken into consideration the size of a contractor when developing many of our requirements to lessen the burden imposed on small contractors. The guide will provide basic guidelines on what a contractor of any size – small or large – will have to do to comply with the law. Additionally, it will highlight requirements that hinge on the size of the contractor. In this guide, “small federal contractors” or “federal contractors” refers to direct supply and service and construction federal contractors and subcontractors and federally assisted construction contractors and subcontractors, unless otherwise specified. The use of the word “contract” in this guide may refer to either a contract or a subcontract, but the term “subcontract” is used when necessary to the context. For more specific guidance, please refer to the [Supply and Service Technical Assistance Guide](#), the [Construction Technical Assistance Guide](#), or the [Educational Institutions Technical Assistance Guide](#).

OFCCP intends for this guide to serve as a valuable self-assessment tool for small contractors to review the practices they have in place to eliminate discrimination and achieve their EEO goals. At a minimum, this guide aims to help small federal contractors meet all of their obligations required under the law.

This guide addresses the following key objectives for federal contractors:

- Understand legal obligations under the laws OFCCP enforces.
- Comply with federal EEO laws even in the absence of a scheduled compliance evaluation by OFCCP.
- Understand requirements and key differences in requirements for small vs. larger contractors.

Certain legal requirements described in this guide provide potentially less burdensome compliance options for small contractors. OFCCP notes these options throughout the guide.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. It does not create new legal requirements or change current legal requirements. The legal requirements related to equal employment opportunity that apply to small federal contractors are contained in the statutes, executive orders, and regulations cited in the guide. Every effort has been made to ensure that the information contained in the guide is accurate and up to date.

OFCCP's Mission

OFCCP protects workers, promotes diversity, and enforces the law. OFCCP holds those who do business with the federal government – including small federal contractors – responsible for complying with the legal requirements to take affirmative action and not discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as a protected veteran. In addition, contractors and subcontractors are prohibited from discharging or otherwise discriminating against applicants or employees who inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

OFCCP Responsibilities

- Help federal contractors comply with regulatory requirements and understand OFCCP's compliance evaluation process.
- Conduct complaint investigations and compliance evaluations of federal contractors, including examining their personnel policies, actions, and practices.
- Connect federal contractors with the U.S. Department of Labor's employment and training programs, Veterans' Employment and Training Service, outside organizations, and recruitment sources that help employers identify and recruit qualified employees.
- Negotiate agreements, including formal conciliation agreements, with federal contractors found to be in violation of the laws that OFCCP enforces.
- Monitor federal contractors' progress in fulfilling the terms of conciliation agreements by reviewing periodic compliance reports.
- Recommend enforcement actions to the Solicitor of Labor when necessary.

Overview of EEO Legal Authorities

OFCCP administers and enforces three equal employment opportunity laws that prohibit federal contractors from discriminating against applicants and employees, and require them to take affirmative action. It is a violation of these laws for federal contractors to harass, threaten, coerce, or discriminate against any individual who files a complaint, opposes an act or practice believed to violate one of the laws, participates in an activity related to the administration of the laws (such as a compliance evaluation), or exercises any other right protected by the laws.

Laws OFCCP Enforces

Executive Order 11246, as amended (Executive Order)

This law prohibits employment discrimination based on race, color, religion, sex, sexual orientation, gender identity, and national origin. Additionally, contractors must take affirmative action to ensure equal employment opportunity in their employment processes. Contractors also must not discriminate against applicants or employees because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations. Executive Order 11246 applies to contractors who meet the following contract thresholds:

- A federal contract or subcontract of more than \$10,000.
- Two or more federal contracts or subcontracts that, when added together, total more than \$10,000 within any 12-month period or can reasonably be expected to total more than \$10,000 during that time.

Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)

Section 503 prohibits employment discrimination on the basis of disability and requires federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Contractors covered by Section 503 must also make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee with a disability unless the contractor can demonstrate that the accommodation would impose an undue hardship on its business. Section 503 covers federal contractors with at least one government contract more than \$15,000, but does not apply to federally assisted construction contracts.



OFCCP shares enforcement responsibilities with other federal agencies in the administration of the following laws:

- Title I of the Americans with Disabilities Act of 1990 (ADA), as amended, which prohibits employment discrimination by employers with 15 or more employees against qualified individuals on the basis of disability. The Equal Employment Opportunity Commission (EEOC) has primary authority for enforcing the ADA, but OFCCP is authorized to act as EEOC's agent in processing, investigating, and resolving ADA complaints falling within the overlapping jurisdiction of Section 503 and Title I of the ADA. The regulations implementing these procedures are at 41 CFR Part 60-742.
- Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the basis of race, color, religion, sex, and national origin. In many instances, employment discrimination claims against a government contractor can be brought under Executive Order 11246 and Title VII. While EEOC has primary authority for enforcing Title VII, per a Memorandum of Understanding renewed in 2011, OFCCP is authorized to act as EEOC's agent in processing, investigating and resolving the Title VII component of complaints filed with OFCCP under Executive Order 11246 that allege discrimination of a systemic or class nature on the basis of race, color, religion, sex or national origin.

Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

VEVRAA prohibits employment discrimination against protected veterans (disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces Service Medal veterans). The law also requires contractors to take affirmative action to employ and advance in employment protected veterans. VEVRAA applies to federal contractors with at least one government contract of \$150,000 or more, but does not apply to federally assisted construction contracts.

OFCCP's Regulations

OFCCP implements these laws through regulations published in Title 41, Chapter 60 of the Code of Federal Regulations (CFR), available at www.ecfr.gov. Parts 60-1 through 60-50 implement Executive Order 11246. Part 60-300 implements VEVRAA, and Part 60-741 implements Section 503. This guide includes many references to the CFR.

Legal Notices and Contract Clauses

Executive Order 11246, Section 503 and VEVRAA each requires that all federal agencies include an equal opportunity clause in contracts and subcontracts. The clause informs contractors of their nondiscrimination and affirmative action requirements. Federal supply and service contractors will find each law's equal opportunity clause in their contracts, in OFCCP's regulations, and in Appendix I: Equal Opportunity Clauses. Even if the government contract does not include the required clauses, the obligations still apply under the law.

Two General Rules

For a small federal contractor to comply with its EEO obligations, there are two general rules.

