

## **SUPPORTING STATEMENT**

### **DEPARTMENT OF LABOR VETERANS' EMPLOYMENT AND TRAINING SERVICE Federal Contractors Veterans' Employment Reports VETS-100 AND VETS-100A**

**OMB No. 1293-0005**

#### **A. Justification**

##### **1. Legal and Administrative Requirements**

The Veterans' Employment and Training Service (VETS) is responsible for administering the requirement under the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. 4212(d), ("VEVRAA" or "Section 4212") that Federal contractors and subcontractors covered by the Act's affirmative action provisions report in 38 U.S.C 4212(a) at least annually to the Secretary of Labor about their employment of certain categories of veterans. VETS has issued regulations set forth in 41 CFR part 61-250, which currently require covered contractors to use the Federal Contractors Veterans' Employment Report VETS-100 ("VETS-100 Report") to provide information on the covered veterans in their workforces. The VETS-100 Report is currently approved under OMB No. 1293-0005.

The existing regulations in 41 CFR part 61-250 and currently approved VETS-100 Report require contractors with a Government contract of \$25,000 or more to report on the number of employees in their workforces, by job category and hiring location, who are special disabled veterans; veterans of the Vietnam era; recently separated veterans (within one year from the date of discharge or release from active duty); or veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. In addition, the existing regulations in 41 CFR part 61-250 require contractors to report on the number of employees hired during the period covered by the report who belong to the specified categories of covered veterans.

The Jobs for Veterans Act (JVA) (Pub. L. 107-288), enacted in 2002, amended the Federal contractor reporting requirements under VEVRAA by: (1) increasing from \$25,000 to \$100,000, the dollar amount of the Government contract that subjects a contractor to the requirement to report the numbers of employees in their workforces who are covered veterans; and (2) changing the categories of covered veterans under the affirmative action provisions of VEVRAA, and thus the categories of veterans that contractors are required to track and report on annually.

The JVA eliminated the category of Vietnam era veterans from coverage under VEVRAA. The JVA added as a new category of covered veterans – those "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 pursuant to Executive Order 12985.” The JVA expanded the coverage of veterans with disabilities to include all veterans with service-connected disabilities. The JVA also expanded the coverage of “recently separated veterans” from one to three years after discharge or release from active duty.

Thus, Section 4212(d), as amended by the JVA, requires Federal contractors and subcontractors that enter into a contract on or after December 1, 2003, in the amount of \$100,000 or more, to report on the total number of employees in their workforces, by job category and hiring location who are disabled veterans; veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized; Armed Forces Service Medal veterans; or recently separated veterans (during the three period following date of discharge or release from active duty). Section 4212(d), as amended by the JVA, also requires contractors to report the total number of new employees hired during the period covered by the report who belong to each of the specified categories of covered veterans; and the maximum and minimum number of employees at each hiring location during the period covered by the report.

The JVA amendments to the reporting requirements under VEVRAA apply only to contracts entered into on or after December 1, 2003. Some contractors have Government contracts that were entered into before December 1, 2003, and are still subject to the reporting requirements in 41 CFR part 61-250. Therefore, VETS has determined that it will be necessary to maintain two sets of regulations to implement the reporting requirements under VEVRAA.

On August 8, 2006, VETS published a Notice of Proposed Rulemaking (NPRM), (71 FR 44945), to implement the JVA amendments to the reporting requirements under VEVRAA. The NPRM proposed to adopt a new set of regulations that would be codified in a new 41 CFR part 61-300. In addition, the NPRM proposed to adopt a separate form for reporting the information on veterans’ employment required by the JVA amendments and name it the Federal Contractor Veterans’ Employment Report VETS-100A (“VETS-100A Report”). Accordingly, VETS is requesting that the currently approved information collection request for the VETS-100 Report be revised to include the proposed VETS-100A Report.

