

VEVRAA CROSSWALK: Existing Rule vs Final Rule

	Existing Rule	Final Rule
Phased in Enforcement of Subpart C (AAP)	N/A	-PREAMBLE ONLY- Contractors may come into compliance with new affirmative action requirements of Subpart C during their standard 12-month AAP review and updating cycle.
Part 60-250	Regulates contractors with unmodified contracts of \$25,000 or more entered into on or before Dec. 1, 2003.	Rescinded. Adds provision to permit any “pre-JVA veteran” who would have been protected solely by Part 250 to file discrimination and retaliation complaints.
Part 60-300.1 Purpose, applicability, and construction	<ul style="list-style-type: none"> Paragraph (a) discusses the contractor’s affirmative action obligations. Paragraph (c)(2) discusses VEVRAA’s relationship to other laws. 	<ul style="list-style-type: none"> Paragraph (a) modified to include a reference to contractors’ non-discrimination obligations. Paragraph (b) modified to include a reference to the protections accorded to “pre-JVA veterans.” New paragraph (c)(2)(i) highlights that VEVRAA and the Uniformed Services Employment and Reemployment Rights Act (USERRA) are separate laws with distinct obligations for contractors.
Part 60-300.2 Definitions	Definitions are listed by subject matter.	<p>This section is modified to:</p> <ul style="list-style-type: none"> Alphabetize definitions. Replace “other protected veteran” with “active duty wartime or campaign badge veteran.” Replace “Deputy Assistant Secretary” with “Director.” Add additional background information to the definition of “employee service delivery system” regarding the Wagner-Peyser Act. Add definition of “pre-JVA veteran,” as a veteran who would be protected by Part 250, were it not rescinded, but who would not be protected under Part 300. Adds definition of “protected veteran,” defined as a “catch-all” term for any veteran in any veteran category who is protected by the nondiscrimination and affirmative action provisions of VEVRAA.

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<p>Part 60-300.5(a) Equal Opportunity clause</p>	<p><i>Paragraph 2: Mandatory Job Listing Obligations:</i> Requires contractors to list open jobs with State employment agency.</p>	<p>Modifies procedures to require that contractors provide job listings “in any manner and format” that the appropriate ESDS permits that will allow it to provide priority referrals to the contractor</p>
<p>Part 60-300.5(a) Equal Opportunity Clause (cont’d)</p>	<p><i>Paragraph 4: Information Provided to State Employment Service:</i> Contractor must provide the appropriate state employment service with the name and location of each of the contractor’s hiring locations.</p>	<p>Contractor must provide additional information including status as a federal contractor, contact information for the hiring official in each location in the state and its request for priority referrals. If the contractor uses any outside job search companies, it must also provide the contact information for those companies. If any of the information changes since it was last reported to the ESDS location, contractor must update it simultaneously with its next job listing.</p> <p>Replaces the term “state workforce agency” and “state agency” throughout the Final Rule with the term “employment service delivery system,” which is defined in the regulations.</p>
<p>Part 60-300.5(a) Equal Opportunity Clause (cont’d)</p>	<p><i>Paragraph 9: Providing Notices to Applicants and Employees:</i> A contractor must post the notice of rights of applicants and employees in conspicuous places that are accessible to persons with disabilities</p>	<ul style="list-style-type: none"> • Updated examples of providing notices of rights in an accessible manner to individuals with disabilities to suggest providing copies in Braille, large print, or other accessible formats, rather than having the notice read to a person with a disability. • Adds that a contractor may use electronic posting for employees who do not work at the company’s physical location, if contractor provides computers that can access the posting OR has actual knowledge that employees can access the posting. • Requires contractors using an electronic application process to use an electronic posting and store it with the electronic application.

