

NWX-DOL ESA OFCCP (US)
Moderator: Lisa Burns
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1:00 pm CT

Coordinator: Welcome and thank you for standing by. At this time all participants are in a listen only mode until the question and answer session of today's call. Today's conference is being recorded. If you have any objections you may disconnect at this time. I would now like to turn the meeting over to Craig Leen. You may begin.

Craig Leen: Hello. This is Craig Leen. Thank you for - thank you very much. Thank you everyone for being here today. It's such an important WebEx. OFCCP's focused review program, is something that has made a big impact in a lot of employees' lives and we believe that the VEVRAA focused reviews, and this entire program, will be so helpful to ensuring the full employment of veterans, veterans with disabilities and veteran and military spouses.

And it is so important for this country and for this nation's federal contractors, to be fully committed to full employment for veterans to the end of any underemployment and to the adoption of best practices to ensure such employment for all of our nation's veterans. I wanted to start off today in the WebEx, with just a couple quotes from two presidents who are well aware of our nation's veterans and were veterans.

First, President Eisenhower, who said, "in order to ensure proper and widespread observance of this anniversary" - and he was speaking about Veteran's Day - "all veterans, all veterans' organizations and the entire

citizenry will wish to join hands in the common purpose. “ And then the president who succeeded him who was also a veteran, President John F. Kennedy - “As we express our gratitude we must never forget that the highest appreciation is not to utter words but to live by them.”

And that is why these VEVRAA focused reviews are so key because it's how federal contractors and how the federal government and OFCCP, and OFCCP stakeholders are living out the commitment to our nation's veterans. It's been about five years since the VEVRAA regulations went into effect. And in those five years so much positive has been done to ensure the full employment of veterans, veterans with disabilities and military spouses. But there's still a long way to go. There's still a way to go.

And we need to ensure that our veterans are being fully employed and not discriminated against in employment. And I want to bring particular attention to veterans with disabilities. Veterans with disabilities are underemployed and veterans with disabilities have an unemployment rate that is higher than the general unemployment rate.

And it is so important that we are identifying and developing job opportunities for veterans with disabilities. That we are making sure that we are listing those jobs, that we are notifying the potential employees of those jobs, because that is how you get increased employment of veterans with disabilities and making sure that you have inclusive work environments in the intersection of Section 503 and VEVRAA.

And so please keep that in mind throughout today's discussion. We are so committed as an agency, to these VEVRAA focused reviews. I would like everyone to do one other thing for me in addition to thinking about these important principals. I'd like you to go on the Web and we'll send the link

around to everybody, but go on the Web and look at our Vietnam Era Veterans Readjustment Assistance Act Best Practices for Federal Contractors.

There are 13 of them. Lucky number 13. There are 13 of them. I highly encourage you to adopt them all. If you asked me today what can we do to help veteran employment and to ensure the full employment of veterans, and to ensure - it's been five years, ensure that we're meeting the hiring goals for veterans, the best thing you can do is to go on the Web, look at those best practices and adopt them.

Now having said that, today's discussion is about VEVRAA focused reviews. I'm going to be turning it over to Tina Williams who is the Director of our Policy Division at OFCCP. Tina is someone who walks the walk and she talks the talk. She cares deeply about our nation's veterans and the focused review program.

And she has been our focused review lead at OFCCP now for several years, while I've been Director. And I'm so proud of the work that she's doing. She speaks with tremendous authenticity, she cares deeply about our nation's veterans and she is leading this program so I want to give her a full chance to be able to talk about it.

Everyone, if you ever want to reach out to me please continue to do so, but reach out to Tina. Tina is the top career official in our agency on policy matters and so she's someone who will be here for years to come. And she knows what she's talking about and she cares deeply about this program.

And I want to thank everyone today who's going to be on the call. I think you're going to really like what we've put together. You can see OFCCP's

commitment to our nation's veterans, veterans with disabilities, and veteran and military spouses. With that, I'd like to turn it over to Tina.

Tina Williams: Good afternoon everyone. So we're going to have a change of pace today. Today I will not force you to listen to me throughout the entire portion of the training. Today we are actually going to have some of my policy staff step in and conduct the training today, so that'll be a bit of a change.

What I will do though, while I have a couple of minutes on this day, is just to sort of give you some updates on what's happening in the agency, as it relates to the focused reviews. At this point we've now had an entire year of the Section 503 focused reviews. Many of you have heard Director Leen and myself, talk about the Section 503 annual report. That is forthcoming.

We are working on that right now. And it will be published, it will be a public facing document. All of you will be able to review that information and find out all the great things that came out of the Section 503 focused reviews. In addition, many of you at this point, have already probably been scheduled for the VEVFA focused reviews. So this is going to be a similar format and layout to what we did with the Section 503 training.

You can also expect to see something very similar for the promotion focused reviews and the accommodation focused reviews. If you have not already done so, I do encourage all of you to please go to our focused review landing page on our Web site. All of the information for the current and upcoming focused reviews is on that page.