The proposed 41 CFR part 61-300 regulations and VETS-100A Report would apply to any contractor or subcontractor who enters into or modifies a contract or subcontract on or after December 1, 2003, in the amount of \$100,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction). Any contractor or subcontractor whose only contract was entered into before December 1, 2003, (and not modified on or after that date), would continue to follow the regulations in 41 CFR part 61-250, which call for contractors to use the currently approved VETS-100 Report to provide information about their employment of veterans. Any contractor or subcontractor who has both a contract subject to 41 CFR part 61-250 and a contract subject to the proposed 41 CFR part 61-300 would be required to file both the VETS-100 Report and the proposed VETS-100A Report.

## **2. Use of Information Collected**

The information collected is to be used by the Department of Labor for compliance monitoring. If reports on veterans' employment are not collected, the Department of Labor would not be in compliance with 38 U.S.C. 4212 (d). In addition, under 31 U.S.C. 1354(b), the Secretary of Labor is required to make available in a database a list of the contractors that have complied with the requirements of 38 U.S.C. 4212(d) for each fiscal year. Under 31 U.S.C. 1354(a)(1), an agency is prohibited from obligating or expending funds to enter into a contract with a contractor that was required to comply with the reporting requirements in 38 U.S.C. 4212(d) the preceding fiscal year, but failed to do so. The agency may award the contract once the contractor submits the report required by 38 U.S.C. 4212(d) for the fiscal year concerned.

## **3. Use of Information Technology**

In order to comply with the Government Paperwork Elimination Act (GPEA) respondents have the option of submitting the report electronically. This option is in keeping with the intent of the GPEA to reduce the burden on respondents. In addition, to assist small businesses, as required under the Small Business Regulatory Enforcement Fairness Act of 1996, the form can be completed on the Internet. The annual report required to be submitted under 38 U.S.C. 4212(d) is already in a format familiar to most of the respondents utilizing modern information technology.

## **4. Description of Efforts to Identify Duplication**

Information concerning the hiring and employment of veterans by Federal contractors is not being collected by any other agency. This is a statutory requirement of 38 U.S.C. 4212(d).

## **5. Collection of Information Impact on Small Businesses or Other Entities**

Small businesses and entities are required by 38 U.S.C. 4212(d) to furnish the same information as large entities. This collection does not have a significant economic impact on a substantial number of small entities. Also, see response to item 4.

## **6. Consequences to Federal Programs If Information Were Collected Less Frequently**

If Federal contractors were permitted to respond less frequently than on an annual basis, the Department of Labor would not comply with the requirements of 38 U.S.C. 4212(d). Requiring contractors to annually submit information on veterans' employment, as prescribed by 38 U.S.C. 4212(d), also enables Federal agencies to comply with 31 U.S.C. 1354. The Congress' rationale for this reporting requirement was that it signals to Federal contractors the importance of their affirmative action obligations to disabled veterans; other veterans protected veterans; Armed Forces Service Medal veterans; and recently separated veterans.

## **7. Special Circumstances for the Collection of Information**

There are no special circumstances for the collection of this information..

## **8. Solicitation of Public Comments on the Collection of Information**

VETS published a Federal Register Notice on October 2, 2007 (72 FR 56103), providing a period of 60 days for the public to submit comments on the proposal to revise the information collection request that is currently approved under OMB Control No. 1293-0005 (VETS-100 Report) to include the burden associated with the VETS-100A Report. One comment was received from ORC Worldwide, a management consulting firm specializing in human resources. ORC repeated the comment that had been submitted in response to the NPRM that the proposed regulations “would place an enormous burden on contractors” by requiring those contractors that have contracts dated prior to December 1, 1003, and contracts dated after that date, to file both the VETS-100 Report and the VETS-100A Report. ORC says that, as a result of the JVA changes made by the JVA amendments to the categories of covered veterans, there is no correlation between the categories in the VETS-100 Report and those in the VETS-100A Report. ORC maintains that the lack of correlation between the two reports places great burden on contractors to collect and maintain two sets of data.

