



July 11, 2011

Ms. Debra A. Carr  
Director, Division of Policy, Planning, and Program Development  
Office of Federal Contract Compliance Programs  
200 Constitution Ave, NW, Room C-3325  
Washington, DC 20210

Re: RIN 1250-AA00

Dear Ms. Carr:

We the undersigned members of the Consortium for Citizens with Disabilities (CCD) Veterans Task Force are writing to provide comment on the proposed rule announced by the Office of Federal Contract Compliance Programs (OFCCP) that would revise the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974, as amended. The notice was officially published for comment on April 26, 2011.

CCD is a coalition of national consumer, service provider, and professional organizations which advocates on behalf of people with disabilities and chronic conditions and their families.

In April 2010, Economic Systems, Inc. (EconSys) released a report analyzing affirmative action for people with disabilities and disabled veterans, including Section 503 and VEVRAA (Section 4212).<sup>1</sup> The report was prepared at the request of the U.S. Department of Labor's Office of Disability Employment Policy. The findings detailed in Volume II of the EconSys report concerning modernizing the affirmative action provisions of Section 503 and Section 4212 highlight key deficiencies in the current implementing regulations. Specifically, the report details five inadequacies in the current regulations that limit the impact of the affirmative action provisions of Section 503 and Section 4212. The five deficiencies follow:

- The regulations lack qualitative analysis and measurable goals and objectives (comparable to those for minorities and women); thus, making it difficult to objectively

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<sup>1</sup> Economic Systems, Inc., Affirmative Action for People with Disabilities and Disabled Veterans: Volume II Modernizing the Affirmative Action Provisions of the Section 503 and VEVRAA Regulations (2010), <http://www.econsys.com/documents/Vol%20II-Modernizing%20Section%20503%20Regulations.pdf>.

determine whether people with disabilities and covered veterans are sufficiently represented in the covered federal contractor workforce.

- The regulations do not clearly define the affirmative action obligation of covered federal contractors.
- The regulations lack sufficient examples of best practices for meeting the components of an affirmative action program outlined in the regulations.
- The regulations fail to account for the technology needs of today's work environment to ensure that all equipment and computer applications are accessible to people with different types of disabilities.
- The regulations lack sufficient guidance concerning the actions covered federal contractors should take toward applicants who have disabilities, such as addressing confidential self-identification at the pre-offer stage.

The EconSys report proposes four modifications to strengthen the regulations governing Section 503 and Section 4212. These recommendations provide a common sense approach that builds on the successes of other affirmative action programs, including Executive Order 11246. The four recommendations follow:

- The report recommends that the regulations be amended to provide covered federal contractors with sufficient understanding of the nature of the duty to implement the affirmative action provisions of these statutes, including the scope and purpose of affirmative action.
- The report proposes that the purpose of an affirmative action program be defined to reflect how it is to be used as a proactive management tool.
- The report suggests that changes be made to ensure that people with disabilities and veterans who give an informed consent about how the information will be used have greater opportunities to self-identify and thus benefit from affirmative action.
- The report proposes adding qualitative analysis and accessible technology to the required components of an affirmative action plan along with ensuring that these and all other affirmative action program components take into account current best practices.

Prior to examining the overall impact of the proposed rule, the CCD Veterans Task Force would like to state that we agree with the rescission of Part 60-250. We believe that it is unlikely that contracts are still in force that were entered into eight years ago.

In addition, we support modernizing the name of the regulation as outlined in Section 60-300.1. However, we think that there may be merit to connecting Section 4212 to the persons covered. Thus, we suggest that it might read "Section 4212/Protected Veterans." Furthermore, we agree with the addition of language prohibiting discrimination to that requiring the affirmative action steps to be taken by contractors and subcontractors.

We also agree with the changes in Section 60-300.2 clarifying and specifying the groups of protected veterans. Specifically, the proposed language more accurately reflects the language in the statute. Thus, we believe it will alleviate some of the past confusion surrounding the wording.