A one point touch you can see everything that you need about the focused reviews even in terms of the best practices, resources, additional information that will assist you on what to expect. At the conclusion of this particular

training, we will also be posting this training, the recorded session and transcript, on our Web site. But we will also have sort of a what to expect for the contractors that will also be disseminated to our stakeholder community at the conclusion of this training.

So if you do not receive it by tomorrow you'll probably receive that information and see it posted next week. That part of it is out of our hands in terms of the recording and getting the transcript together. So without further ado, I am going to turn this over to Lisa Burns and she will introduce the wonderful people that will be conducting the training today.

And as always, for those of you that have any questions about anything related to the agency, please do not hesitate to either give me a call or send me an email. Thank you very much. Lisa?

Lisa Burns: Thank you, Tina. Good afternoon and good morning for some. Welcome to OFCCP's Vietnam Era Veterans Readjustment Act focused review webinar. I'm Lisa Burns from the training branch. Now I'd like to introduce our presenters. So we have Cody Cummings and Cody has joined OFCCP in 2010 as a compliance officer in the Phoenix District Office.

In 2017 Cody transferred to OFCCP's national office, where he currently works as a regulatory analyst in the policy division. Next we have Ms. Dina Smith. Dina began her federal service in 2005 and joined OFCCP in 2010 as a compliance officer in the Richmond District Office. In 2019 Dina was detailed to the policy division after a year and was permanently reassigned as a policy specialist.

So next, I'm going to introduce the agenda. So during this presentation we'll introduce you to OFCCP which is the Office of Federal Contract Compliance

Programs. And provide a brief overview of the Executive Order and two statutes that OFCCP enforces for covered federal contractors.

We will also provide an overview of the scheduling process for supply and service focused reviews, including what a contractor needs to do when they receive a focused review scheduling letter. We also will discuss the different stages of supply and service focused review, including the elements of the desk audit and the onsite review.

And finally, we will share some common problem areas and best practices.
So Cody?

Cody Cummings: All right. Thank you, Lisa. As many of you know, OFCCP is a civil rights agency within the US Department of Labor. And OFCCP evaluates the employment practices of companies doing business with the federal government, to ensure that they do not engage in unlawful discrimination and that they comply with affirmative action requirements, to ensure that all qualified applicants and employees have equal employment opportunities in the workplace.

And these affirmative actions include for example, outreach and recruitment activities. Covered federal contractors and subcontractors are prohibited from discriminating in employment on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, protected veteran status.

Additionally, these contractors are prohibited from taking discriminatory actions including termination, against applicants and employees, for attempting to learn that they are victims of pay discrimination and in certain circumstances, sharing pay information with their coworkers. And one note

before we move to the next slide, for ease of reference going forward, the mention of contractors is intended to include subcontractors.

Dina Smith: OFCCP evaluates the employment practices of federal contractors to determine whether they comply with the Equal Employment Opportunity and affirmative action obligations under an Executive Order and two statutes. OFCCP conducts compliance evaluations including compliance reviews, focused reviews and compliance checks. While today's presentation will be about VEVRAA focused reviews, we are going to go over a few basics about OFCCP first.

The Vietnam Era Veterans Readjustment Assistance Act also known as VEVRAA, applies to federal contracts and subcontracts of \$150,000 or more, and prohibits discrimination in all personnel practices for protected veterans. Section 503 of the Rehabilitation Act that we call Section 503, applies to federal contracts and subcontracts of more than \$15,000 and prohibits discrimination against job applicants and employees, based on disability.

Executive Order 11246 applies to employers with federal contracts and subcontracts and federally assisted construction contracts and subcontracts, of more than \$10,000. It prohibits these employers from discriminating in their hiring and other employment decisions based on race, color, sex, sexual orientation, gender identity, religion, and national origin.

Additionally, it protects applicants and employees from discriminatory discipline including firing and asking about, discussing or disclosing their pay or the pay of their coworkers. However, there are two defenses that would allow an employer to take adverse action for pay disclosures.

Executive Order 11246 Section 503 and VEVRAA, also have affirmative action components that require covered contractors to engage in certain activities including outreach and recruitment, data collection, self-audits and assessments. Section 503 includes a 7% aspirational goal for employing individuals with disabilities in all job categories, while VEVRAA includes an annual hiring benchmark for protected veterans or if the contractor prefers, a customized benchmark which can be established.

Cody Cummings: Okay. So before we can answer the question on the slide, who is a federal contractors, we need to define what is a contract. The term contract includes any agreement or modification to an agreement between a federal agency and any person, for the purchase, sale, or use of personal property or non-personal services.

They may include contracts, purchase orders, bills of lading and leases that also apply to banks, servicing as federal depositories, or issuing and redeeming savings bonds. Generally a covered contractor or subcontractor is an employer doing business with the federal government through either a contract or subcontract that meets certain dollar thresholds or amounts.

There are approximately 25,000 contractors with 120,000 establishments or physical locations and employ nearly 28 million workers nationwide. This includes workers at banks, meat packing plants, retail stores, manufacturing plants, accounting firms, financial service firms, information technology firms, and construction companies among others.

