

# OFCCCP Audit Insight and Future Focus



Redstone  
Government Consulting

*Helping You Navigate the Maze of Government Contracting*



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Sheri provides HR consulting services to our customers on a wide range of issues, from specific projects to an ongoing outsourced solution of the human resources function. Sheri has two decades of experience in providing a comprehensive assessment of all areas of HR, including establishing and implementing policies and practices, contract transition efforts/onboarding, and investigations. Sheri's experience covers a broad spectrum of compensation planning and analysis for total compensation projects, reasonableness assessments including executive compensation, compensation philosophy development, total reward strategies, benefits analysis, market pay and pay equity evaluations. She regularly supports clients with the analysis and mapping of labor categories and the preparation and analysis of wage calculations and supports clients in pricing disputes with DCAA. She stays abreast of the various requirements of the Department of Labor and, of great importance to government contractors, the Office of Federal Contract Compliance Programs, as well as other federal and state regulations impacting human resources.

# OFCCP



**Mission Statement:** At the Office of Federal Contract Compliance Programs (OFCCP), we protect workers, promote diversity and enforce the law. OFCCP holds those who do business with the federal government (contractors and subcontractors) responsible for complying with the legal requirement 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.

- EO 11246
- Section 503 of the Rehabilitation Act of 1973, amended
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974

# EO 11246

*Take affirmative action and prohibits employment discrimination based on race, color, religion, sex, sexual orientation, gender identity, and national origin*



|   |   |
|---|---|
| Supply and Service Contractors  | <i>Basic Requirements:</i><br><br>Any number of employees with contracts more than \$10,000                         |
|   | <i>Enhanced Requirements (AA Program):</i><br><br>50 or more employees with a contract of \$50,000 or more          |
| Construction Contractors  | <i>Basic Requirements &amp; 16 Specifications:</i><br><br>Any number of employees with contracts more than \$10,000 |
| <i>Applicable FAR Clauses:</i> <ul style="list-style-type: none"><li>• 52.222-21 Prohibition of Segregated Facilities</li><li>• 52.222-22 Previous Contracts and Compliance Reports</li><li>• 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation</li><li>• 52.222-25 Affirmative Action Compliance</li><li>• 52.222-26 Equal Opportunity</li><li>• 52.222-29 Notification of Visa Denial</li><li>• 52.222-40 Notification of Employee Rights Under the National Labor Relations Act</li></ul> |   |

# Section 503

*Take affirmative action and prohibits employment discrimination based on disability.*

|   |  |
|---|--|
| Supply and Service Contractors  | Basic Requirements:<br><br>Any number of employees with contracts more than \$15,000   |
|   | Enhanced Requirements (AA Program):<br><br>50 or more employees and a contract of \$50,000 or more   |
| Construction Contractors  | Basic Requirements:<br><br>Any number of employees with a contract of more than \$15,000<br>(Does not apply to federally assisted construction contractors)            |
|   | Enhanced Requirements (AA Program):<br><br>50 or more employees with a contract of \$50,000 or more<br>(Does not apply to federally assisted construction contractors) |
| Applicable FAR Clause: <ul style="list-style-type: none"><li>• 52.222-36 Affirmative Action for Workers with Disabilities</li></ul> |  |

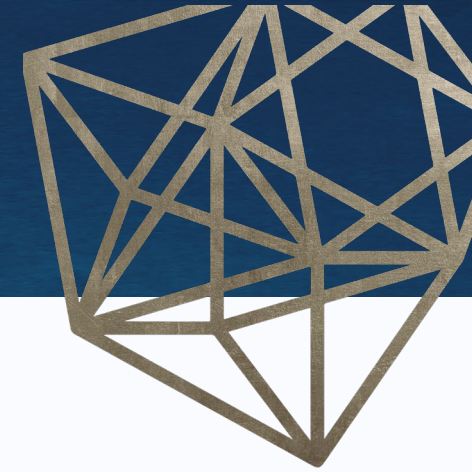
# Vietnam Era Veterans' Readjustment Act (VEVRAA)