With regard to coverage and waivers in Section 60-300.4, we believe that while there may be some legitimate rationale for exempting contractor employment activities outside the United States in (a)(3) and for allowing the head of a contracting agency to waive these regulations in the name of “national security” (b)(2) we find these exceptions troubling. Much of the federal government’s contracting dollars are being spent through the Department of Defense and other domestic agencies that conduct operations outside the United States. Many veterans with disabilities will have the requisite security clearances that would make them ideal candidates for positions within such contracts. We do not believe that employment opportunities for these veterans should be cast aside under such blanket exception language.

We also believe that the provisions in Section 60-300.42 allowing individuals to identify themselves as protected veterans at the pre-offer stage and more specifically as veterans with disabilities at the post-employment offer stage appear to be consistent with the protections afforded under the Americans with Disabilities Act. Furthermore, inclusion of the sample self-identification letter in Appendix B is a very useful tool that OFCCP has provided to contractors. Providing veterans with disabilities the opportunity to self-identify will allow greater opportunities for these individuals to benefit from affirmative action programs.

Concerning the requirement in Section 60-300.5 that contractors supply their job listings in formats and in a manner that an “employment service requires,” we believe that it could place an undue burden on contractors, including many veteran-owned (VOSBs) and service-disabled-veteran-owned small businesses (SDVOSBs). Rather than insisting that companies abide by a multiplicity of formats – the government should make it as easy as possible for companies to post their job listings with any employment service.

Section 60-300.5 also proposes that contractors identify themselves with the state employment service, including the contact information for the hiring officers and a request for priority referrals of protected veterans. Again, this could result in a considerable administrative burden on many VOSBs. It is our understanding that the U.S. General Services Administration maintains a list of federal contractors and, if so, this list should be made available to state employment services by the federal government.

Though we agree that the data collection rules on the number of protected veteran referrals to a contractor are important, we do not understand why contractors must maintain these records for five years when other affirmative action obligations call for recordkeeping for two years. What if an applicant is a female veteran or a veteran with a non-service-connected disability? Would the contractor have to maintain duplicate sets of records in order to comply with the different recordkeeping timeframes set out in each affirmative action requirement? We believe that it would be better to make the recordkeeping rules consistent across all protected classes and maintained at the current timeframes.

We note that Executive Order 11246 includes a statement of function and purpose for affirmative action plans that is not present in Section 4212 or Section 503. In the interests of harmonizing the various affirmative action regulations, this statement of function and purpose should be included in Section 60-300.5 of the proposed rule.

Aside from our initial comments, the remainder of our analysis is based on a review of the four broad categories of benefits the OFCCP sought to create through the proposed rule. The four broad categories are as follows: 1) Connect job-seeking veterans with contractors looking to hire; 2) Ensure that contractors understand and effectively communicate their affirmative action obligations; 3) Increase the mechanisms by which contractors can assess their affirmative action efforts; and 4) Implement changes to the manner in which OFCCP conducts compliance reviews.

#### Connect Job-Seeking Veterans with Contractors Looking to Hire

In Section 60-300.44(f), the proposed rule sets forth several mandatory and suggested steps contractors must take to reach out to protected veterans. The task force supports the required linkage agreement with the Local Veterans Employment Representatives (LVERs) nearest the contractor's establishment. Reference should also be made to Disabled Veterans Outreach Program (DVOP) officers. These positions are funded through the Department of Labor's Veterans' Employment and Training Service (VETS) and are specifically tasked with promoting employment opportunities for veterans with disabilities.

The proposed rule also adds the Department of Defense Transition Assistance Program (TAP) to a current list of offices and organizations with which contractors must partner in developing training opportunities for protected veterans. At this time, the Marines are the only service to require TAP attendance. We would like to note that there is also a Disabled Transition Assistance Program (DTAP) which is intended to assist service members with disabilities. Both TAP and DTAP have come under criticism for shortcomings in reaching all discharging military personnel, for presenting people leaving military service with too much information and for not following up with the service members later in their transition when they may be more attuned to materials concerning employment, VA benefits and other programs. We are hopeful that the current efforts to redesign TAP will increase its usefulness. In the meantime, we agree that TAP may not be the most productive of partners for some contractors and support those provisions allowing selection of another agency or organization for meeting the obligation to create linkages for recruitment and training opportunities.