1. Do not discriminate against applicants or employees based on any of the categories protected by the laws described above.
2. Take affirmative action.
 - a. To ensure equal employment opportunity without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - b. To employ and advance in employment qualified individuals with disabilities and qualified protected veterans.

Contractors who enter into, or modify a contract or subcontract with the federal government, and whose contract meets the VEVRAA dollar threshold, are required to report annually on their affirmative action efforts in employing veterans in the VETS-4212 Report.

The U.S. Department of Labor's Veterans' Employment and Training Service (VETS) and OFCCP have supported affirmative actions to employ and advance in employment covered veterans, and OFCCP verifies whether a contractor submits its VETS-4212 Report during compliance evaluations.

The VETS-4212 Report should be filed if a business has a current federal government contract or subcontract worth \$150,000 or more, regardless of the number of employees. The contract or subcontract may be with any department or agency of the United States for the procurement of personal property or non-personal services. Services include, but are not limited to, utility, construction, transportation, research, insurance, and fund depository, regardless whether the government is the purchaser or seller. The obligation to report is the responsibility of the contractor or subcontractor.

Do Not Discriminate

Contractors must not discriminate against applicants or employees. This requirement lies at the core of OFCCP's laws, which ban discrimination against applicants and employees on the following bases:

- Race
- Color
- Religion
- Sex
- Sexual orientation
- Gender identity
- National origin
- Protected veteran status
- Disability
- Discussing, disclosing, or inquiring about one's compensation or the compensation of others, subject to certain limitations

Unlawful employment discrimination shows itself in many forms. It may be discrimination against an individual, or it may be systemic discrimination against a group of individuals who share a common protected characteristic, such as national origin. It may occur through the intentional action of an employer (disparate treatment discrimination), such as refusing to hire an applicant because of their religion. It may also occur when a contractor's seemingly neutral policy or practice negatively affects members of a particular group and is not justified by business necessity and job-relatedness (disparate impact discrimination). For example, when a contractor screens applicants using strength or agility requirements that exceed the actual requirements necessary to perform the job in question and that disqualifies substantially more women than men. Another example that could present disparate impact discrimination is a contractor that relies on "word-of-mouth" recruitment or "tap-on-the-shoulder" promotions that have an adverse impact on members of a particular racial or ethnic group. Unless the contractor can show that the recruitment and promotion practices are related to the job and necessary for the business, the contractor may be discriminating.



Take Affirmative Action

Contractors must also take specific affirmative actions to ensure equal employment opportunity under the laws that OFCCP enforces. For all covered contractors, these affirmative actions include publishing and posting notices and EEO policies that make known the contractor's affirmative commitment to equal employment opportunity.

In addition, contractors must develop and maintain written affirmative action programs (AAPs):

- Under **Executive Order 11246** if they have a federal supply and service contract or subcontract of **\$50,000 or more** and have **at least 50 employees**;
- Under **Section 503** if they have a direct federal contract or subcontract of **\$50,000 or more** and have **at least 50 employees**; and
- Under VEVRAA if they have a direct federal contract or subcontract of **\$150,000 or more** and have **at least 50 employees**.

Under Executive Order 11246, companies whose sole coverage comes from direct federal or federally assisted construction contracts are not required to develop an AAP, but they must comply with 16 affirmative action specifications for contracts more than \$10,000, regardless of the number of employees they have. These specifications are outlined in the equal opportunity clause for construction contracts, published at [41 CFR 60-4.3\(a\)](#).

An AAP is a management plan for ensuring equal employment opportunity. It establishes the policies, practices, and procedures that contractors implement to ensure that all qualified applicants and employees receive equal opportunity in recruitment, selection, advancement, and other benefits and privileges of employment.

Required Postings, Listings, and Notices

- The *EEO is the Law* poster (and supplement) and the Pay Transparency Nondiscrimination Provision to inform applicants and employees about their protections from discrimination under federal law.
- Notice to any unions with which the contractor has a collective bargaining agreement of the contractor's equal opportunity obligations.
- Notice to job seekers that the employer is an equal opportunity employer, provided by using taglines in job advertisements.
- Notice to OFCCP by the contractor that it was awarded a construction subcontract of more than \$10,000.
- Notice to subcontractors of their nondiscrimination and affirmative action obligations, provided by incorporating equal opportunity clauses into subcontracts and purchase orders.

Though not required, OFCCP encourages contractors to post a policy statement letting applicants and employees know that they will not discriminate against spouses of protected veterans, or anyone with a family, business, social, or other relationship or association with a protected veteran, and will safeguard the fair and equitable treatment of these individuals concerning all employment actions and prohibit harassment of applicants and employees because of their relationship or association with a protected veteran. A sample policy statement is included in this guide in [Appendix G](#).

- Under Section 503 and VEVRAA, notice that those AAPs are available for review by applicants and employees upon request.
- Under VEVRAA only, notice to the appropriate employment service delivery system that the employer is a federal contractor and that it wants priority referrals of veterans.

EEO and Pay Transparency Postings and Notices

Contractors must post these notices:

- “EEO is the Law” Poster
- “EEO is the Law” Poster Supplement
- Pay Transparency Nondiscrimination Provision

These postings inform applicants and employees of their rights protected by OFCCP and procedures for filing complaints. Federal agency contracting officers should provide contractors with the necessary posters. They are also [available in different formats on OFCCP’s website](#), on the DOL Poster page at www.dol.gov/general/topics/posters and by contacting any of OFCCP’s area or district offices. These notices must be in an accessible format for individuals with disabilities.

Required Postings, Listings, and Notices

- ☐ The *EEO is the Law* poster (and supplement) and the Pay Transparency Nondiscrimination Provision to inform applicants and employees about their protections from discrimination under federal law.
- ☐ Notice to any unions with which the contractor has a collective bargaining agreement of the contractor’s equal opportunity obligations.
- ☐ Notice to jobseekers that the employer is an equal opportunity employer, provided by using taglines in job advertisements.
- ☐ Notice to OFCCP by the prime contractor that it awarded a construction subcontract in excess of \$10,000.
- ☐ Notice to subcontractors of their nondiscrimination and affirmative action obligations, provided by incorporating equal opportunity clauses into subcontracts and purchase orders.
- ☐ Under VEVRAA only, notice to the appropriate employment service delivery system that the employer is a federal contractor and that it wants priority referrals of veterans.

