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## **AT LONG LAST! OFCCP ISSUES FINAL RULE ON OBLIGATIONS UNDER JOBS FOR VETERANS ACT**

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August 13, 2007

The Office of Federal Contract Compliance Programs has issued its final rule governing implementation of the Jobs for Veterans Act of 2002. The Act amended the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA") to

- Raise the monetary threshold of covered federal contracts;
- Modify the definition of covered veterans; and
- Revise job posting requirements.

The final rule, issued on August 8 and **effective September 7**, contains only a few minor changes from the proposed rule issued for comment in January 20, 2006. To see a copy of the final rule, click [here](#).

### **Contracts Subject to New Rules**

Significantly, the Act and new regulations apply only to contracts entered on or after December 1, 2003. Contractors holding a contract entered into before that date will be governed by the original VEVRAA regulations. However, if pre-December 1, 2003 contracts are modified, they will be considered new contracts subject to the new regulations. It is possible, then, that a contractor will have some contracts governed by the old rules and some by the new ones. The regulations clarify that only one affirmative action plan is required in this situation, but it must contain all components applicable to each contract.

### **Increased Coverage Threshold**

The Act raises the coverage threshold from \$25,000 to \$100,000. Therefore, contractors with a contract worth less than \$100,000 that was entered into or modified after December 1, 2003 are not covered by the new regulations. However, an older contract worth \$25,000-\$99,999 will have to be in compliance with the old VEVRAA regulations.

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## Categories of Covered Veterans

The Act also changed the categories of veterans covered under VEVRAA. The final rule eliminates the category of “Vietnam era veterans” and defines a new category of “Armed Forces Service Medal Veterans.” These are “veterans 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.” Note that, although the “Vietnam era veterans” **as a formal category** has been eliminated, many who served during the Vietnam era may still be covered.

The Act also expanded coverage for veterans with disabilities. Prior to the amendments, “Qualified Special Disabled Veterans” were defined as having a 10% to 20% “serious employment handicap” or a disability rating of 30% or more by the Department of Veteran Affairs. Under the new rules, coverage is extended to **all** veterans with service-related disabilities (“Qualified Disabled Veterans”).

In addition, the “Recently Separated Veterans” category now includes veterans who were discharged or released from active duty within the past three years, instead of one year.

## Job Posting Requirements

Finally, modifications have been made to the rules regarding posting of job openings. The original VEVRAA regulations, which require contractors to list all job openings, allowed contractors to satisfy this requirement by using the state employment service office where the job was located or by listing with America’s Job Bank.

Enacting the Act, Congress decided that the Job Bank did not meet the needs of veterans who could be better served by the appropriate state employment services, and in any event the Job Bank ceased operations effective June 30, 2007. The Act requires contractors to list their jobs with “the appropriate service delivery system.” The regulations define this term as “a service delivery system at which or through which labor exchange services, including employment, training and placement services . . . offered in accordance with the Wagner-Peyser Act.” (The Wagner-Peyser Act of 1933 established the Employment Service, the nationwide network of public employment offices.)

In an effort to make the new job posting requirement less burdensome, the OFCCP has provided a link on its website captioned “Link to the State Workforce Agency Job Banks” to aid in accessing each state’s employment service offices. To access the link, click [here](#). The Act permits, but does not require, contractors to list their job openings with “one-stop career centers” under the Workforce Investment Act of 1998 or any subsequent national electronic job bank established by the Department of Labor. However, these types of listings alone **will not** satisfy the requirements of the Act.

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Contractors should also be reminded that using an employment agency to recruit candidates will not excuse them from the obligation to post job openings with the appropriate employment delivery system. The only exceptions to the job posting requirements are executive management positions, positions that will be filled from within, and positions that are expected to be less than three days in duration.

### **Recommended Action Steps**

Before September 7, 2007, contractors should review their contracts to determine which set of regulations applies. In some cases a contractor may find, that it must comply with both set of regulations. Contractors should also review their post-offer invitations to self-identify veteran status to ensure that the invitations reflect the proper veteran categories based on coverage. In addition, contractors should review their posting procedures to make sure that jobs are listed with the applicable state employment service office.

If you have any questions regarding the Jobs for Veterans Act or requirements under VEVRAA, please contact a member of Constangy's Affirmative Action Practice Group or the Constangy attorney of your choice.

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