Another data source, GSA Systems for Award Management, oftentimes referred to as SAM, has placed the number of contractors much higher than what is estimated using EEO-1 data.

Dina Smith: OFCCP conducts compliance evaluations to ensure contractors comply with these laws. The list of contractors that OFCCP will evaluate, is found on our Web site. Compliance evaluations are scheduled through a neutral selection procedure. Contractors may either receive a compliance review, a compliance check or focused review.

A compliance review is a comprehensive look at a contractor's personnel practices. It includes a desk audit and may include an onsite and an offsite analysis. A compliance check is a limited check of a contractor's compliance with OFCCP's recordkeeping requirements. And finally, a focused review which is the subject of this presentation, is a focused look at a particular aspect of a contractor's compliance.

Therefore, a VEVRAA focused review will emphasize a contractor's compliance with the regulations that prohibit discrimination and require affirmative actions for protected veterans.

Cody Cummings: VEVRAA focused reviews follow a systematic process that includes selection and scheduling using an OMB approved scheduling letter; a desk audit which focuses on a contractor's VEVRAA affirmative action program; onsite reviews to ensure implementation of the policies and practices; offsite reviews and resolution. Next we'll go over each of these steps.

Dina Smith: OFCCP's national office in Washington, DC has a group dedicated to generating the list of contractors that will be scheduled for a compliance evaluation. This list is assembled on a semi-annual basis using OFCCP's Federal Contractor Selection System, also known as FCSS.

FCSS is a neutral selection system that identifies federal contractor establishments for compliance evaluation using multiple information sources

such as federal acquisition and procurement databases, EEO-1 employer information records, Dun & Bradstreet data, Census data, as well as statistical thresholds such as industry type and employee counts of federal contractor establishments.

Once establishments are identified for compliance evaluation by OFCCP's national office, the FCSS list is ordered in a neutral fashion, and distributed to each OFCCP district office based on the physical addresses of the establishments. A contractor is never scheduled because it sought compliance assistance from OFCCP.

Cody Cummings: Generally, when the compliance evaluation scheduling list is established the national office will announce the names of the contractors on the list either by a letter to each company or through a posting on OFCCP's Web site. This announcement is referred to as the Corporate Scheduling Announcement List, also referred to as a CSAL.

This announcement is a heads up that the establishment is on the list. After publication, OFCCP has a 45-day period before it begins scheduling from the list and this 45-day period provides contractors time to prepare for the upcoming evaluation.

Dina Smith: When the district office schedules an establishment for a VEVRAA focused review, the establishment will receive a written notification by certified mail. In extraordinary circumstances, such as a pandemic, OFCCP may send scheduling letters via electronic mail instead of certified mail. So what is a scheduling letter?

It is a document that has been approved by the Office of Management and Budget and authorized through 2023. Scheduling letters ask for particular

documents and information needed to conduct a desk audit. The VEVRAA focused review letter requires submission of the VEVRAA AAP and supporting documentation.

It also requires the submission of the Executive Order 11246 AAP which will only be used to help get a clearer picture of the contractor's organizational structure and understand generally, how the VEVRAA compliance strategies fit with the contractor's other affirmative efforts.

OFCCP will not analyze the data itself. But if elements of the Executive Order AAP are missing, or insufficient on their face, compliance officers will note those issues and take appropriate actions, beginning with technical assistance, to bring the contractor into compliance.

The letter asks that the contractor's AAP and supporting documentation be submitted within 30 days of the receipt of the letter. If the data and information is available electronically it must be submitted in that format. The scheduling letter also provides a point of contact at the district office if you have any questions.

The contractor may call OFCCP at any time during this process, to ask for any needed technical assistance. Occasionally, the scheduling letter and itemized listing may not be received or is misrouted. If you are listed on a CSAL and do not receive the scheduling letter, please contact your local OFCCP district office.

Cody Cummings: OFCCP's AAP extension policy which became effective September 17, 2018, provides a 30-day extension for supporting data related to the Executive Order 11246, VEVRAA and Section 503 AAP provided that there are some requirements that the first one being the contractor requests the extension

prior to the initial 30-day due date for the AAPs. And secondly, the contractor timely submits the basic Executive Order 11246 Section 503 and VEVRAA AAPs which we refer to as the non-data portions, within the initial 30-day period after receiving the scheduling letter and itemized listing.

OFCCP generally will not allow extensions for submissions of the basic Executive Order 11246 Section 503 and VEVRAA AAPs which contractors are required to maintain and update annually, nor allow extensions of supporting data if requested after the submission date for the AAPs has passed.

The basic Executive Order 11246 AAP encompasses all elements in 41 CFR Part 60-2(b) which is contained Section 60-2.10 through 2.17. The basic Section 503 AAP includes all elements in 41 CFR 60-741.44(a) through (k) absent the specific data metrics described in 44(k). And the VEVRAA AAP includes all elements in the 41 CFR 60-300.44(a) through (k) again, absent the specific data metrics described in 44(k).

