

DEPARTMENT OF LABOR, OFCCP
OFCCP RECORDKEEPING and REPORTING REQUIREMENTS—38 U.S.C. 4212,
VIETNAM ERA VETERANS' READJUSTMENT ASSISTANCE ACT of 1974, as
AMENDED.
CONTROL NUMBER: 1250-0NEW

SUPPORTING STATEMENT A—JUSTIFICATION

1. Legal & Administrative Requirements

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of equal opportunity programs prohibiting employment discrimination and requiring affirmative action. For purposes of this clearance, we are establishing a new Information Collection Request (ICR), specifically for OFCCP's affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (Section 4212), 38 USC 4212. This clearance request covers the Section 4212 recordkeeping, reporting, and third party program requirements. Separate ICRs cover the OFCCP Supply and Service program (OMB No. 1250-0003) and the Construction program (OMB No. 1250-0001).

OFCCP administers three programs:

- Executive Order 11246 (Order), as amended;
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); and
- The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (Section 4212), 38 USC 4212.

Executive Order 11246 prohibits employment discrimination because of race, color, religion, sex, or national origin and requires affirmative action to ensure that persons are treated without regard to these prohibited factors. The Order applies to Federal contractors and subcontractors and to federally assisted construction contractors who have contracts exceeding \$10,000 or which aggregate or can be expected to aggregate to more than \$10,000 in a 12-month period. The Order also applies to government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds.

Section 503 of the Rehabilitation Act prohibits employment discrimination against any employee or applicant for employment because of physical or mental disability and requires affirmative action to ensure that persons are treated without regard to either of these prohibited factors. Section 503 applies to Federal contractors and subcontractors with a contract in excess of \$10,000.

The affirmative action provisions of Section 4212 prohibit employment discrimination against any qualified disabled veteran, Veterans of the Vietnam Era, recently separated veterans, active duty wartime or campaign badge veterans, or Armed Forces Service Medal veterans, and require affirmative action to ensure that persons are treated without regard to protected veteran status. The implementing regulations for 38 U.S.C. 4212

(Section 4212) are split into two separate parts: 41 CFR part 60-250 (part 60-250) and 41 CFR part 60-300 (part 60-300). Part 60-250 applies to any Government contract or subcontract of \$25,000 or more entered into before December 1, 2003, while part 60-300 applies to any Government contract or subcontract of \$100,000 or more entered into or modified on or after December 1, 2003.

OFCCP has promulgated regulations implementing the Section 4212 provisions consistent with the Administrative Procedure Act, and all Section 4212 regulations are found at Title 41 of the Code of Federal Regulations in Chapter 60. All recordkeeping, forms, reporting, and third party requirements originate from these regulations. The Section 4212 recordkeeping, reporting, and third party requirements are the subject of this clearance request.

41 CFR Parts 60-250 and 60-300 --Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans

OFCCP has issued a Notice of Proposed Rulemaking (NPRM) to revise part 60-300 which would address several significant issues. First, the proposed regulations would strengthen the affirmative action provisions for Federal contractors, detailing specific mandatory actions a contractor must take to satisfy its affirmative action obligations with regard to recruitment, the dissemination of its affirmative action policies, employee training, and recordkeeping requirements. Second, they would clarify the contractor's mandatory job listing requirements and the relationship between the contractor, its agents, and the state employment services that provide priority referral of protected veterans. Third, the proposal would address the increased use of technology in the workplace by providing for the electronic posting of employee rights and contractor obligations under Section 4212 and updating the manner in which compliance evaluations are conducted. Fourth, the proposed regulations would increase data collection pertaining to protected veteran referrals, applicants, and hires, and would require the contractor to establish hiring benchmarks to assist in measuring the effectiveness of its affirmative action efforts. These revisions are proposed to achieve a goal of increased employment opportunities for protected veterans by Federal contractors.

