

PUBLICATION

Gasp! VETS-4212 Final Rule Offers More Rules With Less Burden for Government Contractors

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On September 25, 2014, the Department of Labor's Veterans' Employment and Training Service (VETS) agency published a Final Rule revising the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). Unlike several other rules (proposed and final) affecting federal contractors and subcontractors that have been issued recently by the Office of Federal Contract Compliance Programs (OFCCP), the VETS-4212 reporting rule actually simplifies and eases the burden somewhat on one aspect of federal contractor compliance obligations.

The substance of the Final Rule

The Final Rule revises Part 61-300 of the current VETS reporting regulation (VETS-100A) and establishes the VETS-4212 report. The Final Rule applies to federal contractors and subcontractors subject to 38 U.S.C. § 4212(a) who have a federal contract or subcontract in the amount of \$100,000 or more. In short, the Final Rule eliminates the requirement of federal contractors and subcontractors to report veterans by the four definitional categories of the VETS-100 and (past) VETS 100A reports and, instead, mandates reporting the number of "protected veterans" in the aggregate for the reporting period.

Why the change?

VETS believes that the existing VETS-100 and VETS100A reports are not meaningful to the contractor or the Government for a couple of reasons: (1) veterans may (and usually do) belong to one or more veteran categories, thereby not accurately portraying the number of veterans employed by the contractor or newly hired by the contractor during the reporting period; and (2) the identities of disabled veterans might be easily discoverable if the number of employees or new hires in a category is sufficiently small. Therefore, by providing the aggregate number of protected veterans currently employed and newly hired during the reporting period, the contractor (and Government) will be able to assess more accurately its progress in the employment of veterans (while protecting the identities of disabled veterans) and in complying with its affirmative action obligations under VEVRAA. Also, because it is not required by statute, the VETS-4212 report will not require reporting new hires by job category, although VETS will indicate on the form that providing data on new hires by job category is optional.

Consistency with the EEO-1 Report and OFCCP veteran definitions

The job categories on the VETS-4212 report will be renumbered to mirror the numbering on the EEO-1 Report. VETS has also clarified that the term "hiring location" is identical to the term "establishment" as defined by the instructions for completing the EEO-1 report. In addition, VETS has revised the definitions of veterans who are covered by the revised regulations to reflect the definitions in OFCCP's revised VEVRAA regulations. As a result, like the OFCCP, VETS has clarified that the term "protected veteran" applies to a veteran who meets one or more of the four definitions of veterans in the revised regulations and is not a "catch-all" term that applies to veterans in general (not all veterans are covered by the VEVRAA regulations).

When is the Final Rule effective and how do I file?

The first VETS-4212 report filing period will be August 1, 2015, through September 30, 2015, and will use employment data for the 12-month period preceding a date between July 1, 2015, and August 31, 2015, that represents the end of a payroll period. Contractors with fewer than ten hiring locations may file the VETS-4212 electronically or in paper format. Contractors with ten or more hiring locations must file the VETS-4212 report electronically.

Are there any other obligations?

Each covered contractor subcontract must include a reporting clause, which can be found at 41 C.F.R. § 61-300.10. This clause is in addition to VEVRAA's equal opportunity clause, found at 41 C.F.R. § 60-300.5. Unlike the VEVRAA equal opportunity clause, the reporting clause may not be incorporated by reference.

Enforcement

OFCCP will oversee enforcement of the VETS-4212 reporting requirement during compliance evaluations of the contractor's establishment(s).

In Memoriam

VETS has removed the Part 61-250 reporting regulations (VETS-100) that applied to federal contracts or subcontracts worth \$25,000 or more and entered into prior to December 1, 2003. Like the OFCCP, which issued revised VEVRAA regulations on September 24, 2013, rescinding its Part 60-250 regulations, VETS agrees that no contracts exist today that would still be subject to its Part 61-250 regulations.