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<p>Part 60-300.5(a) Equal Opportunity Clause (cont'd)</p>	<p><i>Paragraph 10: Providing Notice to Labor Organizations</i> Contractor must notify labor organizations about its affirmative action obligations.</p>	<p>Adds that contractor must also notify labor organizations about its nondiscrimination obligations.</p>
<p>Part 60-300.5(a) Equal Opportunity Clause (cont'd)</p>	<p>N/A</p>	<p><i>Paragraph 12: Contractor Solicitations and Advertisements</i> New paragraph requires contractors to state they are an equal employment opportunity employer of protected veterans in solicitations and advertisements.</p>
<p>Part 60-300.5(d) and (e) Equal Opportunity Clause (cont'd)</p>	<p><i>Paragraph (d): Inclusion of the equal opportunity clause in the contract</i> Permits incorporation of the EO clause into a contract by reference using a citation to 41 CFR 60-300.5(a).</p>	<p>Requires that incorporation of the EO clause by reference can only be made by citing to the regulations AND using specific, mandatory language to alert subcontractors to their obligations as federal contractors.</p>

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Part 60-300.21 Prohibitions	Defines and addresses discriminatory conduct.	Adds “or pre-JVA veteran” after each instance of “protected veteran” and adds “or pre-JVA special disabled veteran” after each instance of “disabled veteran” in this section.
Part 60-300.40 Applicability of the Affirmative Action Program Requirement	States which contractors are required to maintain an AAP	In paragraph (c), clarifies that a contractor’s AAP shall be reviewed and updated annually “by the official designated by the contractor pursuant to §60-300.44(i).”
Part 60-300.41 Availability of AAP	States that contractor must make its AAPs available to employees for inspection and post the location of hours and availability.	Clarifies that “[t]he full affirmative action program, <i>absent the data metrics required by § 60-300.44(k)</i> , shall be made available...” (revisions emphasized). Preamble explains that contractor may make the AAP available to employees electronically upon request, so long as requester is able to access the electronic version of the AAP.

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<p>Part 60-300.42 Invitation to self-identify</p>	<p>Requires the contractor to invite disabled veteran applicants to voluntarily self-identify at the post-offer stage, and for all other protected veterans to be invited to self-identify at any time before the veteran begins employment. Recommends sample language for contractor use (existing Appendix B).</p>	<ul style="list-style-type: none"> • Eliminates separate invitation to self-identify as a disabled veteran. • Requires pre-offer invitation to self-identify as a “protected veteran.” Preamble permits invitation to be made at the same time race/gender information is requested to harmonize with EO 11246’s Internet Applicant Rule. • Requires post-offer voluntary self-identification in any of the specific categories of protected veteran for which the contractor is required to report data to VETS. • Modifies paragraph (c) to require invitations to self-identify to state that the contractor is a federal contractor required to take affirmative action on behalf of protected veterans, replacing current language that “a request to benefit” under the affirmative action program may be made immediately or at any time in the future. • Replaces “appropriate accommodation” in paragraph (d) with “reasonable accommodation” and deletes the parenthetical example of a reasonable accommodation inquiry.
<p>Part 60-300.43 Affirmative Action Policy</p>	<p>This section outlines the contractor’s nondiscrimination and affirmative action obligations.</p>	<p>Replaces the phrase “because of status as a” protected veteran with “against”</p>

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<p>Part 60-300.44(a) Required contents of AAP</p>	<p><i>Paragraph (a): Affirmative action policy statement:</i> Contractor must include equal opportunity policy statements in its AAP and must post the policy statements so that employees and applicants can read them.</p>	<p>Policy statement must indicate “the top U.S. executive’s (such as the CEO or the President of the U.S. Division of a foreign company) support for the contractor’s affirmative action program....”</p>
<p>Part 60-300.44(f) Required contents of AAP (cont’d)</p>	<p><i>Paragraph (f): External dissemination of policy, outreach, and positive recruitment:</i> Suggests a number of outreach and recruitment efforts that the contractor can undertake to increase employment opportunities for protected veterans.</p>	<ul style="list-style-type: none"> • New .44(f)(1)(ii) requires contractors to send written notification of company AA policy to subcontractors & request their cooperation. • New .44(f)(2) expands list of recruitment resource examples. • New .44(f)(3) requires that contractors conduct annual self-assessment of outreach & recruitment efforts & document the review. Requires that the contractor’s conclusions “be reasonable as determined by OFCCP.” If the totality of efforts not effective, contractor must identify and implement alternative efforts. • New .44(f)(4) requires contractors to document its outreach and recruitment activities, and retain the records for 3 years.
<p>Part 60-300.44(g) Required contents of AAP (cont’d)</p>	<p><i>Paragraph (g): Internal dissemination of affirmative action policy</i> A contractor must develop procedures for communication of its affirmative action obligations. This paragraph contains several suggested methods by which a contractor may fulfill this obligation.</p>	<ul style="list-style-type: none"> • Eliminated as unnecessary: the sentence in paragraph (g)(1) which states that “[t]he scope of the contractor’s efforts shall depend upon all the circumstances, including the contractor’s size and resources...” • Requires the contractor to include the policy in its policy manual and if the contractor is party to a CBA) to notify union officials of the policy and to request their cooperation. Other methods of dissemination are retained as optional.
<p>Part 60-300.44(h) Required contents of AAP (cont’d)</p>	<p><i>Paragraph (h): Audit and reporting system</i> Contractor must design and implement an audit system to measure AAP effectiveness</p>	<p>Adds requirement that the contractor document all actions taken to comply with the audit requirement in .44(h) and retain as an employment record.</p>