*Take affirmative action and prohibits employment discrimination based on protected veteran status.*



|   |   |
|---|---|
| <p style="text-align: center;">Supply and Service<br/>Contractors</p>   | <p><i>Basic Requirements:</i></p> <p>Any number of employees with a contract of \$150,000 or more</p>   |
|   | <p><i>Enhanced Requirements (AA Program):</i></p> <p>50 or more employees and a contract of \$150,000 or more</p>   |
| <p style="text-align: center;">Construction<br/>Contractors</p>   | <p><i>Basic Requirements</i></p> <p>Any number of employees with a contract of \$150,000 or more<br/>(Does not apply to federally assisted construction contractors)</p>              |
|   | <p><i>Enhanced Requirements (AA Program):</i></p> <p>50 or more employees and a contract of \$150,000 or more<br/>(Does not apply to federally assisted construction contractors)</p> |
| <p><i>Applicable FAR Clauses:</i></p> <ul style="list-style-type: none"> <li>• <i>52.222-35 Equal Opportunity for Veterans</i></li> <li>• <i>52.222-37 Employment Reports on Veterans</i></li> <li>• <i>52.222-38 Compliance with Veterans' Employment Reporting Requirements (FEB 2016)</i></li> </ul> |   |

# OFCCP Focus and Initiatives



## Directive 2022-01 Rev 1

### *Advancing Pay Equity Through Compensation Analysis*

**May request additional information if disparities or other concerns in compensation are revealed, such as:**

- Pay disparities or evidence of potential discrimination
- Employee complaints
- Inconsistencies in application of policy
- Statistical analyses

### **This may include:**

- Additional compensation data
- Follow-up interviews
- Previous compensation analysis
- Information to help understand practices and disparities
- Documentation demonstrating what you did if compensation analysis identified problem areas

## **OFCCP's Authority to Review**

# OFCCP Focus and Initiatives



## DIR 2018-05

*Analysis of Contractor Compensation Practices During a Compliance Evaluation* outlines standard procedures for reviewing contractor compliance during a compliance evaluation.

(NOTE that this Directive is referenced/reinforced in Directive 2022-01)

“OFCCP believes that fulsome guidance will further support contractors’ ability to conduct meaningful self-audits so that they can proactively identify and address issues with their compensation practices.”

### Goals:

- 1) Clarify and provide transparency
- 2) Support compliance and compensation self-analyses
- 3) Improve consistency and efficiency during evaluations



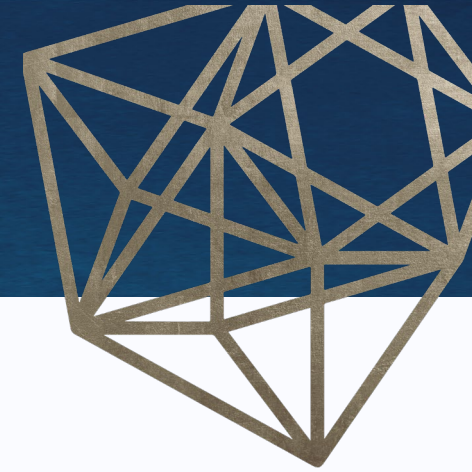
# OFCCP Focus and Initiatives



**Directive 2022-02, *Effective Compliance Evaluations and Enforcement***, to “promote greater contractor compliance” by “conducting comprehensive compliance evaluations” in a timely manner, promoting contractor’s self-audit of systems, implementing cross-regional approach to multi-establishment reviews and promoting communication with contractors.

- Clarification on OFCCP Contractor Portal
- Timeline for issuance of Scheduling Letter & data submission deadlines
- Cross-regional approach to multi-establishment reviews
- Changes to supplemental data requests
- OFCCP access rights and representation during interviews
- Rescinds:
  - DIR 2018-08, *Transparency in OFCCP Compliance Activities*
  - DIR 2020-02, *Efficiency in Compliance Evaluations*
  - DIR 2018-06, *Contractor Recognition Program*
  - DIR 2021-02, *Certainty in OFCCP Policies and Practices*

# OFCCP Focus and Initiatives



## FY 2024 Budget

### Requested \$150 Million - Received \$111 Million (25% increase)

- Hoped to increase staff and resources
- Continue to develop Mega Construction Project Program
- Enhance AI evaluation abilities

## FY 2025 Budget – Requesting \$116 Million

- No new initiatives
- Continue work on Mega Construction Project Program
  - Plan to revise scheduling letter with new and additional information to be requested
- Focus on strategic enforcement
- Enhance outreach efforts