EEO is the Law Poster

Every employer covered by EEO laws is required to place the “Equal Employment Opportunity is the Law” poster prominently on its premises, where it can be readily seen by employees and applicants for employment. Electronic posting of the notice (posted on the company’s intranet or emailed to employees) is acceptable for employees who do not work at a physical location of the company. If the company has an electronic application process, a contractor must use an electronic posting that is stored with or part of the electronic application to notify applicants of their rights.

EEO is the Law Supplement

OFCCP produced a mandatory supplement to the “EEO is the Law” poster that contractors are required to use until the “EEO is the Law” poster is updated to be consistent with OFCCP’s protections. It must also be accessible to all applicants and employees, as described above.

Pay Transparency Nondiscrimination Provision

OFCCP also requires contractors to post the Pay Transparency Nondiscrimination Provision and include it in employee handbooks and manuals to notify applicants and employees of their rights to discuss, disclose, and inquire about compensation and compensation information. The posting requirement can be accomplished by posting the provision electronically or posting copies of the provision in conspicuous places available for employees and applicants. On its website, OFCCP provides a formatted version for posting that includes the OFCCP logo and contact information, and an unformatted version for inclusion in employee handbooks and manuals.

Availability of Section 503 and VEVRAA AAPs for Review

Contractors subject to the AAP requirements of Section 503 and VEVRAA must post a notice that those AAPs are available for review by applicants and employees upon request. The notice must identify the appropriate contact information as well as times of availability. Like other notices, it must be posted in conspicuous places available to employees and applicants.

Notice to Unions

If a contractor has a collective bargaining agreement or another contract with a union, then the contractor must give notice to the union that the contractor is bound by the laws OFCCP enforces and is committed to taking affirmative action and not discriminating against applicants and employees on any protected bases.

Job Advertisement Taglines

OFCCP requires contractors to include notices in all solicitations and advertisements for employees that qualified applicants will be considered without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. The use of “taglines” in job advertisements is the way contractors provide that notice.

Executive Order 11246

- A contractor can use the phrase “equal opportunity employer” or “EOE” as a substitute for listing all the protected bases.
- If a contractor wishes to list any of the bases protected by Executive Order 11246 in its tagline, it must list all of them.

Section 503

- Simply using “D” is not an adequate substitute for “disability” in a tagline.
- For those protected by Section 503, the tagline should at a minimum state “disability” so that job seekers will clearly understand the tagline. This is true even if the phrase “equal opportunity employer” or “EOE” is used as a substitute for listing all the protected bases under Executive Order 11246.

VEVRAA

- Simply using “V” is not an adequate substitute for “veteran” or “vet” in a tagline.
- For those protected by VEVRAA, the tagline should at a minimum state “vet” so that job seekers will clearly understand the tagline. This is true even if the phrase “equal opportunity employer” is used to substitute for listing all the protected bases under Executive Order 11246.

Listing Jobs with the Employment Service Delivery System

A contractor that is covered by VEVRAA must list its employment openings with the appropriate employment service delivery system (ESDS). The term “employment service delivery system” is defined at [41 CFR 60-300.2\(j\)](#). The term refers to local [American Job Centers](#) (also known as One-Stop Centers) and state workforce agencies. Listing these employment openings is one type of affirmative action a contractor takes to recruit and hire qualified veterans.

For questions about the appropriate manner and format for providing job listing information, please contact the ESDS.

Examples of Acceptable EEO Taglines

Executive Order 11246

- Option 1:* EOE
- Option 2:* Equal Opportunity Employer
- Option 3:* All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

Executive Order 11246 and Section 503

- Option 1:* EOE including disability
- Option 2:* Equal Opportunity Employer, including disability
- Option 3:* EOE: race/color/religion/sex/sexual orientation/gender identity/national origin/disability
- Option 4:* All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.

Executive Order 11246, Section 503, and VEVRAA

- Option 1:* EOE including disability and vet
- Option 2:* Equal Opportunity Employer, including disability and protected veteran status
- Option 3:* EOE: race/color/religion/sex/sexual orientation/gender identity/national origin/disability/vet
- Option 4:* All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran.

Contractors must list all employment openings, except the following:

- Executive and senior management positions.
- Positions that will be filled from within the contractor's organization, meaning openings for which no consideration will be given to persons outside the contractor's organization, including openings which the contractor proposes to fill from regularly established "recall" lists.
- Positions lasting three days or less.

Contractors have immediate actions to take upon becoming subject to VEVRAA for the first time and ongoing actions to take for as long as they remain subject to VEVRAA.

Notification to OFCCP of Construction Contract Award

Federal construction contractors are required to give written notice to OFCCP within 10 working days of awarding a construction subcontract more than \$10,000. Applicants for construction contracts, federal agency contracting officers, and in some cases nonconstruction contractors are also responsible for providing this notice. (Nonconstruction contractors are subject to this requirement if the construction work is necessary in whole or in part to the performance of the nonconstruction contract.) This notice requirement is in OFCCP's construction regulations at [41 CFR 60-4.2\(c\)](#).

Mandatory Notices in Subcontracts, Purchase Orders, Bids, and Contracting Documents

Contractors must include equal opportunity clauses in their subcontracts and purchase orders. There is an equal opportunity clause for each of the laws OFCCP enforces. The full equal opportunity clause for each law appears in OFCCP's regulations and is available in [Appendix E](#). A sample for how to incorporate the equal opportunity clauses by reference is available in [Appendix D](#).

These clauses include the general requirements not to discriminate and to take affirmative action. They also contain many of the other posting and notice requirements discussed in this guide, such as listing employment openings and displaying the EEO poster and pay transparency notice.

Federal construction contractors are also required under Executive Order 11246 to include two additional notices in bids and contracting documents: the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity and the Standard Federal Equal Employment Opportunity Construction Contract Specifications. Applicants for construction contracts, federal agency contracting officers, and in some cases, supply and service contractors are also responsible for providing these notices. Supply and service contractors are subject to this requirement if the construction work is necessary in whole or in part to the performance of the nonconstruction contract.

Incorporate Equal Opportunity Clauses in Full

Incorporating the equal opportunity contract clauses (EO clauses) in full means that contractors must include all the language found at the following regulatory citations in subcontracts and purchase orders that meet the minimum dollar thresholds (more than \$10,000 for Executive Order 11246; more than \$15,000 for Section 503; and \$150,000 or more for VEVRAA), as applicable.