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<p>Part 60-300.44(k) Required contents of AAP (cont'd)</p>	<p>N/A</p>	<ul style="list-style-type: none"> • Adds new paragraph .44(k) requiring data collection. Contractors must document and update annually: (1) the total number of applicants for employment and the number of applicants who are protected veterans; (2) the total number of job openings and the number of jobs filled; and (3) the total number of applicants hired and the number of applicants hired who are protected veterans. • Data must be retained for 3 years
<p>Part 60-300.45 Benchmarks for hiring</p>	<p>N/A</p>	<ul style="list-style-type: none"> • New section requires contractors to set an annual hiring benchmark to use as a yardstick to measure success of outreach and recruitment efforts. Benchmark may be set in either of two ways: <ol style="list-style-type: none"> 1) Contractors may use as their benchmark the national percentage of veterans in the civilian labor force, as posted on OFCCP's Web site. 2) OR contractor may establish an individual benchmark by considering five specified factors, including State civilian labor force data; ESDS participants (both published in the Benchmark Database on the OFCCP Web site. • Contractors have discretion to apply benchmark to EO 11246 job groups; to EEO-1 categories or to whole workforce. Failure to meet the benchmark is NOT a violation of VEVRAA. • Records pertaining to the benchmark must be retained for 3 years.
<p>Part 60-300.60 Compliance evaluations</p>	<p>Details the form and scope of compliance evaluations conducted by OFCCP. Is silent on the temporal scope of evaluations.</p>	<ul style="list-style-type: none"> • Codifies OFCCP's longstanding that it may extend the temporal scope of the desk audit beyond the scheduling letter if necessary in order to carry out our investigation. This position was most recently upheld by the ARB in the <i>Frito-Lay</i> decision. • Permits OFCCP to review documents during a compliance check either on-site or off-site, and to allow OFCCP to conduct focused reviews, either on-site or off-site. • Adds a pre-award compliance evaluation procedure mirroring the procedure in the EO 11246 regulations.

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<p>Part 60-741.68 Reinstatement of ineligible contractors</p>	<p>Provides that OFCCP may conduct a compliance evaluation of a contractor requesting reinstatement following its debarment for an indefinite period.</p>	<p>Adds a sentence at the end of paragraph clarifying that the Director shall issue a written decision on a contractor’s request for reinstatement.</p>
<p>Part 60-300.80 Recordkeeping</p>	<p>Requires that contractors keep personnel and employment records for 2 years from the date of the record’s making or the personnel action. Permits contractors with fewer than 150 employees or a contract of less than \$150,000 to keep such records for one year.</p>	<p>Adds a paragraph stating that the following provisions are subject to a new 3-year recordkeeping requirement: §60-300.44(f)(4) – documentation and assessment of external outreach and recruitment efforts; §60-300.44(k) – the new data collection analysis requirement; and §60-300.45(c) – records related to the benchmark.</p>
<p>Part 60-300.81 Access to records</p>	<p>Requires contractors to permit OFCCP access to its establishments for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying records, including computerized records.</p>	<ul style="list-style-type: none"> • Adds requirement that contractors provide off-site access to materials if requested by OFCCP. • Requires contractors to specify to OFCCP all formats in which its records are available, including electronic formats, and provide records to OFCCP in the format(s) it selects. • Adds OFCCP will treat contractors’ records as confidential to the extent permitted by FOIA