With regard to part 60-250, the proposed rule offers two alternatives. The first alternative is to rescind part 60-250 in its entirety. At this time, part 60-250 conceivably covers any contract of \$25,000 or more entered into prior to December 1, 2003, that has been unmodified since that time, or has been modified while maintaining a total contract value between \$25,000 and \$100,000. We do not believe any such contracts still exist, but we invite comment from stakeholders on this issue. In the event that contracts are uncovered that do fall under part 60-250's coverage, the second proposed alternative is a revised part 60-250 that mirrors the changes to the revised part 60-300 herein.

Regulations implementing Section 4212 are found at 41 CFR Parts 60-250 and 60-300. Both regulations use the administrative hearing regulations at 41 CFR Part 60-30. Detailed information about the proposed information collection requirements is provided in item 12.

2. USE OF MATERIALS

These regulations set forth the obligations of contractors and subcontractors under the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act, 38 USC 4212. These regulations are non-substantive and specify the affirmative action and nondiscrimination obligations for all covered contractors and subcontractors as well as the specific requirements regarding written AAPs.

The recordkeeping requirements are necessary to implement the Act. They also assist the contractor in assessing the results of its employment policies and practices as they affect qualified protected veterans. There are several recordkeeping requirements: One is that the contractor must list certain job openings with the State employment service. This is required by the Act itself as well as by the regulations. Consequently, there is no option to discontinue this requirement. Another, requirement is that of developing and maintaining an AAP. The AAP is the contractor's plan for implementing affirmative action and nondiscrimination.

OFCCP will use information reported by contractors to determine compliance with the labor standards the agency administers.

Both contractors and veterans would have an obligation to make third-party disclosures will help all parties understand their rights and obligations.

3. IMPROVED INFORMATION TECHNOLOGY

The proposal addresses the increased use of technology in the workplace by providing for the electronic posting of employee rights and contractor obligations under Section 4212

OFCCP has not imposed a detailed master format for the AAP. Thus, each contractor designs its own AAP format to suit its particular business circumstances. The physical size of an AAP may vary depending on the size and complexity of the contractor's organization. For these reasons, currently OFCCP considers the AAP unsuitable for adopting any technological techniques to its collection.

In general, under OFCCP regulations each contractor designs its own methods for developing and reporting information. The vast majority of government contractors and subcontractors are repeat contractors. Since they are subject to the OFCCP regulatory requirements year after year, most have developed their computer systems to generate the data required by our regulations. They are free to change their systems as they wish as long as they can retrieve the required data.

We assume that technological changes have made complying with our recordkeeping and reporting requirements easier and less burdensome. However, in the absence of empirical data, we are unable to quantify this assumed decrease and hence it is not a part of our calculations.

4. DESCRIPTION OF EFFORTS TO IDENTIFY DUPLICATION

The reporting and recordkeeping requirements contained in this request result exclusively from the implementation of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (Section 4212), 38 USC 4212 or companion statutes which uniquely empower the Secretary of Labor, and by Secretary's Order the OFCCP, to collect information on government contractors' affirmative action requirements. Therefore, no duplication of effort exists.

5. COLLECTION BY SMALL ORGANIZATIONS

OFCCP minimizes the information collection/recordkeeping burden on small businesses. Contractors with fewer than 50 employees are exempt from the AAP requirement.

6. CONSEQUENCES TO FEDERAL PROGRAMS IF THIS INFORMATION WERE COLLECTED LESS FREQUENTLY

The nondiscrimination requirements and general affirmative action requirements of Section 4212 apply to all covered contractors. See 41 CFR 60-250.5, 60-300.5. The requirement to prepare and maintain an Affirmative Action Program (AAP), the specific obligations of which are detailed at 41 CFR 60-250.44 and 60-300.44, apply to those contractors that meet the Section 4212 contract amount threshold stated above and have 50 or more employees. These regulations require contractors to develop and maintain AAPs. OFCCP reviews these AAPs through its compliance evaluation process. If the above programs were collected less frequently, federal contractors and subcontractors may discriminate on the bases of veteran status and not be in compliance with their affirmative action obligations.