Supply and Service

Executive Order 11246

- [41 CFR 60-1.4\(a\)](#). Use this notice language for all covered supply and service subcontracts and purchase orders.

Section 503

- [41 CFR 60-741.5\(a\)](#). Use this language for all covered supply and service subcontracts and purchase orders.

VEVRAA

- [41 CFR 60-300.5\(a\)](#). Use this language for all covered supply and service subcontracts and purchase orders.

Construction

Executive Order 11246

- [41 CFR 60-1.4\(a\)](#). Use this notice language in direct federal construction subcontracts and purchase orders.
- [41 CFR 60-1.4\(b\)](#). Use this notice language in federally assisted construction subcontracts.

Section 503

- [41 CFR 60-741.5\(a\)](#). Use this language for direct federal construction subcontracts and purchase orders. **NOTE: Section 503 does not apply to federally assisted construction contracts.**

VEVRAA

- [41 CFR 60-300.5\(a\)](#). Use this language for direct federal construction subcontracts and purchase orders. **NOTE: VEVRAA does not apply to federally assisted construction contracts.**



Incorporate EO Clauses by Reference

The second way a contractor may fulfill this notice requirement is to incorporate by referring to the EO clauses in OFCCP's regulations.

Supply and Service

Executive Order 11246

- There is no prescribed language to incorporate the EO clauses at 41 CFR 60-1.4(a) or 41 CFR 60-1.4(b). It is appropriate to include the citation to the appropriate regulation.

Section 503

- Cite to 41 CFR 60-741.5(a), and then include the specific language at 41 CFR 60-741.5(d) in **bold typeface**.

VEVRAA

- Cite to 41 CFR 60-300.5(a), and then include the specific language at 41 CFR 60-300.5(d) in **bold typeface**.

Construction

The incorporation by reference notice requirements for construction contractors are the same as those discussed immediately above for supply and service contractors.

Incorporate Formal Notices for Construction Contracts

Beyond the equal opportunity clauses described above, construction contractors must incorporate the following notices to inform bidders and contractors of the binding EEO obligations that come with a federal construction contract.

Executive Order 11246

- [**41 CFR 60-4.2\(d\)**](#). Use this language to give notice of applicable goals for minority and female participation in:
 - » Solicitations for offers and bids on all direct federal and federally assisted construction contracts and subcontracts more than \$10,000.
 - » Grants, contracts, subcontracts, loans, insurance and guarantees involving federally assisted construction covered by 41 CFR Part 60-4.
 - » Construction subcontracts that are necessary in whole or in part to the performance of a covered nonconstruction contract.
- [**41 CFR 60-4.3\(a\)**](#). Use this language to communicate the specific EEO obligations and affirmative action steps for federal construction contractors in:
 - » Solicitations for offers and bids on all direct federal and federally assisted construction contracts and subcontracts more than \$10,000.
 - » Direct federal and federally assisted construction contracts and subcontracts more than \$10,000.
 - » Grants, contracts, subcontracts, loans, insurance and guarantees involving federally assisted construction covered by 41 CFR Part 60-4.
 - » Construction subcontracts more than \$10,000 that are necessary in whole or in part to the performance of covered supply and service federal contracts and subcontracts.

Mandatory Recordkeeping

Being a federal contractor carries with it the responsibility to retain personnel and employment records. It is necessary for contractors to maintain these records not only to comply with OFCCP's recordkeeping requirements but also to demonstrate compliance with their EEO obligations. Without sufficient recordkeeping practices, a contractor will not be able to show OFCCP, for example, that it took all the required affirmative action steps.

What Records to Keep

Contractors must keep records of their entire workforce. All personnel or employment records made or kept by a contractor must be preserved.

Records that contractors must keep include, but are not limited to, documents pertaining to:

- Hiring
- Assignment
- Promotion
- Demotion
- Transfer
- Layoff
- Termination
- Rates of pay or other terms of compensation
- Selection for training and apprenticeship
- Job postings
- Job advertisements
- Applications
- Resumes
- Tests
- Test results
- Job interview notes.

Some records must be kept in a confidential medical file apart from the applicant's file or employee's personnel file, such as results of any physical examinations and records relating to requests for reasonable accommodation. For more examples of records to keep, see [Appendix F](#).

For each record, contractors must, at a minimum, include the race, ethnicity, and gender for each employee, and where possible, each applicant and internet applicant. To comply with OFCCP's recordkeeping requirements, contractors may use the race and ethnicity categories included in OFCCP's regulations or the categories required for the [Employer Information Report EEO-1](#) (EEO-1 Report).

Use of a third-party vendor to recruit, screen or select applicants.

The federal contractor or subcontractor remains responsible for complying with OFCCP's recordkeeping requirements when using a third-party vendor to recruit, screen or select applicants. When using a recruiter for hiring, the contractor may either maintain the records itself or have the third-party vendor maintain the required records. During a compliance evaluation or complaint investigation, the records must be available to OFCCP in a readable format, no matter who maintained them.

RACE AND ETHNICITY CATEGORIES

OFCCP Regulations

African-American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, and White.

EEO-1 Report

Hispanic or Latino, White (Not Hispanic or Latino), Black or African American (Not Hispanic or Latino), Native Hawaiian or Pacific Islander (Not Hispanic or Latino), Asian (Not Hispanic or Latino), Native American or Alaska Native (Not Hispanic or Latino), Two or More Races (Not Hispanic or Latino)

OFCCP's regulations regarding the race and ethnicity categories to be used by contractors have not changed to reflect the new categories for race and ethnicity categories required for the EEO-1 Report. However, as a matter of enforcement discretion, OFCCP does not cite any contractor for non-compliance with Executive Order 11246 solely because it utilizes the categories required by the EEO-1 Report in records required by OFCCP regulations.

Federal construction contractors must also keep records that include the following information for each employee, in addition to race, ethnicity, and sex:

- Name
- Address
- Telephone number
- Social Security number
- Rate of pay
- Construction trade
- Job title (e.g., Equipment Operator, Apprentice Trainee, Laborer)
- Dates of changes in job status
- Hours worked per week in each indicated trade
- Locations at which the work was performed
- Union affiliation, if any
- Employee identification number, if any

Invitation to Self-Identify

Contractors covered by Executive Order 11246 must invite applicants to identify their sex, race, and ethnicity. OFCCP does not mandate a specific time in the selection process when these applicant demographic data must be requested, only that applicants must be invited to provide the data before the contractor makes a job offer. The following guidelines will assist contractors to be in compliance.