OFCCP may also grant 30-day extensions for both AAPs and support data in the event of an extraordinary circumstance. Presently, in light of the pandemic, OFCCP is granting all contractors an automatic 30-day extraordinary circumstance extension to (proffer) both the AAP and support data items requested in the scheduling letter.

In addition to this automatic extension, contractors may also request an additional 30 days to submit support data if it (proffer)s the AAP narratives within the initial 60 days. Thus in total, a contractor could receive a total of 60 days to submit its AAP and a total of 90 days to submit support data. Failure to submit AAPs and/or supporting data timely, with approved

extensions, will result in an immediate notice to show cause by OFCCP should not initiate enforcement proceedings.

During this period, the contractor will have an additional 30 days to provide the AAPs and supporting data in response to the notice to show cause.

Dina Smith: Now that we've covered what a focused review is, let's talk about how to prepare for a focused review. Cody?

Cody Cummings: I apologize. Mute. The preparation that we are discussing over the next several slides is also a great blueprint for a contractor's self-audit to ensure compliance. Your self-audit should address certain elements including confirming that you have an acceptable written affirmative action program. An AAP is considered to be a living document and as such, should be implemented, monitored and annually updated.

During a focus review, OFCCP will be requesting the AAP and other supporting documentation to evaluate your compliance. As the emphasis of focused reviews in VEVRAA compliance, in your preparations, make sure in certain, you have an AAP for protected veterans.

In addition to confirming that the contractor has a current AAP, a contractor must confirm that they have collected and maintained personnel activity data. Examples of the types of personal activity data maintained include information on applicants, hires, promotions, terminations and compensation.

All contractors are required to maintain this information for two years from the date of making the record or taking the personal action, whichever is later. Our (response) contractors, those with fewer than 150 employees, must keep the records for one year.

A contractor must review their required notices and postings including the EEO is the Law poster, and its supplement. And also, the pay transparency notice. Those updated posters are needed. They are available on our Web site. The posters and notices should be posted in an area that is accessible to both applicants and employees.

Dina Smith: Compliance is rooted in an acceptable VEVRAA AAP. Contractors who employ 50 or more employees and have \$150 or more in a federal contract or subcontract, are required to develop a written AAP under VEVRAA. Generally AAPs are developed and maintained at each contractor establishment within 120 days from the commencement of a contract and must be updated annually.

Without going into a lot of detail here, AAPs are a management tool designed to ensure equal employment opportunity. AAPs include steps designed to analyze personnel activity data, identify problem areas and implement measures to overcome barriers to employment. Generally, the Executive Order and Section 503 AAPs include utilization goals while the VEVRAA AAP includes a hiring benchmark.

Cody Cummings: In preparation you also want to confirm that a contractor must also share that the equal opportunity clauses are included in covered subcontracts and purchase orders. The clauses may be included in whole or by reference, and are also available on our Web site. This is under our notices and postings guide. It's a good resource you can reference.

A contractor must also review their job advertisements to ensure the EEO tag line is included. The contractor may list all of the protected categories - race, color, religion, sex, sexual orientation, gender identity, national origin,

disability, and status as a protected veteran, or they may state Equal Opportunity Employer disability and veteran.

Dina Smith: Further preparation calls for the contractor to confirm that reasonable accommodations provided to disabled veterans is documented, should gather documentation showing that all appropriate job opportunities were listed with the local state employment office in a manner and format that allows for priority referral of protected veterans.

A contractor should have on hand a copy of their current VETS 4212 report. And although OFCCP does not cite contractors for failure to file a VETS 4212 report, we do provide a periodic report to the Department of Labor's Veterans Employment and Training Service agency of contractors who have not filed. And once the focused review begins, allow OFCCP access to records.

Cody Cummings: Okay. So once the AAP is received in the OFCCP field office, the compliance officer will begin the desk audit of the VEVRAA AAP.

Dina Smith: OFCCP begins its review when it receives the AAP and supporting documentation. The desk audit begins with an initial check which includes answering the following questions - did we get the AAP; were they timely and submitted within 30 days; is the VEVRAA AAP complete; did we receive the supporting documentation; is the supporting documentation complete? Without a complete submission, a compliance officer will be unable to determine whether a contractor is in compliance with the requirement.

Further, if the AAP is unacceptable or the support data is not provided, OFCCP may issue a notice to show cause. This notice informs the contractor that they are not in compliance and they have 30 days to come into compliance. Once the compliance officer determines the AAP and supporting

documentation is timely and complete, a more in-depth analysis of the VEVRAA AAP and supporting documentation begins.

Cody Cummings: Okay. So the components of the VEVRAA AAP are included on the next few slides. And the first contractors that are required to develop a VEVRAA AAP are also required to invite applicants to voluntarily self-identify as a protected veteran prior to making a job offer in addition to the longstanding requirement to invite post offer self-identification.

The pre offer indication to self-identify as a protected veteran may be made at the same time that the contractor collects demographic data regarding race, gender and ethnicity from applicants as required by Executive Order 11246. Contractors should also inform employees that they can voluntarily update their status as a protected veteran, at any time. A sample voluntary self-identification of protected veteran status form is available and can be found on OFCCP's Web site.

