

# OFCCP REVISED VEVRAA AND 503 REGULATIONS

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## *Part I*

### *Compliance Timeline, Narrative Obligations and Outreach Requirements*

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# Today's Objectives

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- Review changes in regulations; and
- Provide guidance on compliance obligations as of March 24, 2014 and for subsequent AAP updates.

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# Today's Agenda

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- Overview of Regulatory Subparts for Veterans and Individuals with Disabilities (IWD);
- Compliance Obligations Timeline;
  - March 24th, 2014 and AAP updates
- Review of and practical tips for March 24<sup>th</sup> compliance obligations; and
- AAP Narrative obligations *including outreach obligations*.

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# Overview of Subparts for Veterans and IWD

- OFCCP published revised regulations in the Federal Register September 24, 2013 effective March 24, 2014
- Two major AAP regulations:
  - Veterans 41 CFR 60-300 (VEVRAA)
    - [www.dol.gov/ofccp/regs/compliance/vevraa.htm](http://www.dol.gov/ofccp/regs/compliance/vevraa.htm)
  - Individuals with Disabilities (IWD) 41 CFR 60-741 (Section 503)
    - [www.dol.gov/ofccp/regs/compliance/section503.htm](http://www.dol.gov/ofccp/regs/compliance/section503.htm)

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# Veterans and IWD Regulation Subparts

Subpart	Title	Comply on 3/24/2014	Comply with 1st AAP Update	Comply with subsequent AAP Updates
A	Preliminary Matters, EO Clause	<b>Yes</b> – ESDS Listing (Vet), Rights Notice, EOE tag line, EO clause		
B	Discrimination Prohibited	(minimal changes)		
C	Affirmative Action Program		<b>Yes (most)</b>	<b>Yes</b>
D	General Enforcement	(minimal changes)		
E	Ancillary Matters	<b>Yes</b> -3 year record retention, OFCCP access		

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# Subpart A – Preliminary Matters

- **Applicability 60-300.1/-741.1 (not new)**
  - Veterans regulations apply to contracts/subcontracts of \$100,000 or more; and
  - IWD regulations apply to contracts/subcontracts of \$10,000 or more.
    - (written AAP for contracts of \$50,000 or more... and 50 or more employees)

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# Subpart A – Preliminary Matters

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- For veterans regulations:
  - “Other protected veterans” is relabeled “active duty wartime or campaign badge veteran”; and
  - General umbrella “protected veterans” covers/refers to all four veterans categories.

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# Subpart A – Preliminary Matters

- Changes in Equal Opportunity (EO) clause (60-300.5 and 741.5) and required obligations:
  - **List job vacancies** (Vets) with employment service delivery system (ESDS);
  - **Posting notices** regarding applicant and employee rights;
  - **EOE** (tag line) job posting notice; and
  - **EO clause** in contract/subcontract/PO.





# Subpart A – EO clause changes

- **List** job vacancies with employment service delivery system (ESDS) (300.5 a. 2-4 Veterans only):
  - Contractors must provide job vacancy information
    - ...in *any manner and format permitted by the appropriate employment service delivery system* (fax, email, online...); and
    - Contact local office to verify manner/format.
  - Advise ESDS that contractor
    - *Is a federal contractor;*
    - *Desires priority referrals from state of protected veterans; and*
    - *Label notification as “**VEVRAA contractor/subcontractor Requesting Priority Referral of Protected Veterans**”.*
  - Provide to ESDS
    - *Name and location of each hiring location within state;*
    - *Contact information* for the contractor official responsible for hiring at each location (chief hiring official, HR contact, senior management contact or any other manager) that can verify info and receive priority referrals;
    - If contractor uses external job search organizations...provide *contact info for the job search organization; and*
    - *Must provide updates to ESDS* if contact information changes (but not required annually).

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# Subpart A – EO clause changes

- **Posting notices re applicant and employee rights** (300.5 a. 9 and 741.5 a. 4):
  - EEO is the law poster;
  - Provide notice in accessible and understandable form for disabled veterans/IWD (Braille, large print, at lower height...);
  - For employees not at physical location, can post notice electronically provided contractor has “actual knowledge that such employees otherwise are able to access...”; and
  - If use electronic application process, must use electronic posting to notify job applicants. Must be conspicuously stored with or as part of the electronic application.