- Solicitation of demographic information should be made as early in the application process as possible. Contractors should not wait until after assessing basic qualifications or at the interview stage to solicit the information.
- Contractors are required to solicit demographic information from all applicants. The invitation should state that the submission of such information is voluntary.
- Once a contractor determines when to invite applicants to provide demographic data, all applicants must be given the same opportunity.
- All demographic data must be preserved, including demographic data gathered from social and professional networking websites.
- Contractors may use post-employment records or visual observation when an individual declines to self-identify.
- Demographic data related to disability and veteran status is confidential and must be maintained in a file separate from medical and other personnel files.
- Contractors subject to Section 503 and VEVRAA must also invite applicants to self-identify as individuals with disabilities or as protected veterans, respectively, during the pre-offer stage of the selection process. Additional requirements regarding invitations to self-identify are listed under Section 503 and VEVRAA's implementing regulations.

Traditional Applicants and Internet Applicants

OFCCP's recordkeeping requirements reflect the reality that some contractors need to use data management techniques to limit the number of electronic applications they consider for a position. Other contractors may rely on a more traditional, paper-based process. When establishing recordkeeping practices, contractors need to devise a system that captures expressions of interest, such as job applications, for both traditional and internet applicants.

Internet Applicants

As noted above, contractors must keep records of all internet applicants. OFCCP defines “internet applicant” in its regulations. An internet applicant is a person who meets each of the following four criteria:

- Submits an expression of interest in employment through the internet or related electronic data technologies.
- Is considered by the contractor for employment in a particular position.
- Possesses the basic job qualifications, as indicated in the expression of interest.
- Has not withdrawn from consideration at any point in the contractor’s selection process before receiving an offer of employment.

For more information, please refer to [OFCCP’s guidance on internet applicants](#).

Traditional Applicants

Contractors must also keep records of all traditional applicants. Traditional applicants might express interest in employment orally or by completing an application form, depending upon the employer’s practice.

Format for Keeping Records

Contractors can maintain paper or electronic records. Regardless of how they are preserved, the records must be accessible to OFCCP during a compliance evaluation or complaint investigation (i.e., readily available for review and in a form or format that is readable and capable of being copied by OFCCP).

Contractors can transfer their original paper records to an electronic recordkeeping system if the medium used accurately reproduces the paper original and would constitute a duplicate or substitute copy of the original paper record.

Contractors have the flexibility to determine the form or format they use to maintain electronic records such as applications and resumes. Contractors may opt to keep them in their applicant tracking system or to create paper copies. The same is true for maintaining the results of searches conducted on electronic internal or external resume databases.

How Long to Keep Records

Contractors will need to keep records for at least one or two years, depending on how many employees they have and the size of their contract. The clock starts on the later of the date the record was created or the date the personnel action occurred. Furthermore, contractors subject to the affirmative action components of Section 503 and VEVRAA are required to maintain certain records for three years regardless of contractor size.

One year

The one-year retention requirement for personnel and employment records applies to contractors that have fewer than 150 employees. It also applies to contractors that do not have any direct federal contract of \$150,000 or more.

Two years

The two-year retention requirement for personnel and employment records applies to contractors with both 150 or more employees and a direct federal contract of at least \$150,000.

Three years

Records that must be maintained for three years include:

- Documentation of the VEVRAA hiring benchmark and method used to set the benchmark;
- Documentation of the external dissemination of the EEO policy and the outreach and positive recruitment activities under Section 503 and VEVRAA; and
- The applicant, hire, and employment opening data collected for Section 503 and VEVRAA data collection analyses.

Affirmative Action Programs

OFCCP's regulations require that contractors with 50 or more employees and contracts meeting the specified dollar thresholds under Executive Order 11246, Section 503, and VEVRAA develop and maintain written affirmative action programs (AAPs). The thresholds are addressed above in the "Take Affirmative Action" section. As noted previously, that federal construction contractors are not required to prepare AAPs under Executive Order 11246.

Contractors must develop their AAP(s) within 120 days from the start of the contract (or upon reaching 50 employees as applicable). In general, multi-establishment supply and service contractors must develop an AAP for each location, facility, or establishment with 50 or more employees, unless they enter into an agreement with OFCCP to maintain functional AAPs (also known as FAAPs). Construction contractors can develop and maintain their AAPs companywide or by geographical area.

The AAP documents organizational structure, the demographic composition of the workforce, and other data such as personnel activity and compensation. It also documents the policies, practices, and procedures the contractor will use to ensure that qualified applicants and employees are receiving an equal opportunity to apply and compete for jobs, promotions, training, and other employment opportunities.

OFCCP provides free compliance assistance to employers who need help understanding the AAP requirements and developing AAPs. Once developed, contractors must submit all AAPs to OFCCP when requested during a compliance evaluation. Additionally, as noted above, contractors must make Section 503 and VEVRAA AAPs available to applicants and employees upon request.

The overall objectives of each AAP are to:

- Identify areas in the workforce that are deficient in the utilization of women, minorities, individuals with disabilities, and/or veterans.
- Undertake appropriate actions to address underutilization and achieve or exceed utilization of women, minorities, individuals with disabilities, and/or hiring of veterans at all levels and all segments of the workforce. Over time, contractors should have workforces that reflect the demographics of the labor pools from which they select employees.

The regulations implementing each law provide the required elements of AAPs. Additionally, OFCCP has [sample AAPs](#) available on its website. The descriptions of compliance actions in the sample AAPs illustrate possible compliance activities but do not represent the only style, format, and content that meet regulatory requirements. OFCCP encourages contractors to personalize their AAPs to depict actions they have taken, or plan to take, to comply with the regulatory EEO requirements. Contractors should particularly describe innovative strategies they have employed, or plan to employ, to enhance the success of their respective programs. For more information regarding AAPs, refer to the [Supply and Service Technical Assistance Guide](#) and [Construction Technical Assistance Guide](#).

Resources

Where can I learn more?

Find more information and tools on OFCCP's website at www.dol.gov/agencies/ofccp:

- [Compliance Assistance Guides](#)
- [Frequently Asked Questions](#)
- [Sample Affirmative Action Programs](#)
- [Workplace Posters](#)

Whom can I contact for assistance?

