



# 2014 OFCCP DEVELOPMENTS

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What Federal Contractors Need to Know  
Before Updating AAPs for 2015

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# Today's Objectives

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- Review Executive Orders and other recent regulatory changes affecting contractors
- Provide guidance to contractors updating their VEVRAA/503 AAPs for the first time since March 24, 2014

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# Today's Agenda

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- Status of recent Executive Orders
- New VETS-4212 report
- OFCCP's new compliance review (audit) scheduling letter
- Key VEVRAA/503 changes to implement during the first update after March 24, 2014 for Veterans and Individuals with Disabilities (IWD) AAP

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# Recent Executive Orders

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- President Obama issued Executive Orders (EO) without working with or having Congress pass legislation
- Agencies such as OFCCP responsible for issuing regulations enacting EO, providing opportunity for comments, and then issuing final regulations
- Several EOs have been issued in the last year plus but only a subset need to be on the contractor's radar for implementation

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# Recent Executive Orders

| EO No. | Title   | Status   | Effective Date                                | Comments   |
|--------|---|--|---|--|
| 13658  | Establishing a Minimum Wage for Contractors   | <b><u>Final Regulations issued</u></b>   | new solicitations on or after <b>1/1/2015</b> | \$10.10, not applicable to existing contracts prior to effective date            |
| 13672  | Further Amendments to Executive Order 11478, EEO in the Federal Government, and Executive Order 11246, EEO (LGBT) | OFCCP <b><u>expected to issue final regulations</u></b> without any comment period | Late <b>2014</b> or early <b>2015</b>         | Will at least require updates to protected categories in policies, posters, etc. |
| 13665  | Non-Retaliation for Disclosure of Compensation Information  | <b><u>Comment period</u></b> on proposed rule through 12/16/2014                   | In <b>2015</b> ?                              |  |
| n/a    | Presidential Memorandum directing OFCCP to issue compensation data collection tool                                | <b><u>Comment period</u></b> on proposed rule extended through 1/5/2015            | Spring <b>2016</b> at earliest                | "Equal Pay Report" W-2 data report by EEO-1 establishment / categories           |
| 13673  | Fair Pay and Safe Workplaces  | <b><u>No proposed rule yet</u></b>   | Unknown                                       |  |

# E.O. 13658 Minimum Wage for Federal Contractors

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- Covered contracts for solicitations issued on or after 1/1/15:
  - Procurement for construction, DBA
  - Service contracts, SCA
  - Concessions contracts
  - Services provided on federal property
- Exclusions:
  - Grants
  - Procurement for construction, non-DBA
  - Service contracts, exempt from SCA
- Flow-down:
  - EO contract clauses in all covered lower tier contracts

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# VETS-4212 Reporting

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- New VETS-4212 regulations
  - Effective 10/27/2014 (41 CFR 61-300)
  - Old VETS-100A and VETS-100 reports eliminated
  - For September 2015, contractors file VETS 4212
  - Major change: only one veteran reporting category “Protected Veterans” rather than the four required in the past
  - Still report counts of employees and new hires
  - Appears to allow optionally for counts of new hires to be reported in aggregate and not by EEO-1 category
  - EO clause requirement (reference 41 CFR 61-300.10)
  - Form not yet approved by OMB

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# VETS-4212 Reporting

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- Previously reported on VETS-100A/100:
  - *Disabled veteran*
  - *Recently separated veteran*
  - *Active duty wartime or campaign badge veteran*
  - *Armed Forces service medal veteran*
- To report by September 2015 on VETS-4212:
  - Protected veterans which includes all four veterans categories above

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# VETS-4212 Reporting

- VETS Reporting requires New Hire and Existing Employees
- OFCCP's data collection requires only New Hire data
- Open question: How to collect VETS Existing Employee data?
  - Can only be a "recently separated veteran" for three years from date of discharge - not permanent status

## Options

- 1 – Separate VETS / VEVRAA data collection
- 2 – Supplement(s) to capture separation date
- 3 – Maintain status quo until VETS guidance issued