VETS appreciates the burdens imposed on those contractors that are required to file both the VETS-100 and the VETS-100A Reports, but the agency is constrained to carry out the provisions of the statute. However, as explained in the preamble to the final rule, VETS estimates that only a small percentage of contractors will be required to file both reports. The term “Government contract” is defined in the regulations implementing the affirmative action and reporting requirements under VEVRAA as “any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or nonpersonal services (including construction).” Because a contract modification is a “Government contract,” modification of a contract that otherwise would be covered under the JVA amendments but for the date the contract was entered into renders the contract subject to the VETS-100A reporting requirements, rather than the VETS-100 reporting requirements. Consequently, VETS estimates that vast majority of contractors (80%) will file either the VETS-100 Report or the VETS-100A Report, but not both.

ORC Worldwide also argues that it is burdensome for contractors to report on the VETS-100A Report the total number of employees in the workforce, when there is no such requirement under the VETS-100 Report. The JVA amendments to VEVRAA require that contractors report on the total number of employees in their workforces by job category and hiring location, and the VETS-100A merely implements the statutory requirement. The VETS-100 Report implements the reporting requirements prior to amendment by the JVA, which did not call for contractors to report on their total employment. Further, ORC asserts that the proposed regulations do not provide clear guidance on what contractors are obligated to do to comply with the proposed new regulations. However, VETS maintains that the final regulations and the instructions for completing the VETS-100A Report adequately explain what is required for reporting on veterans’ employment. VETS will provide additional technical support through the

[www.VETS100.com](http://www.VETS100.com) website to further assist contractors in understanding the reporting requirements.

Finally, ORC maintains that the Department “substantially underestimated” the time and costs for contractors required to comply with reporting requirements of two sets of regulations. We disagree. ORC seems to believe that most contractors will have to file both the VETS-100 and VETS-100A Reports, but as explained above, VETS estimates that fewer contractors will be subject to filing both the VETS-100 and the VETS-100A Reports than ORC’s comment suggests. Further, that number will decrease as the contracts entered into before December 1, 2003, are either completed or modified.

## **9. Gift Giving**

There is no decision, nor is one contemplated, to provide any payment or gift to respondents.

## **10. Assurance of Confidentiality**

No elements of confidentiality are involved. The data collected on the VETS-100 and VETS-100A Reports will not identify any individual by name or social security number.

## **11. Sensitive Questions**

No data collected is of a sensitive nature.

## **12. Estimate of the Hour Burden for the Collection of Information**

The burden hours are made up of two components. The first component is a one-time estimate of the burden hours associated with contractors adjusting their recordkeeping systems to collect the information on veterans’ employment required by the JVA amendments and the proposed VETS-100A Report. The second component is the aggregate number of hours required for contractors to annually submit the information on their veterans’ employment using the currently approved VETS-100 or the proposed VETS-100A Report forms.

### **One-Time Implementation Burden**

The regulations in 41 CFR part 61-250 and the VETS-100 Report currently require contractors and subcontractors to collect data on the number of veterans who belong to the categories of veterans covered under VEVRAA prior to amendment by the JVA. VETS estimates that 14,000 contractors will submit 154,000 VETS-100A Reports. For each VETS-100A Report form, VETS estimates that it will take a contractor 2 hours to adjust its recordkeeping system to the collect the required data, and that collectively the one-time implementation will take 308,000 hours and will cost about \$5.8 million. In estimating the one-time implementation burden for the VETS-100A Report, VETS used the same estimated cost per burden hour that the EEOC

used when calculating costs for implementing the revised EEO-1 Report. *See* 70 FR 71294, 71301, November 28, 2005.

### **Annual Burden Calculation**

VETS estimates that about 16,000 Federal contractors and subcontractors are subject to the reporting requirements under VEVRAA. Depending on when a federal contract is awarded, some contractors will be required to submit only the VETS-100 Report form, some will submit only the VETS-100A Report form, and some will need to submit both report forms. VETS does not have sufficient information to precisely determine how many contractors will be required to submit the VETS-100 Report, the VETS-100A Report, or both. It is anticipated that once the regulations implementing the JVA amendments are finalized, fewer contractors will file a VETS-100 Report than currently file. Under the proposed regulations, contractors with a contract of \$100,000 or more that is entered into on or after December 1, 2003, would be required to comply with the VETS-100A reporting requirement. The proposed regulations and VETS-100A reporting requirement would also apply to a contract entered into prior to December 1, 2003, if the contract is modified on or after that date and meets the \$100,000 threshold amount.