Additional assistance is available:

- At OFCCP's toll-free help line: 1-800-397-6251 (TTY 1-877-889-5627)
- Online at www.dol.gov/agencies/ofccp

Additional Resources

You may also direct inquiries regarding the information in this guide to:

Yota Karavagelis

Senior Regulatory Analyst

Division of Policy and Program Development

Office of Federal Contract Compliance Programs

OFCCPsmallguide@dol.gov

APPENDICES



List of Appendices

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Appendix A: AAP Checklists

Executive Order 11246 AAP Checklist

- An organizational profile of the company's workforce using an "organizational display" or "workforce analysis" that provides detailed data reflecting staffing patterns within the establishment.
- A job group analysis that combines jobs at the establishment with similar content, wage rates, and opportunities to form job groups and facilitates the comparison of the representation of minorities and women in the company's workforce with the estimated availability of minorities and women qualified for employment.
- A utilization analysis that includes the placement of the contractor's employees into the job groups, the determination of the availability for employment of minorities and women for the job groups, and a comparison of their incumbency in the job groups to their availability.
- Established placement goals that serve as reasonably attainable objectives and to measure progress toward achieving equal employment opportunity.
- Designation of responsibility to direct, manage, and ensure the implementation of the affirmative action program.
- Identification of problem areas by organizational unit and job group.
- Description of established action-oriented programs designed to eliminate problems and to accomplish stated goals and objectives.
- Description of an internal audit and reporting system designed to measure the effectiveness of the total affirmative action program.
- Documentation of analyses and support data used to evaluate and identify problem areas.

Section 503 AAP and Utilization Goal Checklist

- A policy statement.
- Confirmation that the contractor reviews personnel processes to ensure they provide equal employment opportunity for individuals with disabilities.
- Confirmation that the contractor reviews physical and mental qualifications of all positions to ensure that, if individuals with disabilities are screened out due to these qualifications, that the qualifications are job-related and consistent with business necessity.
- Confirmation that the contractor is committed to making reasonable accommodations to known physical and mental limitations.
- An anti-harassment statement.
- Description of and documentation on external dissemination of policy, outreach and positive recruitment.
- An assessment of outreach efforts.
- Description of and documentation on internal dissemination of policy.
- Description of and documentation on the contractor's audit and reporting system.
- Designation of responsibility to direct, manage, and ensure the implementation of the affirmative action program training.
- Description of and documentation on the data collection analysis, which requires contractors to document and update annually the:
 - » total number of applicants for all jobs;
 - » total number of applicants hired;
 - » number of applicants who self-identified as or are otherwise known to be individuals with disabilities;

- » number of applicants with disabilities hired; and
- » total number of job openings and jobs filled.
- Documentation of the contractor's annual utilization analysis and assessment of problem areas, and establishment of specific action-oriented programs to address any identified problems related to the mandatory 7% disability utilization goal.

VEVRAA AAP and Hiring Benchmark Checklist

- A policy statement.
- Confirmation that the contractor reviews personnel processes to ensure they provide equal employment opportunity for protected veterans.
- Confirmation that the contractor reviews physical and mental qualifications of all positions to ensure that, if protected veterans are screened out due to these qualifications, that the qualifications are job-related and consistent with business necessity.
- Confirmation that the contractor is committed to making reasonable accommodations to known physical and mental limitations.
- An anti-harassment statement.
- Description of and documentation on external dissemination of policy, outreach and positive recruitment.
- An assessment of outreach efforts.
- Description of and documentation on internal dissemination of policy.
- Description of and documentation on the contractor's audit and reporting system.
- Designation of responsibility to direct, manage, and ensure the implementation of the affirmative action program training.
- Description of and documentation on the data collection analysis, which requires contractors to document and update annually the:
 - » total number of applicants for all jobs;
 - » total number of applicants hired;
 - » number of applicants who self-identified or are otherwise known as protected veterans;
 - » number of protected veteran applicants hired; and
 - » total number of job openings and jobs filled.
- Identification of the Veteran Hiring Benchmark, and if a custom benchmark is established, description of and documentation on the factors used.

Appendix B: U.S. Small Business Administration's Ombudsman Program

Office of the National Ombudsman

The National Ombudsman's mission is to assist small businesses when they experience excessive or unfair federal regulatory enforcement actions, such as repetitive audits or investigations, excessive fines, penalties, threats, retaliation or other unfair enforcement action by a federal agency.

Congress established the Office of the National Ombudsman in 1996 as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA). The Act ensures that businesses, small government entities, and small nonprofit organizations that experience unfair regulatory enforcement actions by federal agencies have a means to comment about such actions.

As an impartial liaison, the Office of the National Ombudsman directs reported regulatory fairness matters to the appropriate agency for high-level fairness review, and works across government to address those concerns, reduce regulatory burdens, and help small businesses succeed.

The National Ombudsman can help:

- If you are a small business or represent one, a non-profit organization, or a small government entity (population 50,000 or less), and
- If your comment or complaint directly involves a federal agency and federal regulation.

For more information about SBA's Office of National Ombudsman please contact the office at:

Office of Ombudsman

409 3rd Street, S.W. Suite 7125

Washington, DC 20416

Fax: (202) 481-5719

TTY/TTD: 800-877-8339

Toll Free: 888-734-3247

Website: <https://www.sba.gov/ombudsman>

Appendix C: OFCCP Regional Offices

Regional Office Contact Information

Mid-Atlantic Region

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia
 U.S. Department of Labor—OFCCP
 Curtis Center
 170 South Independence Mall West,
 Suite 650 South
 Philadelphia, PA 19106
 Main Line: (215) 861-5765
 Fax Line: (215) 861-5769

Midwest Region

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin
 U.S. Department of Labor—OFCCP
 230 South Dearborn Street, Room 570
 Chicago, IL 60604
 Main: (312) 596-7010
 Fax: (312) 596-7036

Northeast Region

New Jersey, New York, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Puerto Rico, and Virgin Islands
 U.S. Department of Labor—OFCCP
 201 Varick Street, Room 750
 New York, NY 10014
 Main: (646) 264-3170
 Fax: (646) 264-3009

Pacific Region

Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Washington, Guam, American Samoa, and the Northern Mariana Islands
 U.S. Department of Labor—OFCCP
 90 7th Street, Suite 18-300
 San Francisco, CA 94103
 Main: (415) 625-7800
 Fax: (415) 625-7799

Southeast Region

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee
 U.S. Department of Labor—OFCCP
 61 Forsyth Street, S.W., Suite 7B75
 Atlanta, GA 30303-8931
 Main: (404) 893-4545
 Fax: (404) 893-4546

Southwest and Rocky Mountain Region

Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming
 U.S. Department of Labor—OFCCP
 A. Mateo Smith Federal Building
 525 South Griffin St., Room 840
 Dallas, TX 75202
 Main: (972) 850-2550
 Fax: (972) 850-2552

Appendix D: Equal Opportunity Clauses – Incorporation by Reference

Incorporation of **Executive Order 11246** Equal Opportunity Clause by reference in Subcontract or Purchase Order:

- This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a). These regulations prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. 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, sexual orientation, gender identity and national origin.