# OFCCP Initiates Audit



## Corporate Scheduling Announcement List (CSAL) is a “courtesy”

- OFCCP issued the most recent CSAL in June 2024
  - 500 contractors
    - Establishment Reviews
    - Functional Affirmative Action Plan Reviews
    - Corporate Management Compliance Evaluations
    - University

## Scheduling Letter – Initial Request for Documents

- August 2023 - New Scheduling Letter
- Contractor has 30 days to submit all requested items in Scheduling Letter for Desk Audit
- Per Directive 2022-02, effective March 31, 2022, the Scheduling Letter can be initiated immediately after CSAL is issued
  - Previously, the Scheduling Letter was delayed at least 45 days

# Combined Scheduling Letter and Itemized Listing

**Current EO 11246 AAP**

**Current Section 503 AAP**

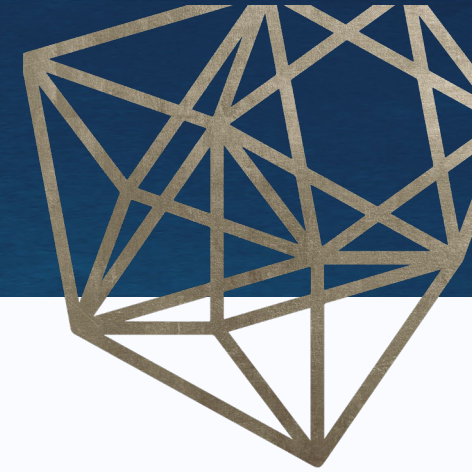
**Current VEVRAA AAP**

**EEO-1 Reports  
for last 3 years**

**Support Data**

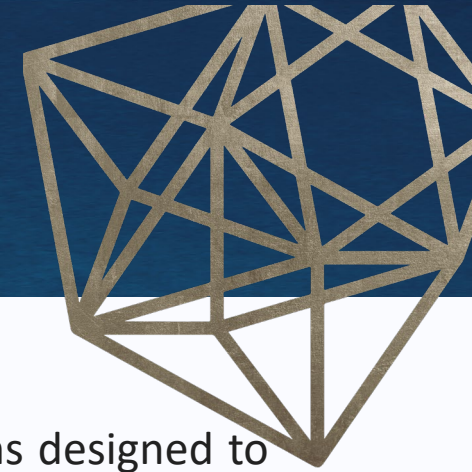


# ...and there's More...



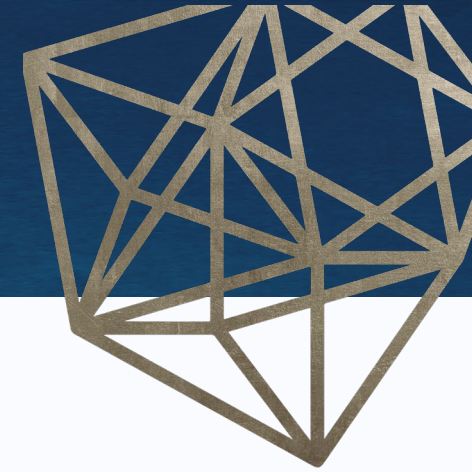
- Within your Plans:
  - Organizational display or workforce analysis
  - Formation of job groups, job group analysis, goals
  - Activities and analysis
  - Support Data
- EEO-1 reports for last 3 years
- Copy of Collective Bargaining Agreement
- Reasonable Accommodation Policy
  - Accommodation Log
- EEO Policy

# ...yes, there's more...



- EO 11246
  - Documentation demonstrating the development and execution of action-oriented programs designed to correct any problem areas identified .
- Section 503 /VEVRAA
  - Documentation of appropriate outreach and positive recruitment activities reasonably designed to effectively recruit qualified individuals with disabilities, and an assessment of the effectiveness of these efforts.
  - Effectiveness of your efforts, detailed description of actions to be implemented, alternative methods, etc.
- Support Data
  - Documentation that the contractor has satisfied its obligation to evaluate its “compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities,” as part of the contractor’s “in-depth analyses of its total employment process”
  - Most recent assessment of personnel processes
  - Most recent assessment of physical and mental qualifications
  - Policy and practice related to hiring and use of AI, algorithms, automated systems or other technology-based selection procedures