The proposed rule also requires contractors to consult with the Employer Resources Section of the National Resource Directory (NRD). The NRD is a partnership among the Departments of Defense, Labor and Veterans Affairs (VA). The information contained within the NRD is from federal, state and local government agencies; veterans service and benefit organizations; non-profit and community-based organizations; academic institutions; and professional associations that provide assistance to wounded warriors and their families. While the Employer Resources page within the directory contains a wealth of information, including links specifically for federal contractors, the amount of material may prove daunting to many companies in need of concise, reliable information about who to contact and how to contact them in their outreach to protected veterans.

Additional, optional outreach efforts proposed include formal briefing sessions - preferably on company premises - with representatives from recruiting sources; special efforts to reach student veterans; participation in work study programs of VA rehabilitation facilities; engagement of protected veterans in career days, youth programs and related activities in

communities. All of these are useful suggestions and can provide additional ideas for contractors to pursue in their Section 4212 compliance undertakings.

A variety of avenues through which employers and contractors currently find protected veterans may offer additional means for complying with Section 4212. OFCCP should consider including these resources in its final regulations. For example, VA and the federal Rehabilitation Services Administration (RSA) recently signed a memorandum of understanding under which VA Vocational Rehabilitation and Employment services and state vocational rehabilitation agencies will work together to help veterans with significant disabilities who are seeking employment opportunities.

Within VA, there is an entire set of programs and policies devoted to promotion of VOSBs and SDVOSBs. Many of these VOSBs and SDVOSBs are federal contractors and would be valuable resources as subcontractor partners or as potential hiring pools for protected veterans. The Center for Veterans Enterprise (CVE) was created as a subdivision of the VA Office of Small and Disadvantaged Business Utilization (OSDBU). OSDBU is intended to serve as an advocate for VOSBs and SDVOSBs, providing information about contracting with the federal government, hosting vendor conferences and offering other support for veteran entrepreneurs. The contact information for the VA OSDBU can be found at this link – <http://www.va.gov/osdbu/about/contacts.asp> – and the link to the home page for that office is <http://www.va.gov/osdbu/about/index.asp>.

In testimony before the House Veterans’ Affairs Committee on June 1, 2011, several witnesses identified the National Labor Exchange (NLX) as a “comprehensive suite of programs and services to assist employers (e.g. federal government contractors) in complying with VEVRAA regulations. . . . Members can have their job openings automatically indexed (scraped) directly from their corporate career sites and made available to veterans through NLX and VetCentral, which assists participating members in complying with JVA [Jobs for Veterans Act] regulations. Vet Central is a unique feature of the NLX which feeds job listings to State Employment Services offices nationwide. VetCentral is fully integrated into the NLX.” In addition, NLX obtains downloads of postings from USAJOBS – the federal government’s job opening portal – and distributes them to state job banks. To date, over 20 states have asked that USAJOBS be included in their state job bank postings.<sup>2</sup> According to other testimony at the same hearing, NLX has also been working with state job banks to receive electronically postings from their state workforce agencies and offers Section 4212 compliance assistance through VetCentral.

Additional external outreach steps that OFCCP may want to incorporate can be found in Examples of Practices: Federal Affirmative Action Programs for Qualified Individuals with Disabilities and Qualified Disabled Veterans.<sup>3</sup>

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<sup>2</sup> Testimony of Jolene Jeffries, DirectEmployers Association, June 1, 2011, House Veterans Affairs Committee hearing on “Putting America’s Veterans Back to Work.”

<sup>3</sup> Examples of Practices: Federal Affirmative Action Programs for Qualified Individuals with Disabilities and Qualified Disabled Veterans, Collaborative on Accessible Workplace Technologies, November 2009, p. 22

### Ensure that Contractors Understand and Effectively Communicate Their Affirmative Action Efforts

In Section 60-300.44(g), the proposed rule sets out a variety of ways for contractors to disseminate their affirmative action policy among their employees and management from inclusion in the company policy manual, to annual staff meetings and employee orientations, to meetings with senior management. We assume that these steps can be incorporated into other regularly scheduled staff communications undertaken by a contractor. However, to avoid concerns that this imposes additional administrative burdens on small and medium sized companies, the rule should explicitly allow for these matters to be discussed in the context of other regularly scheduled employee meetings. The regulations also need to permit distribution of affirmative action policies in electronic or web-based formats for contractors with offices in a multiplicity of locations around the country.