Applicants for federal assistance involving a construction contract are required to include the equal opportunity clause found at 41 CFR 60-1.4(b) in all covered federally assisted construction contracts. Moreover, each administering agency must include this clause as a condition of any grant, contract, loan, insurance or guarantee involving federally assisted construction. Federally assisted construction contractors and subcontractors are to incorporate only the Executive Order equal opportunity clause in subcontracts – either in its entirety or by reference. An example of an acceptable way to incorporate the equal opportunity clause by reference is found below:

- This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(b). These regulations prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing or disclosing compensation. 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, sexual orientation, gender identity or national origin.

Incorporation of **Executive Order 11246** and **Section 503** Equal Opportunity Clauses by reference in Subcontract or Purchase Order:

- This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. 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, sexual orientation, gender identity, national origin, or disability.

NOTE: Section 503 does not apply to federally assisted construction contracts.

Incorporation of **Executive Order 11246, Section 503** and **VEVRAA** Equal Opportunity Clauses by reference in Subcontract or Purchase Order:

- 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, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. 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, sexual orientation, gender identity, national origin, disability or veteran status.

NOTE: *VEVRAA does not apply to federally assisted construction contracts.*

Appendix E: Equal Opportunity Clauses

This appendix reproduces equal opportunity clauses found in OFCCP's regulations at 41 CFR 60-1.4(a), 41 CFR 60-1.4(b), 41 CFR 60-300.5(a), and 41 CFR 60-741.5(a). More information about the requirements can be found in the regulations and in this guide.

Executive Order 11246

41 CFR 60-1.4(a). Equal Opportunity Clause for Executive Order 11246 (Direct Federal Contracts)

Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract).

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

41 CFR 60-1.4(b). Equal Opportunity Clause for Executive Order 11246 (Federally Assisted Construction Contracts)

Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause.

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their

race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(2) [Reserved]

VEVRAA**41 CFR 60-300.5(a). Equal Opportunity Clause for VEVRAA Protected Veterans**

Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract).

EQUAL OPPORTUNITY FOR VEVRAA PROTECTED VETERANS

1. The contractor will not discriminate against any employee or applicant for employment because they are a disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, or Armed Forces service medal veteran (hereinafter collectively referred to as “protected veteran(s)”) in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals without discrimination based on their status as a protected veteran in all employment practices, including the following:
 - i. Recruitment, advertising, and job application procedures.
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.
 - iii. Rates of pay or any other form of compensation and changes in compensation.
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
 - v. Leaves of absence, sick leave, or any other leave.
 - vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor.
 - vii. Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training.
 - viii. Activities sponsored by the contractor including social or recreational programs.
 - ix. Any other term, condition, or privilege of employment.
2. The contractor agrees to immediately list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, with the appropriate employment service delivery system where the opening occurs. Listing employment openings with the state workforce agency job bank or with the local employment service delivery system where the opening occurs will satisfy the requirement to list jobs with the appropriate employment service delivery system. In order to satisfy the listing requirement described herein, contractors must provide information about the job vacancy in any manner and format permitted by the appropriate employment service delivery system which will allow that system to

provide priority referral of veterans protected by VEVRAA for that job vacancy. Providing information on employment openings to a privately run job service or exchange will satisfy the contractor's listing obligation if the privately run job service or exchange provides the information to the appropriate employment service delivery system in any manner and format that the employment service delivery system permits which will allow that system to provide priority referral of protected veterans.

3. Listing of employment openings with the appropriate employment service delivery system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a *bona fide* job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicants or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.
4. Whenever a contractor, other than a state or local governmental contractor, becomes contractually bound to the listing provisions in paragraphs 2 and 3 of this clause, it shall advise the employment service delivery system in each state where it has establishments that: (a) It is a Federal contractor, so that the employment service delivery systems are able to identify them as such; and (b) it desires priority referrals from the state of protected veterans for job openings at all locations within the state. The contractor shall also provide to the employment service delivery system the name and location of each hiring location within the state and the contact information for the contractor official responsible for hiring at each location. The "contractor official" may be a chief hiring official, a Human Resources contact, a senior management contact, or any other manager for the contractor that can verify the information set forth in the job listing and receive priority referrals from employment service delivery systems. In the event that the contractor uses any external job search organizations to assist in its hiring, the contractor shall also provide to the employment service delivery system the contact information for the job search organization(s). The disclosures required by this paragraph shall be made simultaneously with the contractor's first job listing at each employment service delivery system location after the effective date of this final rule. Should any of the information in the disclosures change since it was last reported to the employment service delivery system location, the contractor shall provide updated information simultaneously with its next job listing. As long as the contractor is contractually bound to these provisions and has so advised the employment service delivery system, there is no need to advise the employment service delivery system of subsequent contracts. The contractor may advise the employment service delivery system when it is no longer bound by this contract clause.
5. The provisions of paragraphs 2 and 3 of this clause do not apply to the listing of employment openings which occur and are filled outside of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

6. As used in this clause:

- i. *All employment openings* includes all positions except executive and senior management, those positions that will be filled from within the contractor's organization, and positions lasting three days or less. This term includes full-time employment, temporary employment of more than three days' duration, and part-time employment.
- ii. *Executive and senior management* means: (1) Any employee (a) compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (b) whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (c) who customarily and regularly directs the work of two or more other employees; and (d) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; or (2) any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.
- iii. *Positions that will be filled from within the contractor's organization* means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of their own organization.

7. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

8. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

9. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are protected veterans. The contractor must ensure that applicants or employees who are disabled veterans are provided the notice in a form that is accessible and understandable to the disabled veteran (*e.g.*, providing Braille or large print versions of the notice, posting the notice for visual accessibility to persons in wheelchairs, providing the notice electronically or on computer disc, or other versions). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically

posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

10. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of VEVRAA, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, protected veterans.
11. The contractor will include the provisions of this clause in every subcontract or purchase order of \$100,000 or more, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to VEVRAA so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs, may direct to enforce such provisions, including action for noncompliance.
12. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their protected veteran status.

Section 503

41 CFR 60-741.5(a). Equal Opportunity Clause for Workers with Disability

Each contracting agency and each contractor shall include the following equal opportunity clause in each of its covered Government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract).

EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES

1. The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability in all employment practices, including the following:
 - i. Recruitment, advertising, and job application procedures;
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;

- vi. Fringe benefits available by virtue of employment, whether or not administered by the contractor;
 - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by the contractor including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.
2. The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
 3. In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
 4. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The contractor must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers, or access to computers, that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company's intranet or sent by electronic mail to employees. An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.
 5. The contractor will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

6. The contractor will include the provisions of this clause in every subcontract or purchase order in excess of \$10,000, unless exempted by the rules, regulations, or orders of the Secretary issued pursuant to section 503 of the act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director, Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.
7. The contractor must, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment and will not be discriminated against on the basis of disability.

Appendix F: Examples of Records Contractors Must Retain

- **Executive Order 11246:** [41 CFR 60-1.12](#); [41 CFR 60-3.4](#); [41 CFR 3.15](#); [41 CFR 60-4.3\(A\)14](#).
- **Section 503:** [41 CFR 60-741.44\(f\)\(4\)](#) and (k); [41 CFR 60-741.80](#).
- **VEVRAA:** [41 CFR 60-300.44\(f\)\(4\)](#) and (k); [41 CFR 60-300.45\(c\)](#); [41 CFR 60-300.80](#).

Records that contractors maintain under Executive Order 11246 must include each employee's gender, race, and ethnicity, and where possible, the gender, race, and ethnicity of each applicant or internet applicant as applicable. [41 CFR 60-1.12\(c\)](#); see [41 CFR 60-1.3](#). This requirement is noted for some of the record types listed.

Note: This list is not all-inclusive.

Recruitment

- Letters and Vacancy Announcements sent to recruitment sources
- Employment Openings sent to local American Job Centers or State Workforce Agency Job Bank
- List of Recruitment Sources for Women, Minorities, Individuals with Disabilities, Protected Veterans
- Written Recruitment Policies
- Documentation of Outreach Efforts under Section 503 and VEVRAA

Hiring

- Job Analysis
- Job Description
- Recruitment Plan
- Job Requisitions
- Disposition Codes
- Vacancy Announcements
- New Position Form
- Selection Criteria for Job Openings
- Minimum and Preferred Job Qualifications
- Documentation of Data Management Techniques utilized to review resumes (e.g., dates of resume searches, keywords used, numbers of resumes requested.)
- Expressions of Interest in employment
- Applications
- Resumes
- Applicant Logs with race, ethnicity and sex data
- Hiring Logs with race, ethnicity and sex data
- Interview Notes, including ratings and scores
- Interview Questionnaires
- Test(s) Used in Selection Process
- Results of Test(s) Used in Selection Process
- Manuals on the administration of the test(s)
- Copies of validity studies conducted on selection procedures (tests, standardized interview questions, etc.)
- Post-it Notes made during the selection process

- Calendars
- Telephone Logs (to document attempts to contact or interview dates)
- Invitations to Self-Identify as an individual with a disability or protected veteran
- Reference Checks
- Job Offer Letters
- Transfers and Reassignments
- Documentation of Background Checks
- Documentation of Physical Exams
- Drug Screen Results
- Written Policies
- Post Offer Process
- Disability and Veteran Self-Identification Information for Applicants and Employees
- Documentation for Establishing VEVRAA Hiring Benchmark
- Affirmative Action Goal Progress

Promotions

- Applications/Expression of Interest in the new position
- Promotion Logs with race, ethnicity and sex data
- Training, including Management and Leadership Development and Leadership
- Transfers and Reassignments Providing Promotion Opportunity
- Selections for Apprenticeship with race, ethnicity and sex data
- Resumes
- Seniority Roster
- Job Bidding List
- Performance Appraisals
- Training Assessments
- Commendation Memos
- Written Policies

Terminations

- Resignation Letters
- Termination Letters
- Termination Logs with race, ethnicity and sex data
- Disciplinary Memos
- Performance Appraisals
- Performance Action Plans/Performance Improvement Plans
- Documentation of Reductions in Force, including criteria used
- Documentation of Layoffs, including criteria used
- Documentation of Facility Closings
- Written Policies

Compensation

- Performance Appraisals
- Change-of-Status Forms
- Commendation Memos
- Merit Increase Documentation
- Performance Bonus Documentation
- Documentation on Commissions

- Internal Compensation Analyses
- Market Research Documentation
- Offer Letters and Starting Salary
- Performance Bonus Documentation/Calculations
- Goals, Targets and Performance Expectations
- Other Incentive Compensation Information
- Reward Strategies
- Benefit Information
- Overtime Calculations
- Stock Administration
- Productivity Records (if piece rate or other productivity measure is used in compensation)
- Written Policies

Other

- Affirmative Action Program(s)
- Impact Ratio Analyses
- Collective Bargaining Agreements
- Employee Handbooks
- Organizational Chart(s)
- Information on Workflows (approvals for salary changes, promotions, etc.)
- Records on Demotions with race, ethnicity and sex data
- Records on Leave/Leave Management
- Records on Reasonable Accommodation Requests
- Mergers/Acquisitions, including dates, employees affected, etc.
- Internal Investigations of Complaints, including process for filing and resolution of internal complaints
- Discipline Records
- Employee Contact Information
- Separation Records
- Succession Planning/Career Planning Records
- Analytics Maintained in Human Resource Information Systems

Appendix G: Sample Policy Statement for Employment of Spouses and Other Individuals Associated with Protected Veterans

It is unlawful for [Federal Contractor, Inc.] to discriminate because of a person's relationship or association with a protected veteran. This includes spouses and other family members. [Federal Contractor, Inc.] will safeguard the fair and equitable treatment of protected veteran spouses and family members with regard to all employment actions and prohibit harassment of applicants and employees because of their relationship or association with a protected veteran.



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