# ...and even More!



## Compensation Data...and lots of it!

- **Employee data, to include:**
  - Name/ID, Race, Gender, Title, EEO-1 Category, Job Group
  - Base wages and hours worked in a typical week
  - Bonuses, incentives, commissions, merit increases, locality pay, overtime
- **Factors used to determine compensation (i.e., education, experience, geographic differentials, performance)**
- **P&P related to compensation**
- **Documentation that compensation system(s) have been evaluated “to determine whether there are gender-, race-, or ethnicity-based disparities”**
  - When performed
  - What was analyzed
  - Method of analysis

## Key Takeaways

**Document everything**

**Take action**

**Be intentional**

**Be consistent**

**Communicate and Train**



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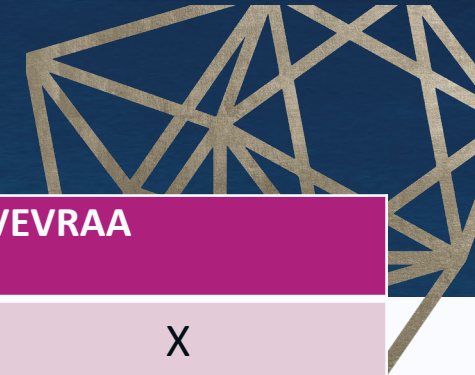
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| Basic Requirements  | EO 11246 | Section 503 | VEVRAA |
|---|----------|-------------|--------|
| Refrain from discrimination and take affirmative steps  | X        | X           | X      |
| <p>In addition to equal employment opportunity, federal government contractors have the added responsibility of affirmative action or encouraging and taking proactive steps toward equal employment and nondiscrimination. This is true for every phase of employment, to include recruiting, hiring, training, transfer, promoting, compensation, social activities, lay off and termination.</p>   |          |             |        |
| Incorporate the EEO clause into contracts and subcontracts & Provide notice to vendors and unions   | X        | X           | X      |
| <p>Subcontractors and vendors must be made aware of the nondiscrimination and affirmative action requirements by incorporating the FAR clauses into subcontracts and purchase orders. There are specific guidelines as to how these clauses must be incorporated (i.e. full text, reference, bold text) and we have found that proof of such is often requested during an audit.</p>  |          |             |        |
| Maintain recordkeeping and retention requirements   | X        | X           | X      |
| <p>All personnel and employment records related to all phases of employment must be maintained for one to two years from the time the record was made or action was taken, whichever is later. The length of retention is dependent upon the size of the contractor. Note that the regulations related to EO 11246 state that for each of these records, the contractor should be able to identify the race, gender and ethnicity of each employee and applicant. This information will be key to a future Affirmative Action Program and written plan.</p> |          |             |        |

| Basic Requirements   | EO 11246 | Section 503 | VEVRAA |
|--|----------|-------------|--------|
| Job postings must contain appropriate EEO language   | X        | X           | X      |
| The appropriate tagline stating that the contractor is an equal opportunity employer must be included in all job postings. Per the OFCCP, the following is acceptable for contractors meeting the minimum threshold requirements of EO 11246, Section 503 and VEVRAA: 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. |          |             |        |
| Post required posters  | X        | X           | X      |
| <u>EEO is the Law</u> , <u>EEO is the Law Supplement</u> , <u>Pay Transparency Nondiscrimination</u> and <u>Employee Rights under the National Labor Relations Act</u> posters are required. These posters should be posted in physical establishments and made available to applicants and remote workers.  |          |             |        |
| Provide OFCCP access to records and worksite/s   | X        | X           | X      |
| If audited, OFCCP has the authority to access related records and visit worksites. Details regarding the types of audits and how to prepare will be provided later in the series.  |          |             |        |
| Adhere to uniform guidelines on selection criteria   | X        |             |        |
| These guidelines provide the standards to be used when performing any type of testing to make decisions which impact any phase of employment. These standards are in place to protect all individuals from adverse impact of employment opportunities.   |          |             |        |



| Basic Requirements  | EO 11246 | Section 503 | VEVRAA |
|---|----------|-------------|--------|
| Annual reporting  |          |             | X      |
| <p>VEETS-4212 is due by September 30 of each year. This report provides OFCCP with information related to the hiring activity of protected veterans during the reporting period.</p>  |          |             |        |
| Provide reasonable accommodation, to include religious  | X        | X           | X      |
| <p>Reasonable accommodation processes should be maintained, related policies and procedures should be made available to employees and managers should be made aware of their role and responsibility in this process. Maintain a log of requests for accommodation, the outcome and reason for denial, if applicable.</p> |          |             |        |
| List employment openings with state Employment Service Delivery System (ESDS)   |          |             | X      |
| <p>Job postings must be posted with the appropriate employment service delivery system, or state workforce agency. Few exceptions apply: executive/senior management positions, positions filled internally or from a “recall” list, and positions which will last three days or fewer.</p>                               |          |             |        |