7. SPECIAL CIRCUMSTANCES FOR THE COLLECTION OF INFORMATION

The proposed regulation adds a new paragraph 5 to the EO clause which requires the contractor to maintain records, on an annual basis, of the total number of referrals it receives from state employment services, the number of priority referrals of protected veterans it receives, and the ratio of protected veteran referrals to total referrals. This is one of a few new data collection requirements set forth in this NPRM that are proposed in order to give the contractor (as well as OFCCP, in the course of compliance evaluations) a quantifiable measure of the availability of protected veterans in the workforce. The contractor would be required to maintain these records on the number of referrals for five (5) years. We are proposing more than a three year period for multiple reasons. First, because the proposed rule anticipates that the contractor will use the referral data in setting annual hiring benchmarks (see Section-by-Section discussion in 250.45, *infra*) we

wanted to ensure that the contractor has sufficient historical data on the number of referrals it has received in years past to meaningfully inform the benchmarks it sets going forward. Further, because the proposed rule anticipates that the contractor will review its outreach efforts and adjust them to maximize recruitment of protected veterans (*see* Section-by-Section discussion in 250.44(f)(3), *infra*), we wanted to ensure that the contractor has sufficient historical data to recognize meaningful trends in recruitment and, subsequently, to identify effective recruitment efforts that corresponded with time periods of increased recruitment of protected veterans. If the contractor had fewer years of referral data on hand, it is less likely that the data would provide meaningful assistance to the contractor in these respects. We solicit public comment on the burden and practical utility of this requirement.

8. CONSULTATION OUTSIDE THE AGENCY

OFCCP maintains an ongoing dialogue with contractor groups on a number of compliance issues, among them reporting and recordkeeping. Formal input will come through submission of public comments in the Federal Register in response to publication of proposed rules.

9. GIFTGIVING

OFCCP makes no payments nor gives gifts to respondents.

10. ASSURANCE OF CONFIDENTIALITY

While OFCCP makes no assurance of confidentiality for this information collection, much of the employment data that OFCCP collects as a result of the requirements within this activity is viewed by the contractors who submit it as extremely sensitive. The disclosure of information obtained from a contractor will be evaluated pursuant to the public inspection and copying provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR Part 70. OFCCP follows a policy of advising contractors when there has been a request for their documents. OFCCP makes no decision to disclose such documents until the contractor has had an opportunity to submit objections to the release of the document.

Furthermore, it is OFCCP's position that none of the data obtained during the course of a compliance evaluation is required to be released under FOIA until the agency action has been completed.

11. SENSITIVE QUESTIONS

OFCCP does not collect information of a personal nature, such as marital status, religious beliefs, or other matters commonly considered private during the course of a compliance evaluation unless alleged employment discrimination becomes an issue. If employment discrimination becomes an issue, then such evidence becomes relevant. Under such

circumstances, OFCCP will seek evidence concerning the attitudes of selecting officials, but these investigations are unique to each case. OFCCP has no set of standardized questions.

OFCCP rules require contractors ask applicants whether they are protected veterans. Race and Sex data are not required, under the Section 4212 regulations. The protected veteran data is required to investigate for indicators of potential employment discrimination. Generally, a contractor informs its protected veteran employees that it collects and maintains their data strictly for affirmative action purposes.

12. ESTIMATE OF INFORMATION COLLECTION BURDEN

Where estimates are provided or assumptions are described, contractors and other members of the public are encouraged to provide data they have that could help OFCCP refine the estimates of amount of time needed to fulfill specific requirements.

The estimates of this information collection burden are broken down into recordkeeping, reporting and third party requirements. The following is a summary of the methodology for the calculation of each of these burdens.