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# Subpart A – EO clause changes

- **Equal Opportunity Employer (EOE) job posting notice (tag line)** (300.5 a. 12 and 741.5 a. 7):
  - Solicitations/advertisements for employees placed by/on behalf of the contractor must state that all qualified applicants will receive consideration for employment
    - “without regard to their protected veteran status”; and
    - “will not be discriminated against on the basis of disability.”
  - In past EOE M/F/D/V used. No longer acceptable by OFCCP.

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# Subpart A – EO clause changes

- **Equal Opportunity Employer (EOE) job posting notice** (300.5 a. 12 and 741.5 a. 7)
  - Examples
    - “EOE. Minorities/Women/Protected Veterans/Individuals with Disabilities”
    - “Acme, Inc. is an equal opportunity employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, disability status, protected veteran status, or any other characteristic protected by law.”

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# Subpart A – EO clause changes

- **EO Clause in applicable contracts, subcontracts, Purchase Orders** (300.5 d and 741.5 d)
  - Threshold
    - Veterans - \$100,000 or more in single contract
    - IWD - more than \$10,000
    - Women and Minorities - more than \$10,000
  - Must cite clause and include specified language in bold text (see examples).

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# Subpart A – EO clause changes

## EO Clause Example 1

*[Insert name of subcontractor/vendor/supplier or other term used in form (e.g., subcontractor, seller, etc.)]* shall comply with all applicable federal, state and local laws of any nature whatsoever in connection with the goods and services provided including, but not limited, to applicable provisions of E.O. 11246, Rehabilitation Act of 1973, Vietnam Era Veterans' Readjustment Assistance Act of 1974, E.O. 13496 and respective regulations including 29 C.F.R. 471 Appendix A to Subpart A, and the EEO Clauses set forth in 41 C.F.R. 60-1.4, 41 C.F.R. 60-300.5 (**This contractor and subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5. This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractor and subcontractors to employ and advance in employment qualified protected veterans**) and 41 C.F.R. 60-741.5 (**This contractor and subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5. This regulation prohibits discrimination against qualified individuals with disabilities on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities**), all of which are incorporated herein by reference.

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# Subpart A – EO clause changes

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## EO Clause Example 2

During the performance of this contract [or purchase order], the contractor/vendor agrees to comply with all Federal, state and local laws respecting discrimination in employment and non-segregation of facilities including, but not limited to, requirements set out at 41 CFR 60-1.4, 41 CFR 61-300.10, 29 CFR Part 471 Appendix A to Subpart A, 41 CFR 60-300.5 (**This contractor and subcontractor shall abide by the requirements of 41 CFR 60–300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**) and 41 CFR 60-741.5 (**This contractor and subcontractor shall abide by the requirements of 41 CFR 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**) These equal opportunity clauses and the employee notification clause are hereby incorporated by reference.

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# Subpart C - Major Sections

Section	Title	Changes?
300.40/741.40	Applicability of AAP requirement	AAP to be “reviewed and updated annually by the official designated per .44(i)”
300.41/741.41	Availability of AAP	Contractor does not have to make available data metrics
300.42/741.42	Invitation to Self-Identify	<b><u>Extensive changes</u></b> (covered in <b>Part 2</b> of Webinar)
300.43/741.43	Affirmative action policy	Similar
300.44/741.44	Required contents of affirmative action programs	<b><u>Extensive changes</u></b>
300.45 (Vet)	Veterans: Hiring Benchmarks	<b><u>NEW</u></b> (8 % of hires)- <b>Part 2</b>
741.45 (IWD)	IWD: Utilization Goals	<b><u>NEW</u></b> (7% by Job Group)- <b>Part 2</b>
741.46 (IWD)	Voluntary AAP for disabled emps	<b><u>NEW</u></b>
741.47 (IWD)	Sheltered workshops	Similar

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# Subpart C

## Required Contents of AAP

Section 300.44/741.44	Title	Changes?
a)	Policy Statement	Minor changes
b)	Review of personnel process	Minor changes
c)	Physical and mental qualifications	Similar
d)	Reasonable accommodations	Minor changes
e)	Harassment	Similar
f)	External dissemination	<b>Extensive changes</b>
g)	Internal dissemination	Minor changes
h)	Audit and reporting	Minor changes
i)	Responsibility for Implementation	Similar
j)	Training	Similar
k)	Data collection analysis	<b>NEW</b>

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# Subpart C – AAP Contents

- Policy Statement - .44 (a)
  - Contractor must ensure that applicants and employees who are disabled or disabled veterans are provided notice in a form that is accessible and understandable... (e.g. providing Braille or large print...posting notice for visual accessibility to persons in wheelchairs); and
  - Policy statement shall indicate “top United States executive’s (such as the Chief Executive Officer or the President of the United States Division of a foreign company) support for contractor’s affirmative action program...”.