| Required Components of AAP  | EO 11246 | Section 503 | VEVRAA |
|---|----------|-------------|--------|
| <b>Designation of Responsibility</b><br>Assign responsibility of Equal Employment and Affirmative Action responsibilities to an official of the organization. This employee is responsible for the development, implementation, and monitoring of all aspects of the Affirmative Action Program.  | X        | X           | X      |
| <b>Annual Reporting</b><br>EEO-1 reporting is to be submitted annually and includes data related to the race/ethnicity and gender of the workforce by EEO-1 job category.<br><i>Note that the reporting deadline for submitting 2022 EEO-1 Component 1 reports is Tuesday, December 5, 2023.</i>  | X        |             |        |
| <b>Recordkeeping &amp; Retention</b><br>This topic was also addressed in the Basic Requirements chart of a previous blog. As a reminder, personnel and employment records related to all phases of employment must be maintained for one to two years from the time the record was made or action was taken, whichever is later. The length of retention is dependent upon the size of the contractor. Recordkeeping and retention become more involved when reaching 50 employees. | X        | X           | X      |

| Required Components of AAP  | EO 11246 | Section 503 | VEVRAA |
|---|----------|-------------|--------|
| Written AAP available for viewing   |          | X           | X      |
| <p>The Section 503 and VEVRAA written affirmative action plans must be made available upon request by applicants and employees. Notice of how to make such request should be included in policy statements and posted at establishments and other methods should be used to ensure that applicants and employees may be reasonably informed of their right to do so. <i>Note that the Data Collection Analysis may be removed from the version available for viewing by applicants and employees.</i></p>   |          |             |        |
| Inviting voluntary Self ID pre offer  | X        | X           | X      |
| <p>Applicants are to be provided with an opportunity to self-identify race, gender, disabled status and veteran status. Completed forms should be maintained separately from other personnel information and should only be accessible to those who have a “need to know” for compliance purposes. <i>Note that OFCCP issues and updates the only approved pre and post offer Self ID form for Section 503; therefore, contractors must consider the very specific requirements of OFCCP if making any change or incorporating it into their interactive electronic system.</i></p> |          |             |        |
| Inviting voluntary Self ID post offer   |          | X           | X      |
| <p>New hires are to be provided with an opportunity to self-identify disabled status and veteran status. Completed forms should be maintained separately from other personnel information and should only be accessible to those who have a “need to know” for compliance purposes. <i>Note that OFCCP issues and updates the only approved pre and post offer Self ID form for Section 503; therefore, contractors must consider the very specific requirements of OFCCP if making any change or incorporating it into their interactive electronic system.</i></p>                |          |             |        |
| Inviting periodic Self ID   |          | X           |        |
| <p>Using the OFCCP approved form, or a form that meets the specific criteria set forth by OFCCP, provide the workforce with an opportunity to Self ID disabled status at least once every five years. In addition, provide reminders to employees that they may update their status at least once in between these periodic surveys.</p>  |          |             |        |

| Required Components of AAP (continued)  | EO 11246 | Section 503 | VEVRAA |
|---|----------|-------------|--------|
| Written Affirmative Action Plan   | X        | X           | X      |
| We are often asked “What exactly is a written plan?” These <u>written documents</u> address all of the Basic and AAP requirements we have provided as well as the following components and data analyses: |          |             |        |
| Organizational Profile<br>(Organizational Display or Workforce Analysis)  | X        |             |        |
| Job Group Analysis  | X        |             |        |
| Placement of Incumbents into Job Groups   | X        |             |        |
| Determining Availability to Incumbency  | X        |             |        |
| Placement Goals/Utilization Goals   | X        | X           |        |
| Designation of Responsibility   | X        | X           | X      |
| Data Collection Analysis/Identification of Problem Areas/Review of<br>Personnel Processes   | X        | X           | X      |
| Action-Oriented Programs/Outreach and Recruitment   | X        | X           | X      |
| Internal Audit and Reporting System   | X        | X           | X      |
| Compensation Analysis   | X        |             |        |