- 60-250.5/300.5
 - Contractor must provide job vacancy information to appropriate employment service delivery system (ESDS) in usable format (¶2 of EO Clause).
 - The contractor's mandatory job listing obligations, which is required by 38 U.S.C. 4212(a)(2)(A) and promulgated in OFCCP's regulations at FR, Vol. 43, NO. 204 –Friday, October 20, 1978, requires federal contractors and subcontractors to list their job opening with the state or local employment service delivery system. To reduce the burden on the contractor, it has the flexibility to list its job openings at the state or local employment service delivery system concurrently with the contractor's use of any other recruitment source or effort. Further, to reduce the burden, the mandatory job listing requirement need not include (1) executive and top management positions, (2) positions that will be filled from within the contractor's organization, and (3) positions lasting three days or less.
 - The contractor must provide state or local employment service delivery system information that is sufficient to carry out its responsibilities under VEVRAA to give protected veterans priority referrals to federal contractor employment openings. This has always been a requirement under Section 4212 and its regulations. OFCCP estimates that the required gathering of records, reporting the job listing, and recordkeeping would take **15 minutes** per job listing. The FY 2009 Equal Employment Data System Report (EEDS), which compiles information on Federal contractors for OFCCP, showed that there were 108,031 Federal contractor and subcontractor establishments under OFCCP jurisdiction. EEDS information concerning the number of contractor establishments is derived

from the EEO-1 Report, which the Equal Employment Opportunity Commission submits to OFCCP annually. OFCCP also includes 257 post-secondary institutions under its jurisdiction, for a total of 108,288 contractor establishments. The number of listings provided by contractors may vary from year to year, from a low of zero to a high of one per month. OFCCP estimates that on average a contractor will provide 2 listings annually, or 30 minutes. Therefore, OFCCP estimates $108,288 \times 30/60 = 54,144$ **total Federal contractor hours** for gathering of records, reporting the job listing, and recordkeeping.

- o Contractor must provide ESDS additional information, updated on an annual basis (§4 of EO Clause) The current regulations require that the contractor provide the appropriate state employment service with the name and location of each of the contractor's hiring locations. The proposed regulations require that the contractor provide the state employment service with the following additional information: (1) its status as a Federal contractor; (2) contact information for the contractor hiring official at each location in the state; and (3) its request for priority referrals by the state of protected veterans for job openings at all locations within the state. This information shall be updated on an annual basis. These three additional items are proposed in light of feedback received from state employment services and congressional testimony citing concerns about appropriate interface between federal contractors and state and local employment service delivery system staff. Using some form of electronic means (email, fax, etc), OFCCP estimates a total of **15 minutes** to give the ESDS the information newly required by this regulation (status as a federal contractor, contact information for the contractor hiring official, and the request for priority referrals). The proposed regulation also adds a sentence clarifying that, if the contractor uses any outside job search organizations (such as a temporary employment agency) to assist in its hiring, the contractor must provide the state employment service with the contact information for these outside job search organizations. OFCCP further estimates 25% of contractors, or 27,072, will use outside job search organizations, and **5 additional minutes** for the contractor to notify state employment agencies concerning its outside job search organizations. The burden to give ESDS additional information is $108,288 \times 15 /60 = 27,072$ hours. The burden to notify the state employment service about outside job search organizations is $27,072 \times 5 /60 = 2,256$ hours. The sum of $27,072 + 2,256 =$ **29,328 total Federal contractor hours**.
- o Contractor must maintain records, for five years, of the total number of priority referral of veterans, and ratio of veteran referrals to total referrals (§5 of EO Clause). The contractors is already required to keep applicant data for either one or two years, depending on their size, *see* 41 CFR § 60-300.80, thus the only changes proposed are that the contractor calculate the ratio of preferred veteran referrals and to maintain these records for an additional period of time. According to the ETA 9002 B Quarterly Report from July 1, 2008 to June 30, 2009, State employment office staff referred 75,657 protected veterans

(campaign, special disabled, and recently separated veterans) to Federal contractor job vacancies. However, some contractors may receive no referrals (and have few or no job postings) while others will receive multiple referrals. It is expected that computing the ratio for multiple referrals is not significantly more time consuming than doing a ratio for a small number of referrals. OFCCP estimates that the contractor will take 30 minutes to analyze the ratio of veteran referrals. Therefore, the estimated maximum burden hours associated with calculating the ratio of veteran referrals would be $30 \times 75,657 / 60 = \mathbf{37,829 \text{ total Federal contractor hours}}$.