Dina Smith: The AAP components include an Equal Employment Opportunity policy statement, the statement - the policy statement must affirm the contractor's commitment to provide equal employment opportunity and to take affirmative action. It should also indicate that the top US executive supports the contractor's AAP.

This ensures that the policy communicates to employees that the support for the AAP comes from the top of the organization. Remember, this policy is also posted for employees. Next, review your personnel processes. A contractor is required to periodically review their personnel processes to ensure that they do not screen out protected veterans.

In the AAP there should be some indication of how frequently the contractor conducts this review and must be - and there must be some narrative regarding the procedures that the contractor follows. The AAP should also show that the contractor conducted a review of physical and mental job requirements. A contractor is required to review the physical and mental qualifications of positions periodically, to ensure that these qualifications are not screening out qualified disabled veterans. The AAP must include a schedule for this review.

Cody Cummings: Okay. So additional AAP components are reasonable accommodation to physical and mental limitations. As required, a contractor must make reasonable accommodations upon request, to the known physical and mental limitations of otherwise qualified protected veterans. Although not required, it is as best practice for a contractor to have a written procedure for processing such a request.

Additionally, if an applicant identifies himself or herself, as a disabled veteran in the post offer self-identification, the contractor should inquire of the applicant, whether an accommodation is necessary, and if so, should engage with the applicant regarding reasonable accommodation.

The next AAP component is harassment. The contractor must develop and implement procedures to ensure that employees are not subject to harassment based on their protected veteran status. Next, a contractor must disseminate their EEO policy externally and engage in outreach and positive recruitment.

Further, contractors must assess their external outreach efforts. These efforts must be evaluated annually to determine their effectiveness. This assessment must be documented including at a minimum, the criteria used to evaluate the effectiveness of each effort and the contractor's conclusion as to the effectiveness of its efforts.

If a contractor concludes that the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it must implement alternative outreach and recruitment methods. Contractors must retain their evaluations for three years, to allow them to assess the success of their outreach and recruitment efforts for veterans over time.

Dina Smith: Additionally, the VEVRAA AAP must include these next five elements. Disseminate your EEO policy internally. A contractor must ensure that their outreach program is supported by their supervisors and managers. As a part of this, a contractor must develop procedures for communicating their obligations, and commitments to their executive, management, supervisory, and other employees and must include the policy in its policy manual or otherwise make it available to employees.

Some other examples of activities are informing all employees about it during meetings and publicizing it in the company newspaper or other media. These are just a few of the options for internal dissemination. And more are listed in the regulations.

Next, design and implement an audit and reporting system. This requirement is an important part of the affirmative action program. The system must measure the effectiveness of the AAP. It must also indicate any need for remedial action; it should determine the degree by which objectives are obtained.

It should determine whether known protected veterans have had the opportunity to participate in all company-sponsored educational training, recreational and social activities. And it should measure compliance with the AAP requirements. A contractor must document the actions they take and

retain this information for a minimum period of two years. However, the retention period is reduced to one year if the contractor employs fewer than 150 employees or has a contract of less than \$150,000.

Next, designate a management official to direct and assume the responsibility for ensuring the implementation of the affirmative action program. Like the Executive Order AAP, a contractor must designate a person to be responsible for implementing the AAP. His/her identity should appear in all internal and external communications regarding the AAP and that person should be given necessary senior management support.

Training is another key component of the AAP. All personnel involved in recruitment, screening, selection, promotion, disciplinary and related processes, must be trained to ensure that the commitments in the AAP are implemented. The data collection analysis requires a contractor to document and compute comparisons between applicants and new hires on an annual basis.

This data must be stored for three years and includes these five elements. One, the number of applicants who self-identified or were otherwise known as a protected veteran; two, the total number of job openings and total number of jobs filled; three, the total number of applicants for all jobs; four, the total number of protected veteran applicants hired; and five, the total number of applicants hired.

Job openings can refer to positions advertised as open in a vacancy announcement, or a requisition. Jobs filled can include being filled by any means such as transfers, promotions, or reassignments and also includes movement into a different position.

Cody Cummings: The VEVRAA regulations require that each contractor who is required to develop a written AAP, also establish a hiring benchmark for protected veterans each year. This benchmark is a tool to help contractors assess the effectiveness of their efforts, to recruit and employ protected veterans.

A contractor must establish its hiring benchmark in one of the two - one of two ways. First, a contractor may establish a benchmark equal to the national percentage of veterans in the civilian labor force, as posted in the benchmark database on the OFCCP Web site. Or the second option, a contractor may establish its own benchmark by taking into account the five factors described in OFCCP's regulations.

Specific examples on how to apply the five factor method can be found on OFCCP's Web site. Contractors must maintain records related to the benchmark for three years allowing them to assess the success of their outreach and recruitment efforts for protected veterans over time.

During the desk audit the compliance officer will examine each of the required AAP components that we just discussed, and then determine whether or not the information provided in the AAP is compliant.