A contractor is required to submit the prescribed report(s) for each of its hiring locations. VETS estimates that each contractor has, on average, 11 hiring locations. Table 1 shows that 20,000 contractors will submit a total of approximately 264,000 VETS-100 Report and VETS 100A Report forms. Approximately, 6,000 contractors will submit only the VETS-100 Report, while an estimated 10,000 contractors will submit only the VETS-100A Report. Approximately 4,000 contractors will submit both the VETS-100 and VETS-100A Reports.

The use of electronic submission (internet, software or tape) has halved the amount of time it takes a contractor to submit the VETS-100 Report. The agency estimates that it takes one hour to submit a paper copy of the VETS-100 Report, whereas electronic submission of the report takes approximately one-half hour. In the previous reporting period, 65 percent of all VETS-100 Reports were submitted electronically.

The proposed VETS-100A Report has the same number of reporting elements as the currently approved VETS-100 Report, so the time estimates for submitting the reports are approximately the same. VETS estimates that it will take an hour to submit a paper copy of the VETS-100 or VETS-100A Report, and about 30 minutes to submit electronic versions of the reports. The estimated cost of the personnel assigned by the contractor to complete the reports is \$16.00 per hour. Burden cost is calculated by multiplying the 264,000 burden hours by the hourly wage (\$16.00) of the person preparing the report.

Table 1

Federal Contractor Veterans' VETS-100 and VETS-100A OMB Number: 1293-0005				
Submission from Federal Contractors	VETS-100 Only	VETS-100A Only	Both VETS-100 VETS-100A	Total Reporting
Total Respondents	6,000	10,000	4,000	20,000
Total Annual Responses	66,000	110,000	88,000	264,000
Avg. Paper Response (35%)	1 hr.	1 hr.	45 min.	-
Avg. Electronic Response (65%)	30 min.	30 min.	15 min.	-
<b>Burden Hours</b>				
Paper	23,100	38,500	23,100*	84,700
Electronic	21,450	35,750	14,300**	71,500
Total Filing Burden Hours	44,550	74,250	37,400	156,200
Total Filing Burden Cost	\$712,800	\$1,188,000	\$598,400	\$2,499,200
One Time Implementation Burden Cost	\$0	\$4,180,000	\$1,672,000	\$5,852,000

\*Paper both 88,000\*.35 x 0.75 = 23,100

\*\*Electronic both: 88,000 x 0.65 x 0.25 = 14,300

**13. Annual Cost Burden for Maintaining and Providing the Information Collection**

The information contractors report about their veterans' employment is collected and maintained in the normal course of business. There are no requirements for contractors to have any kind of equipment to be able comply with this collection of information. Therefore, there are no additional costs not reported in item 12.

**14. Annualized Costs to the Federal Government**

The cost to the Federal government for this collection includes the following components:  
 Staff.....\$25,000 (25% of 1 FTE including benefits)  
 Contract for processing forms .....\$290,000  
 Total Cost.....\$315,000

**15. Changes in Burden Hours**

The final rule would create 41 CFR part 61-300 to implement certain provisions of the Job for Veterans Act ("JVA") (Pub.L.107-288) which amends the Vietnam Era Veterans Readjustment Assistance Act of 1974. The action necessitates the creation of a new form, the VETS-100A Form.

**16. Publication of Results of the Information Collection**

The results of this information collection will not be published.

**17. Approval Not to Display Expiration Date for OMB Approval**

VETS is not seeking approval to not display the expiration date for OMB approval.

**18. Exceptions to the Certification Statement for Paperwork Reduction Act Submission**

No exceptions to the certification statement were identified in item 19 of OMB Form 83-1.

**B. Collection of Information Employing Statistical Methods**

The information collection does not employ any statistical methods.