# OFCCP's New Compliance Review Scheduling Letter

- Currently being used by OFCCP
- Itemized listing increased from 11 to 22 sets of documents requested
- Employment activity data (applicants, hires...)
  - Requesting data, not analyses
  - Black, Asian/PI, Hispanic, Am Indian/Alaskan, White
    - Can submit with seven categories per earlier OFCCP Directive 283
  - Also counts of unknown race/ethnicity/gender
  - By Job Title or Job Group
  - Provide definition of promotion
- Compensation data
  - Employee level data
  - All employees in the AAP
  - Race/ethnicity, gender, job title, EEO-1, Job Group, hire date
  - Base salary or wage rate, hours worked, other compensation (bonuses, commissions, etc.)
  - Provide electronically

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# OFCCP's New Compliance Review Scheduling Letter

- Individuals with Disabilities (Section 503) Items
  - Results of effectiveness of outreach and recruitment
  - Documentation of actions to comply with audit and reporting system
  - Documentation of computations or comparisons for preceding AAP year (data metrics), or if six months into AAP year must supply information for at least six months
  - Utilization Analysis by Job Group ... again if at least six months into AAP year must supply results for at least the first six months

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# OFCCP's New Compliance Review Scheduling Letter

- Veterans (VEVRAA) Items
  - Results of effectiveness of outreach and recruitment
  - Documentation of actions to comply with audit and reporting system
  - Documentation of computations or comparisons for preceding AAP year (data metrics), or if six months into AAP year must supply information for at least six months
  - Documentation of hiring benchmark adopted (most contractors will have nothing to provide)

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# OFCCP's New Compliance Review Scheduling Letter

- Other Items
  - Copies of reasonable accommodation policies
  - Copies of documentation of accommodation requests received and resolution
  - Most recent assessment of personnel processes including date, actions, changes and next scheduled date
  - Most recent assessment of physical and mental qualifications including date, actions, changes and next scheduled date
- Per OFCCP should only take 27.9 hours!

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# OFCCP's New Compliance Review Scheduling Letter

OFCCP's new scheduling letter for compliance reviews

OMB NO. 1250-0003  
Expires XX/XX/XXXX

VIA CERTIFIED MAIL  
(NUMBER)  
RETURN RECEIPT REQUESTED

(Name of contractor official)  
(Title of contractor official)  
(Establishment Name)  
(Street Address)  
(City, State, Zip Code)

Dear (Name of contractor official):

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), selected your \_\_\_\_\_ [Insert: establishment, functional unit, or corporate headquarters] located at \_\_\_\_\_ for a \_\_\_\_\_ [Insert: compliance evaluation or corporate management compliance evaluation (CMCE)]. We are conducting this \_\_\_\_\_ [Insert: compliance evaluation or CMCE] under the authority of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973,<sup>1</sup> the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974<sup>2</sup> and their implementing regulations in 41 CFR Chapter 60.<sup>3</sup> In addition to determining your compliance with these authorities, we will also verify your compliance with the regulations issued by the Veterans' Employment and Training Service (VETS) requiring contractors covered under Section 4212 to file an annual report on their employment and hiring of protected veterans.<sup>4</sup>

A compliance evaluation is initiated as a compliance review. The compliance review may progress in three phases: a desk audit, an on-site review, and an off-site analysis. OFCCP describes the phases of a compliance review in its regulations at 41 CFR Chapter 60.<sup>5</sup> For the desk audit, please submit the following information:

<sup>1</sup> 29 U.S.C. § 793 (2006).

<sup>2</sup> 38 U.S.C. § 4212 (2006).

<sup>3</sup> E.O. 11246, as amended, 3 CFR 339 12319 (1965); Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (2006); Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (2006).

<sup>4</sup> The VETS regulations require Federal contractors to submit either or both the VETS-100 and the VETS-100A Federal Contractor Report on Veterans' Employment. See 41 CFR § 61-300.10.

<sup>5</sup> 41 CFR §§ 60-1.20(a), 60-300.60(a), and 60-741.60(a).