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# Subpart C – AAP Contents

- Review of personnel process - .44 (b)
  - IWD – Eliminate old Appendix C “Review of Personnel Processes” which was a suggested set of steps to undertake;
  - IWD – “contractor shall ensure that applicants and employees with disabilities have equal access to its personnel processes, including those implemented through information and communication technologies.”
  - IWD – “contractor is also encouraged to make its information and communication technologies accessible, even absent a specific request for reasonable accommodation.”

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# Subpart C – AAP Contents

- Reasonable accommodation - .44 (d)
  - IWD – emphasizes “as a matter of nondiscrimination, the contractor must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability”;
  - IWD – restated from previous regulations “As a matter of affirmative action, if an employee with a known disability is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the known disability, the contractor shall confidentially notify the employee of the performance problem and inquire whether the problem is related to the employee’s disability. If the employee responds affirmatively, the contractor shall confidentially inquire whether the employee is in need of a reasonable accommodation.”(Also applies to disabled vets); and
  - IWD – suggest best practice is to develop written procedures for processing requests for reasonable accommodations.

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# Subpart C – AAP Contents

- External dissemination of policy, outreach and positive recruitment -.44 (f)
  - Written notification of company policy related to AA efforts to all subcontractors, including subcontracting vendors and suppliers, requesting appropriate action on their part. (300/741.44 (f) (1))
    - Via letter, email (keep copies); and
    - Which vendors (alternative approaches)
      - All for whom received a W-9
      - Apply a threshold of \$10,000
      - Analyze all vendors and determine which are covered

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# Subpart C – AAP Contents

- External dissemination of policy, outreach and positive recruitment -.44 (f)
  - Examples of Outreach (300/741.44 (f) (2))
    - Veterans
      - Local Veteran's' Employment Representative;
      - Nearest Dept of Veterans Affairs Regional Office;
      - Dept of Defense TAP; and
      - Organizations in National Resource directory. ([www.nationalresourcedirectory.gov](http://www.nationalresourcedirectory.gov))
    - IWD
      - State vocational rehabilitation service agency;
      - Employment One-Stop Career Center; and
      - Local Employment Network (EN) organizations.

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# Subpart C – AAP Contents

- External dissemination of policy, outreach and positive recruitment -.44 (f)
  - Assessment of external outreach and recruitment efforts (300/741.44 (f) (3))
    - On annual basis review efforts over past 12 months to evaluate effectiveness;
    - Document each evaluation including:
      - Criteria used to evaluate effectiveness
      - Contractor’s conclusion as to whether each effort was effective
        - Must be determined as reasonable by OFCCP
      - Include data collected in section 300.44 (k) and 741.44 (k) in evaluation
    - If conclusion is that efforts were not effective, shall identify and implement alternative efforts.

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# Subpart C – AAP Contents



## Sample Assessment of Outreach and Recruitment

Outreach / Recruitment Activity	Date of Activity	Description	Evaluation
Annual meeting with State Vocational Rehabilitation Service Agency (SVRA)	November 15, 2014	Briefed SVRA with FCI's outreach and recruitment efforts for IWDs.	SVRA representatives will conduct briefings with FCI management regarding hiring IWDs and reasonable accommodations to expand the inclusion of IWDs in FCI workforce. Also, SVRA will begin posting FCI job openings starting in 2015, which will help expand FCI's IWD applicant pool.
Briefing of Local Disability Advocates (LDA)	September 1, 2014	Briefed representatives of LDA, a local disability advocacy group, regarding FCI's services and job opportunities for IWDs, and provided an FCI facility tour.	LDA will begin sending job applicants to FCI starting in 2015 and include FCI in its list of companies that are undertaking affirmative efforts to hire IWDs. FCI will also participate in LDA activities and LDA-sponsored job fairs in 2015.
Outreach event at Local Community College	October 8, 2014	Conducted outreach event at local community college to attract students who are IWDs.	Community college did not have a targeted program specifically designed to attract students who are IWDs, therefore, limited impact in the school. Only 2 students attended event. Consider partnering with other educational institutions.
Participated in Disability Job Fair	November 14, 2014	Disability Job Fair was hosted by the local disability advocacy groups, and over 30 employers participated.	Received 15 applications from qualified individuals with disabilities. 1 was hired. Resumes were retained for consideration in future job openings.