Dina Smith: Once the desk audit is complete, the compliance officer will prepare for the onsite review. OFCCP will conduct virtual onsites for VEVRAA focused reviews with the possibility for physical onsite reviews in the future. OFCCP has successfully conducted virtual onsites for Section 503 focused reviews due to the pandemic.

Most onsite functions can be done telephonically or through other electronic platforms such as video conference, WebEx and Microsoft Teams. OFCCP will work with federal contractors on the scheduling and logistics for a virtual onsite. Additionally, the compliance officer will send a letter confirming the

onsite dates and provide a list of document or other information that is needed for the onsite review.

The onsite will include the following activities. First, the entrance conference. The onsite begins with an entrance conference where OFCCP's mission and the focused review process is explained to the Chief Executive Officer or highest official at the establishment. And it's also - it also explains to the responsible official for the affirmative action program.

Typically, the CEO or facility manager, human resource manager or any person responsible for developing and implementing the AAP, should be present at the entrance conference. Generally, during the entrance conference the compliance officer will discuss a general summary of the contractor's EEO and affirmative action obligations under VEVRAA, explain his/her role as a neutral fact finder, give a description of the scope of the onsite review, and reserve the right to return if complete or missing information exists.

Next is the facility inspection. After the entrance conference, the compliance officer will conduct a virtual inspection of the facility. If a virtual inspection is not feasible because the establishment is on 100% telework due to the pandemic, OFCCP will not require the contractor to go into the facility.

However, if a virtual facility inspection is feasible, the compliance officer will be focusing on a variety of things including working conditions, the distribution of employees, and compliance with the posting of EEO posters and the pay transparency notice.

Interviews is the next component. The compliance officer will conduct interviews with the managers and employees to confirm and verify the contractor's policies and practices. During the VEVRAA focused reviews the

compliance officer will also interview managers who are involved in employee resource groups, providing accommodations and other related programs. The CEO - I'm sorry, the COO will also review additional personnel records as needed.

The onsite normally ends with an exit conference. During the exit conference the compliance officer will review any tentative findings. However, if additional information is needed during the offsite analysis, OFCCP may make a follow up onsite visit to a contractor's facility.

Cody Cummings: After the onsite OFCCP will conduct an offsite analysis of the collected information. During this phase of the compliance evaluation, a compliance officer reviews all of the information collected during the onsite. Part of the data gathering process involves interviewing current and former employees plus unsuccessful job applicants.

The objective is to determine if any potential problems that were identified during the desk audit have been resolved or confirmed and if any new potential problems were identified. In some cases we may find that we require additional information or interviews, to clarify outstanding issues. At the conclusion of the offsite analysis you will be informed of OFCCP's findings in writing.

If there are problems then OFCCP will issue a notice - excuse me, if there are no problems then OFCCP will issue a notice of compliance. OFCCP may acknowledge contractors with exemplary programs as well.

Dina Smith: Some common evaluation actions or notices which may be issued by OFCCP during a compliance evaluation, include notice to show cause. This notice is typically issued when the contractor does at least one of the following. The

contractor fails to submit their AAP or supporting documentation, as we discussed earlier; the contractor does not allow OFCCP access to their facility; the contractor does not provide the information or data asked for during the compliance evaluation; contractor does not allow OFCCP to interview their employees such as their managers or HR staff; or the contractor does not conciliate following the issuance of a predetermination notice or notice of violations.

Another common action is the issuance of a notice of closure when there are no violations. This is issued at the conclusion of the compliance evaluation if the contractor is found to be in compliance with the requirements. Next is the notice of violations. If violations are found during the compliance evaluation, then a contractor will be notified with a notice of violations or NOV.

The NOV notifies the contractor that one or more violations were identified. It explains each problem including the regulatory citations and describes the corrective actions. An NOV is generally resolved with a conciliation agreement. The predetermination notice or PDN is issued for preliminary individual and systemic discrimination findings identified during the course of the compliance evaluations.

The document is issued before the NOV and describes the problems in detail, including the evidence relied upon in making the determination. A contractor that receives a PDN may offer additional evidence within a prescribed timeframe that shows the tentative determination is not correct. If the issues are not rebutted then the contractor is issued an NOV.

A conciliation agreement or CA, is a document used to resolve both technical and major substantive violations identified during a compliance evaluation.

All CAs contain three parts that include general provisions, specific provisions, and reporting requirements.

Cody Cummings: We've given an overview of the VEVRAA focused review process and reviewed the components of the AAPs. Now we will talk about some of the common problem areas identified in a compliance evaluation. First, the failure to create and update AAPs annually. AAPs are required under all three regulations, for any contractor that meets both the dollar threshold amount and the 50 or more employee thresholds.

Not having an AAP or not having a current AAP, is a violation. Next, is the failure to include the proper equal opportunity clauses in applicable subcontracts and purchase orders. Each of the three programs again, Executive Order 11246, VEVRAA and Section 503, have an equal opportunity clause that must be included.