Section 60-300.40 directs the official with knowledge of a firm's affirmative action plan to annually review and update it pursuant to 60-300.44. In all likelihood, at a large corporation or company, the official with the responsibility for the contractor's affirmative action program will be someone in the human resources or personnel department. However, at small or medium sized VOSBs and SDVOSBs, that official may also be the CEO, office manager, and payroll clerk. As a result, the requirements for training in 60-300.44(j) may be overly burdensome for some small companies. Technical assistance and training should be readily available from OFCCP and OFCCP approved sources – through online teaching tools, webinars and other easily achievable learning mechanisms. Moreover, it would be helpful for these small businesses – and likely even for large corporations – if technical assistance and training for all affirmative action obligations under Section 4212, Section 503, and the Executive Order were provided in one comprehensive government website.

### Increase the Mechanisms to Allow Contractors to Assess Affirmative Action Efforts

Affirmative action requirements and programs covering race, ethnicity, and gender under Executive Order 11246 provide an important model, including numerical placement goals, changes to qualification standards, quantitative analyses, measurable action steps, reporting, and accountability. As recommended by the EconSys report, the CCD Veterans Task Force believes that incorporation of these or similar elements into Section 4212 and Section 503 is critical to send a clear message to contractors that disability and veterans' affirmative action stands on parallel footing to affirmative action on other factors.

Thus, we appreciate the requirement in Section 60-300.45 that contractors establish annual hiring benchmarks but recognize there is confusion within the contractor community over the term benchmarks used in this proposed rule and “placement goals” set out in the Executive Order. However, we believe that it is still important to require the development of these benchmarks or goals using available statistics. In addition to the suggested data sources referenced in the proposed rule, information available through VA may be able to further assist contractors in determining the percentages of veterans who have service-connected disabilities that should be reflected in their recruitment and hiring efforts. Specifically, it is important that the benchmarks

or goals fully address the employment needs of veterans who have disabilities and thus have additional barriers to employment.

To ensure that data collection is not overly burdensome, however, we encourage OFCCP to adopt documentation retention policies that mirror those in place for other affirmative action requirements.

#### Implement Changes to the Manner in Which OFCCP Conduct Compliance Reviews

The CCD Veterans Task Force believes that the compliance review process outlined in Section 60-300.60 must be conducted in a manner that seeks to ensure that contractors are fully complying with the requirements of Section 4212. However, the compliance review process must balance the need for enforcement with the potential burden on the contractors. Otherwise, efforts to increase employment opportunities for veterans may be lost in efforts to satisfy documentation requirements. The potential consequence is that the letter and not the spirit of the requirement will be met which could limit the effectiveness of affirmative action under Section 4212.

In Section 60-300.61, the proposed rule allows complaints to be filed either with OFCCP or VETS or through the LVERs. It is possible that veterans with disabilities may believe that they were subjected to discrimination due to their status as a veteran and as a person with a disability. Because the Equal Employment Opportunity Commission has jurisdiction over discrimination complaints filed on the basis of disability, we believe that connection should be made in the final rule to the agency responsible for investigating these violations. Moreover, training must ensure that LVERs, VETS, and OFCCP staff are alert to the possibility that a protected veteran with a disability may also be covered under other civil rights statutes and should advise these veterans of their rights to file complaints with the appropriate external federal agencies.

Thank you for the opportunity to comment on the proposed rule. CCD stands ready to assist OFCCP to serve veterans with disabilities. If you have any questions, please contact Heather Ansley, CCD Veterans Task Force Co-Chair, at (202) 556-2076, ext. 7702 or by e-mail at [hansley@vetsfirst.org](mailto:hansley@vetsfirst.org).

Sincerely,

Easter Seals  
National Council on Independent Living  
NISH  
Paralyzed Veterans of America  
VetsFirst, a program of United Spinal Association  
Vietnam Veterans of America