### Criteria for Evaluation:

1. Did the activity attract qualified applicants with disabilities?
2. Did the activity result in the hiring of qualified individuals with disabilities?
3. Did the activity expand FCI's outreach to individuals with disabilities in the community?
4. Did the activity increase FCI's capacity/capability to include individuals with disabilities in its workforce?

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# Subpart C – AAP Contents

- External dissemination of policy, outreach and positive recruitment -.44 (f)
  - Recordkeeping obligations (300/741.44 (f) (4))
    - Document all activities it undertakes to comply with “external dissemination”; and
    - Retain documents for a period of three (3) years.

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# Subpart C – AAP Contents

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- Internal dissemination of policy -.44 (g)
  - Must include the policy in the policy manual (was voluntary);
  - If party to a collective bargaining agreement (CBA), must notify union officials of policy and request cooperation; and
  - Other suggestions (unchanged) are voluntary but encouraged.

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# Subpart C – AAP Contents

- Audit and reporting systems -.44 (h)
  - Audit and reporting system requirements remain the same (i) to (v): measure effectiveness of AAP, need for remedial action, degree of objectives attained, opportunities to participate, measure compliance; and
  - Adds: “ (vi) Document the actions taken to comply with the obligations of paragraphs (i) through (v) above, and retain these documents as employment records subject to the recordkeeping requirements of § 60–741.80.”

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# Subpart C – AAP Contents



## Sample Self-Audit Table

AAP Components	AAP Requirements	Compliance (Y/N) and date last inspected/reviewed (If applicable)	Remedial/Follow-up actions necessary (If any)
Policy Statement (§ 60-741.44(a))	EEO policy statement posted on bulletin boards	Y (last inspected on mm/dd/yyyy)	None
	Policy available in a form that is accessible and understandable to IWDs	Y (last inspected on mm/dd/yyyy)	None
	EEO policy indicates top executive support for AAP	Y (policy statement signed by CEO on mm/dd/yyyy)	New CEO starting mm/dd/yyyy. Publish new policy statement.
Review of Personnel Processes (§ 60-741.44(b))	Periodic review of personnel processes	Y (last review conducted on mm/dd/yyyy)	Modify applicant flow logs to include tracking of IWDs during the job application process. Schedule next review of personnel processes on (mm/dd/yyyy)
	Reasonable accommodation provided for applicants and employees who are IWDs	Y (last review conducted on mm/dd/yyyy)	Time and attendance software system is not accessible. Provide alternate means for timekeeping as accommodation for employees who are IWDs. May procure upgrade to an accessible software package.

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# Subpart C – AAP Contents

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- Data collection analysis -.44 (k)
  - To be covered in Part 2 of webinar

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# Subpart E – Ancillary Matters

- **Recordkeeping (60-300.80 and 741.80)**
  - Similar to older regulations regarding two years from date of making of record or personnel action, whichever is later (exception for employer under 150...)
  - Three year retention required for:
    - outreach/recruitment 60-300.44 (f) and 60-741.44 (f)
    - data collection 60-300.44 (k) and 60-741.44 (k)
    - Veterans hiring benchmark 60-300.45 (c)
- **Access to Records (60-300.81 and 741.81)**
  - Adds provision to provide off-site access to materials;
  - Contractors must specify all formats data available in including electronic;
  - Contractors must provide records in format OFCCP selects; and
  - OFCCP will treat records as confidential to extent permitted by FOIA.

# ***Thank you for attending today's webinar!***

***Don't forget to join us for part II tomorrow:  
Data Collection and Analysis, Hiring Benchmarks  
and Utilization Goals***

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