A contractor can incorporate the equal opportunity clause fully or by reference, and a combined Executive Order, or excuse me, EEO clause, is available on OFCCP's Web site. Failure to include the EEO tag line in job advertisements is also common. The EEO tag line should be included in all job advertisements.

As we mentioned earlier, an acceptable tag line may be - may read Equal Opportunity Employer/Disability and Veteran. Another common problem is the failure to invite applicants and employees to identify their status as a protected veteran or as an individual with a disability.

Dina Smith: Other common problem areas include failure to maintain accurate and complete records. This is a requirement under all three regulations. Some suggested best practices to prevent any violations would be to manage any IT

system changes to better align with your AAP year. Map your IT system to meet the specified recordkeeping requirements and ensure that data can be migrated to the new system.

Denial of access is another common violation. This includes a failure to provide OFCCP access to records. Denial of access to managers for interview purposes and denial of access to the facility to conduct an onsite. Each of these actions may be considered a denial of access and could result in a notice to show cause.

Cody Cummings: Another problem area may occur in the contractor's application process. If selection criteria are applied differently and the difference is based on a prohibited basis then this may lead to a discrimination finding. Additionally, there may be violations related to a contractor's internal audit procedures.

Examples of some common problem areas in application procedures include failure to review qualification standards, employment tests, and other selection criteria, to determine if they screen out or tend to screen out protected and/or disabled veterans. And if so, assess whether those criteria are job related and consistent with business necessity.

Another is use of stereotypes when evaluating applicants for positions. Also inconsistent application of the contractor's own selection standards. And lastly, failure to clearly specify or implement disability and accommodation policies and procedures.

Dina Smith: Failure to engage in outreach and positive recruitment may be considered a violation. A contractor must engage in outreach and positive recruitment for protected veterans. A contractor has the flexibility to design its outreach

efforts to meet its particular needs. Additionally, a contractor must assess its efforts and determine the effectiveness of those efforts.

Among the common problems in this area include the failure to conduct outreach. Some suggestions for outreach programs are detailed in the VEVRAA regulations. Another common problem is the failure to document outreach. As was previously mentioned, when engaging in outreach efforts, the contractor is required to document and assess each effort and the outcome of each effort.

A final common problem area related to outreach and recruitment is the failure to implement alternative efforts when existing efforts were not effective. Remember, if a contractor concludes that the totality of its efforts were not effective in identifying and recruiting qualified protected veterans, it must implement alternative outreach and recruiting methods.

Cody Cummings: As Director Leen mentioned in his opening remarks, there are a number of best practices highlighted on our VEVRAA focused review landing page and on the general VEVRAA page on our Web site.

Among the best practices include creating employee resource groups that encourage veterans to join and participate; enlisting the assistance of individuals and organizations with a mission to help veterans gain employment; enlisting the support of professionals and local US Department of Veteran Affairs Medical Social Services Offices; participating in work-study programs with Department of Veteran Affairs rehabilitation facilities who specialize in training or educating disabled veterans.

Dina Smith: Other best practices include developing professional relationships with disabled veterans outreach program specialists and local veterans'

employment representatives at your local employment service offices, which are also known as American Job Centers.

Also develop relationships with veteran representatives at colleges and universities and with personnel on military bases involved in the transition of military personnel into the private sector. And lastly, review employment policies and practices to ensure that spouses and other associates of protected veterans are not discriminated against in employment because of that relationship. Cody?

Cody Cummings: So this is our contact information if you do have any questions. As Tina mentioned at the beginning, you know, feel free to reach out and ask us. We do have our help desk line here. And you can also do questions directly on OFCCP's Web site through our portal.

Lisa Burns: Great. Thank you Cody and Dina. This concludes our webinar. And as mentioned at the beginning of today's briefing, our objective was to introduce you to the OFCCP and provide a brief overview of the Executive Order and two statutes of OFCCP enforcement for covered federal contractors.

We also provided an overview of - we also provided an overview of scheduling process for supply and service focused reviews including what a contractor needs to do when they receive a focused review scheduling letter. We also discussed some different stages of supply and service focused review including the elements of the desk audit and the onsite review.

And finally, we shared some common problem areas and best practices. We hope this webinar accomplished that. Now we're going to turn to some questions that you all have been putting in the chat box. If you haven't already done so, please submit questions you may have.

We may not get through all of the questions today, but we will review all questions and update our frequently asked question on the OFCCP Web site based on the type of questions we receive.

Tina Williams: So Lisa, I'm going to jump in here for a moment. I see a couple of questions coming through the chat box so I'm going to just start responding to some of these. So everyone, one of the first questions we received was that a particular contractor was identified on the scheduling list, the 2019 supplemental scheduling list and they had not received a scheduling letter. And they wanted to know where can they look to make sure they were sent a letter?

Well first, I'll say that just because you were identified on a scheduling letter or on the scheduling list does not mean that you have actually been scheduled yet, especially as it relates to the supplemental list of 2019 which housed the VEVRAA focused reviews. We have only gotten through a handful of those focused reviews, so you may not have been scheduled yet.

