

OFCCP Issues Regulations Revising the Categories of Protected Veterans for Affirmative Action Program Purposes

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On August 8, OFCCP issued final regulations that revise the categories of protected veterans for affirmative action program (AAP) purposes. The new regulations become effective on September 7, 2007, and will require many contractors to revise self-identification forms and engage in affirmative action for new categories of protected veterans. The text of the regulations and FAQs published by OFCCP are available on the agency's website at <http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-15385.pdf>.

The new OFCCP veterans regulations apply to covered federal contractors with contracts entered into or modified after December 1, 2003. OFCCP continues to enforce another set of veterans regulations that are applicable to contractors that have extant federal contracts entered into before December 1, 2003 (and that have not been modified since December 1, 2003). The requirements under these two sets of veterans regulations are nearly identical; the primary difference between them is the classes of veterans covered by the regulations. Fortunately, OFCCP will permit contractors covered by both regulations to continue to maintain only one veterans AAP that includes the categories of covered veterans listed below. Large contractors that will likely have difficulty identifying and classifying all of their federal contracts and subcontracts may find it most efficient simply to amend their current veterans AAPs by adding the new categories of protected veterans.

In addition, the new regulations will require covered contractors to revise their voluntary self-identification forms to add the new veterans categories, to revise their job listing procedures to comply with the new listing requirements, and to revise their standard purchase orders and agreements with suppliers and vendors to incorporate the new required contract terms.

Categories of Covered Veterans

The new OFCCP veterans regulations added the following categories of protected veterans for post-December 1, 2003 contracts:

- Disabled Veterans
- Recently Separated Veterans (three-year)

- Other Protected Veterans
- Armed Forces Service Medal Veterans

The categories for pre–December 1, 2003 contracts are:

- Special Disabled Veterans
- Recently Separated Veterans (one-year)
- Other Protected Veterans
- Veterans of the Vietnam Era

Because all of the pre–December 1, 2003 categories are encompassed by the post–December 1, 2003 categories, except for certain Veterans of the Vietnam Era, contractors with both pre– and post–December 1, 2003 contracts can use the following categories of protected veterans in their AAPs:

- Disabled Veterans
- Recently Separated Veterans (three-year)
- Other Protected Veterans
- Armed Forces Service Medal Veterans
- Veterans of the Vietnam Era

Covered contractors must include the new categories of protected veterans in new AAPs that are implemented for an AAP year that begins on or after September 7, 2007. Contractors can do this simply by referencing a general “covered veterans” category throughout their AAP and defining that term to include the above-listed categories of protected veterans.

Self-Identification Forms

The current and new OFCCP veterans regulations require contractors to invite job applicants to complete a voluntary self-identification form. Because the OFCCP regulations in most instances preclude contractors from asking whether job applicants are disabled prior to an offer of employment, many contractors defer until after making an offer of employment the use of a self-identification form to solicit veterans category information and information regarding status as an individual with a disability (for purposes of compliance with AAP requirements under Section 503 of the Rehabilitation Act).

Covered contractors can revise their post-offer self-identification forms to solicit the veterans categories listed in the following table:

Check This Column to Select All That Apply to You	Category of Covered Veteran	Definition of Category
	Disabled Veteran	Any veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs, or who was

		discharged or released from active duty because of a service-connected disability.
	Special Disabled Veteran	Any veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability rated at 30% or more, or rated at 10% or 20% in the case of a veteran who has been determined by the Department of Veterans Affairs to have a serious employment handicap. This also covers a person who was discharged or released from active duty because of a service-connected disability.
	Armed Forces Service Medal Veteran	Any person who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (62 Fed. Reg. 1,209).
	One-Year Recently Separated Veteran	Any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty.
	Three-Year Recently Separated Veteran	Any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.
	Veteran of the Vietnam Era	Any person who served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or between August 5, 1964, and May 7, 1975, in all other cases. This also applies to any person who was discharged or released from active duty for a service-connected disability if any part of such active duty was performed in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or between August 5, 1964, and May 7, 1975, in all other cases.
	Other Protected Veteran	Any person who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, under laws administered by the Department of Defense.

Note that post-offer applicants should be permitted to select all categories in the above table that apply to them. Contractors may also provide attachments or links (e.g., <http://www.opm.gov/veterans/html/vgmedal2.asp>) identifying the wars, campaigns, or expeditions for which a campaign badge has been authorized and providing information regarding the Armed Forces service medal, to help post-offer applicants understand the above definitions.

Mandatory Job Listing

The new OFCCP regulations require contractors to list jobs with the state workforce job bank or the local employment service that covers the location of the position. For example, a job opening in Chicago, Illinois would require a listing with the Illinois job bank or the Chicago employment service. Executive and senior management positions, positions for which only internal candidates are considered, and positions lasting three days or less are exempt from this requirement.

Links to the state workforce agency job banks are available at <http://careeronestop.org/ajbprsjbl/>.

VETS-100 Reporting Requirements

The OFCCP veterans regulations do not address employer reporting requirements on covered veterans. Those reporting requirements—the filing of an annual VETS-100 form—are established by regulations issued by the Department of Labor’s Veterans Employment and Training Service (VETS).

The VETS regulations require covered federal contractors to file a VETS-100 report by September 30, 2007, based on a workforce snapshot as of a date between July 1, 2007, and August 31, 2007. The 2007 VETS-100 form requires submission on the following veterans categories: Special Disabled Veterans, Vietnam Era Veterans, and Other Protected Veterans. (The form and instructions are available at http://vets.dol.gov/vets100/vetsform_20072.pdf; an informational fact sheet is available at http://www.dol.gov/vets/programs/fcp/federal_contractor_program_fs.htm.)

For the 2008 reporting cycle, VETS has proposed regulations (see 71 Fed. Reg. 44,945 (Aug. 8, 2006)) that would require contractors to file one or both of two VETS-100 forms (VETS-100 and VETS-100A), depending on the date of their contracts with the federal government. We will issue a LawFlash when VETS issues the final regulations regarding these reporting obligations.

Provisions in Subcontracts

The OFCCP veterans regulations require contractors to include certain contract terms in their covered subcontracts. All of the regulations enforced by OFCCP require similar provisions and OFCCP permits contractors to include these provisions simply by referencing the pertinent OFCCP regulations in the subcontract. Because it is difficult to determine whether a contract with a vendor or supplier is a covered subcontract, contractors may comply with these requirements by inserting the following text as a standard term in all of their contracts with vendors and suppliers:

Federal Contractor Requirements: This order/contract is subject to the requirements of 41 C.F.R. 60-1.4, 41 C.F.R. 60-250.5(a), 41 C.F.R. 60-300.5(a), 41 C.F.R. 60-741.5(a), and 29 C.F.R. part 470, which are incorporated into this order/contract by reference, if applicable.

For more information regarding these regulatory changes or for assistance in implementing the changes, please contact either of the following Morgan Lewis attorneys:

Washington, D.C.

Robert J. Smith

202.739.5065

rsmith@morganlewis.com

William E. Doyle, Jr.

202.739.5208

wdoyle@morganlewis.com

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