[http://www.reginfo.gov/public/do/PRAViewIC?ref\\_nbr=201104-1250-001&icID=13735](http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201104-1250-001&icID=13735)

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# Veterans and IWD Changes

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

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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), and provide additional information
  - **Posting notices** regarding applicant and employee rights
  - **EOE** (tag line) job posting notice
  - **EO clause** in contract/subcontract/PO

# 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>   |
| 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> (7.2 % of hires)  |
| 741.45 (IWD)  | IWD: Utilization Goals                           | <b><u>NEW</u></b> (7% by Job Group)   |
| 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

## Invitation to Self-Identify

- IWD (60-741.42)
  - Pre-offer: must use OFCCP's mandatory form
  - Post-offer: must use OFCCP's mandatory form
    - Sufficient to ask during on-boarding process
  - Employees: must use OFCCP's mandatory form
    - Must provide and invite employees to self-id during first AAP year following March 24, 2014
    - then again invite every five years
    - Must remind at least once in between these invitations
  - Cannot combine with other forms; if replicate, certain specifications required
- Veterans (60-300.42)
  - Pre-offer: can use own form or modify OFCCP's pre-offer form in Appendix B
    - Single response category is "protected veterans"
  - Post-offer: can use own form or OFCCP's post-offer form in Appendix B
    - Sufficient to ask during on-boarding process
    - Previously had to invite identification of specific category(ies) of protected veteran
  - Can combine with other forms

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# Subpart C Invitation to Self-Identify

OFCCP's final  
self-  
identification  
form for IWDs

## Voluntary Self-Identification of Disability

Form CC-305  
OMB Control Number 1250-0005  
Expires 1/31/2017  
Page 1 of 2

### Why are you being asked to complete this form?

When we do business with the government, we must reach out to, hire, and provide equal opportunity to qualified people with disabilities.<sup>1</sup> To help us measure how well we are doing, we are asking you to tell us if you have a disability or if you ever had a disability. Completing this form is voluntary, but we hope that you will choose to fill it out. If you are applying for a job, any answer you give will be kept private and will not be used against you in any way.

If you already work for us, your answer will not be used against you in any way. Because a person may become disabled at any time, we are required to ask all of our employees to update their information every five years. You may voluntarily self-identify as having a disability on this form without fear of any punishment because you did not identify as having a disability earlier.

### How do I know if I have a disability?

You are considered to have a disability if you have a physical or mental impairment or medical condition that substantially limits a major life activity, or if you have a history or record of such an impairment or medical condition.

Disabilities include, but are not limited to:

- Blindness
- Autism
- Bipolar disorder
- Post-traumatic stress disorder (PTSD)
- Deafness
- Cerebral palsy
- Major depression
- Obsessive compulsive disorder
- Cancer
- HIV/AIDS
- Multiple sclerosis (MS)
- Impairments requiring the use of a wheelchair
- Diabetes
- Schizophrenia
- Missing limbs or partially missing limbs
- Intellectual disability (previously called mental retardation)
- Epilepsy
- Muscular dystrophy

Please check one of the boxes below:

- YES, I HAVE A DISABILITY (or previously had a disability)
- NO, I DON'T HAVE A DISABILITY
- I DON'T WISH TO ANSWER

\_\_\_\_\_  
Your Name

\_\_\_\_\_  
Today's Date

## Voluntary Self-Identification of Disability

Form CC-305  
OMB Control Number 1250-0005  
Expires 1/31/2017  
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### Reasonable Accommodation Notice

Federal law requires employers to provide reasonable accommodation to qualified individuals with disabilities. Please tell us if you require a reasonable accommodation to apply for a job or to perform your job. Examples of reasonable accommodation include making a change to the application process or work procedures, providing documents in an alternate format, using a sign language interpreter, or using specialized equipment.

<sup>1</sup> Section 503 of the Rehabilitation Act of 1973, as amended. For more information about this form or the equal employment obligations of Federal contractors, visit the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) website at [www.dol.gov/ofccp](http://www.dol.gov/ofccp).

**PUBLIC BURDEN STATEMENT:** According to the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. This survey should take about 5 minutes to complete.

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# Subpart C

## Invitation to Self-Identify

### -300.42 and -741.42

- How many forms?
  - Two or three different self-identify (survey) forms
    - Race/ethnicity and gender
    - Veterans (can combine with race/ethnicity/gender)
    - Individuals with Disabilities (must keep separate)
- When to ask pre-offer?
  - Harmonize with internet applicant rules
  - Could ask
    - at beginning
    - for applicants passing “basic qualifications”
    - after you know who are “internet applicants”
- Where to store self-id responses?
  - Regulations require keeping self-id information confidential
  - Maintain in data analysis file with limited access (not hiring managers, general HR or recruiters)
  - Maintain for three years

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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

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- 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)
  - 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...”

# Subpart C – AAP Contents

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- 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.”