So being on the scheduling list does not mean that you have actually been scheduled already. So when all else fails, what you can do is look to our Web site to identify the region in which your particular contractor is located, and you can contact them if you'd like to see if you've received a scheduling letter and you need to double check or confirm the contact information where the letter would have been sent.

But again, just because you were on the scheduling list does not mean that you have scheduled. I'll now go to a second question about an Executive Order being reviewed outside of the VEVRAA. And I'll just say to that person, I'm not sure who that person is, but it made mention of another type of Executive

Order. And for that particular person if you want to provide some sort of clarifying question in the chat box please do so.

Because the Executive Order that you're mentioning, I am not aware of sick leave Executive Order. I don't know what a sick leave Executive Order is. So if you want to provide a clarifying question to me, I'll be more than happy to respond to it. And if you want to talk to me offline about what your question is, please feel free to do so.

I'm just trying to go through the list here. There were some additional questions being asked. I think that I'm going to let some of the policy staff members, the person that made mention of the American Indian Tribal, I'm not certain if you were clarifying something or if you have a question that you would like something clarified on. But again, if you'd like to provide a clarifying question that can sort of give me an idea as to what it is that you are seeking guidance on, I'll be more than happy to assist.

Cody or Dina, we have a chat question here about the contract thresholds for VEVRAA. And the question is, is it one contract at \$150,000 or a total of contracts over \$150,000? If one of you would like to respond to that I'll start trying to look at some of the other chat questions, so they don't have to always hear me speaking.

Cody Cummings: Okay. Yes, this is Cody. Yes, so VEVRAA is a little bit different. VEVRAA is a single contract so if you don't have a single contract of \$150,000 or more then you would not meet that dollar threshold, unlike our Section 503 and VEVRAA AAP - or excuse me, 503 and Executive Order 11246 which have much smaller dollar thresholds. Those can be aggregated in some instances. But VEVRAA is a single contract of \$150,000 or more.

Tina Williams: Wonderful. Thank you, Cody. Are there samples of VEVRAA AAP listing your components on your Web site? We have a number of sample AAPs on our Web site. Cody, is there anything specifically on our Web site? I know as far as the AAPs that we have, we do have information that their (unintelligible) would do. So I would certainly encourage you to go to our Web site to see the sample AAPs.

But again, if you want to see something else as far as the components or if you have additional questions you can always reach out to us. But we do have sample AAPs listed on our Web site. There is a PowerPoint of...

Cody Cummings: And I would also...

Tina Williams: Go ahead, Cody.

Cody Cummings: Yes. And I would just also mention that we just recently released our supply and service new technical assistance guide. And so - a then it will go through the various components of the VEVRAA AAP as well and give you the requirements related to those components there. So that's a good resource as well.

Tina Williams: Wonderful. Is this PowerPoint available online afterwards? We are, as we stated at the beginning of this session, we are going to not only post the recorded session for today's training and a transcript, we are also going to collectively respond to any Q&A that we don't have the opportunity to get to.

In addition to that, you will also see a What to Expect for contractors as far as the VEVRAA focused reviews. So that will be made available to you. Okay. I'm just trying to go through, so we have received a number of questions here. I just don't know if we're going to be able to get through all of these.

Yes. We've received a number of questions about the presentations. Again, you will be able to have access to the presentations. It looks like someone is referencing that perhaps one of the previous questions about the Executive Order was referencing 13950. I don't think so.

I don't think that the original question has anything to do with the new Executive Order. If it does I stand corrected. But they would still have to provide some sort of clarifying remark of such because again, I think they were trying to connect something perhaps to accommodations or individual with disabilities or protected veterans with disabilities. I'm just not sure.

This is a very good question - how I should develop an individualized hiring benchmark. We get this question often. And what I would recommend to you at this point, is we have FAQs and guidance on how to develop an individual hiring benchmark on our Web site.

But what I would suggest is in the past I've had a number of contractors contact me directly and we will work with you on establishing an individual hiring benchmark because there are a number of factors that need to be considered. And I think it'll be worthwhile for you to work with us directly, to figure out what is better suited to meet your needs. But we do have guidance, a formula, everything that you would need to do, on our Web site, as it relates to the individualized hiring benchmark.

So there we have it. I want to thank all of you for joining us today. Again, the information will be made available. I think most of you know who I am at this point and you know how to get in touch with me. In the event that you do not have my contact information, I will provide you with my email address which is williams.tina.t - as in Tom - @DOL.gov.

If you would like to reach out to me by phone, please feel free to contact my direct line at (202) 693-0835. I thank you all very much, especially those of you in the DMV area where it is gray and raining and all of that, for taking the time to spend it with us today. I thank all of you very much. I would like to thank the policy staff employees for conducting and participating in this training presentation to our wonderful stakeholder community.

And again, if any of you have any questions, please let us know. If not, this concludes our session for today. I thank all of you and I hope you have a very great day. Bye-bye.

Lisa Burns: Thank you.

Coordinator: Thank you for your participation in today's conference. You may disconnect at this time. Speakers, please standby for post conference.

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