# 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)
  - 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)
    - 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
      - Organizations in National Resource directory ([www.nationalresourcedirectory.gov](http://www.nationalresourcedirectory.gov))
    - IWD
      - State vocational rehabilitation service agency
      - Employment One-Stop Career Center
      - 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

# 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”
    - Retain documents for a period of three (3) years
  - Open Question: Tracking source of job seekers from referral and outreach organizations without compromising the confidentiality of veterans or IWD status
    - Pre-offer v. post-offer tracking

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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
  - Other suggestions (unchanged) are voluntary but encouraged

# Subpart C – AAP Contents

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- 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
  - **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.”**



# 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

## Data collection analysis

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- For Veterans and IWD (60-300.44 (k) and 60-741.44 (k))
  - Must collect certain counts of applicants and hires
  - Relies on the Self-Id responses
  - Collect and analyze on an annual basis
  - Must assess effectiveness of outreach
  - Maintain data, calculations and comparisons for three years

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# Subpart C

## Data collection analysis

|              | Title  | Notes                                 |
|--------------|--|---------------------------------------|
| Veterans/IWD | Total number of applicants for all jobs                    |                                       |
| Veterans/IWD | Total number of job openings                               |                                       |
| Veterans/IWD | Total number of jobs filled                                |                                       |
| Veterans/IWD | Total number of applicants hired                           |                                       |
| Veterans     | Number of applicants who are “protected veterans”          | Pre-offer Self-identified or “known”  |
| Veterans     | Number of “protected veteran” applicants hired             | Post-offer Self-identified or “known” |
| IWD          | Number of applicants who are individuals with disabilities | Pre-offer Self-identified or “known”  |
| IWD          | Number of applicants with disabilities hired               | Post-offer Self-identified or “known” |

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# Subpart C

## Data collection analysis

- Since use of Self-Identify form begins with the first AAP year beginning March 24, 2014 or later
  - Data will not be available to conduct .44(f)(3) or .44(k) analysis until after the plan year concludes in 2015 or, in some cases, 2016
  - Example
    - For example, AAP year is January 1st, 2014 to December 31, 2014
    - Contractor begins collecting data with self-identify forms January 1, 2015 (i.e., first AAP year that begins following March 24, 2014)
    - First data analysis under .44(f)(3) and .44(k) conducted following conclusion of AAP year, December 31, 2015

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# Subpart C

## Benchmarks for Hiring Vets

(-300.45)

- Set annual hiring benchmark goal for just “**protected veterans**”
  - Two options for setting goal:
    - National percentage posted by OFCCP: 7.2% (was 8% initially)
    - Contractor calculated using five specific factors (**not recommended**)
    - Apply goal to entire workforce (or by Job Group or EEO-1 category, if preferred)
  - Not rigid and inflexible quota, quotas forbidden
  - Not to be considered ceiling or floor for employment
- No requirement to conduct comparison or analysis
- Failure to meet goal is not a violation – no fines / penalties
- Maintain records for three years

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# Subpart C

## Utilization Goal for IWD (-741.45)

- Set an annual **utilization goal for individuals with disabilities**
  - Not rigid and inflexible quota, quotas forbidden
  - Not to be considered ceiling or floor for employment
- Must use 7% for goal (to be updated by OFCCP periodically)
- Annually evaluate by Job Group (contractors with 100 or fewer employees optionally by entire workforce)
  - Compare percentage of IWD employees in a Job Group to the goal
- No rules specifying requirements for how utilization analysis is to be conducted. No provision for any rules other than effectively “any difference”

# Subpart C

## Utilization Goal for IWD (-741.45)

- Identification of Problem Areas
  - If percentage of IWDs is less than utilization goal
    - Must take steps to determine whether and where impediments to EEO exist
    - Must
      - Assess its personnel processes
      - Assess effectiveness of its outreach and recruitment efforts
      - Assess results of AAP audit
      - Assess any other areas that might affect success of AAP
- Action-oriented programs
  - Must develop and execute action-oriented program designed to correct any identified problem areas
  - Action-oriented program may include modification to personnel processes, alternative or additional outreach/recruitment efforts or other actions designed to correct problems
- Failure to meet goal does not constitute finding or admission of discrimination. No fines or penalties!

# 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
  - OFCCP will treat records as confidential to extent permitted by FOIA

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

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