Contractor must include the entire clause verbatim in Federal contracts (.5(d), .5(e)) (This is a third party disclosure burden.) A contractor may copy/paste the EO Clause from the OFCCP regulations into its contracts. Assuming each of the federal contractor establishments has a single contract would equal 108,288 times **1 minute of copy/paste time** would equal 108,288 minutes divided by 60 minutes equals **1,805 total Federal contractor hours**.

- Contractor must provide Braille, large print, or other versions of notice so that visually impaired may read the notice themselves (§10 of EO Clause).
 - The FY 2008 VETS-100 report identified 62,000 Special Disabled Veterans (SDVs). Not all SDVs will normally request and accommodation, therefore the estimate is 10% of the SDVs may request an accommodation due to visual impairment. OFCCP estimates that it takes 5 minutes for the contractor to receive the accommodation request and 5 minutes for recordkeeping and providing the notice in an alternative format, for a total of **10 minutes** per request. Therefore, 10 minutes times 6,200 SDVs equals 62,000 minutes divided by 60 minutes equals **1,033 total Federal contractor hours**.
- Posting of notice for employees working at a site other than the contractor's physical location. (§10 of EO Clause). OFCCP estimates one or more offsite locations at 10% of contractors, or 10,829, and posting a notice on the company's website so that offsite employees can access the notice. No additional hours for creation of the notice since the notice is already required. OFCCP estimates 5 minutes for each contractor to post the notice on its website. Therefore, $10,829 \times 5 \text{ minutes} / 60 = \mathbf{902 \text{ total Federal contractor hours}}$.
- Contractor must state in all solicitations and advertisements that it is an EEO employer of veterans (§13 of EO Clause). (This is a third party disclosure burden.) The contractor already must state that it is an EEO employer due to many state and federal requirements, including the Executive Order EEO requirements. This revision would simply require the contractor to add protected veterans to the list of categories of protected EEO groups. OFCCP estimates **1 minute additional burden per contractor**, or $108,288 \times 1 \text{ minute} / 60 = \mathbf{1,805 \text{ total Federal contractor hours}}$.

- 60-250.41/300.41

- Contractor must inform employees who do not work at contractor's physical establishment regarding the availability of AAP for review. OFCCP estimates one or more offsite location at 10% of contractors, or 10,829, and posting a notice on the company's website so that offsite employees can access the notice to find out about the availability of the AAP to review. OFCCP estimates 5 minutes to create this notice. (Posting time is accounted for in above ¶10 of EO Clause, "Posting of notice for employees working at a site other than the contractor's physical location"). Therefore, $10,829 \times 5 \text{ minutes} / 60 = 902$ **total Federal contractor hours**.

- 60-250.42/300.42

- The proposed regulation would require that the contractor invite all applicants to self-identify as a protected veteran generally prior to the offer of employment, and invite individuals who receive job offers to indicate the particular category or categories of protected veteran to which they belong (.42(a)). In Appendix B of the proposed regulation, OFCCP provides sample invitations to self-identify so that the contractor will not have the burden of creating these invitations. We estimate it will take **1 minute** for the contractor to copy and paste the sample invitations to self-identify from the regulations into a separate document that it can store electronically and include in electronic applications or print out in paper applications as needed. Multiplying 1 minute by the 108,288 establishments equals 108,288 minutes / 60 = **1,805 total Federal contractor hours** adapting the self-identification forms in Appendix B for contractor use.

OFCCP estimates that protected veteran applicants will have a minimal burden complying with this proposal in the course of completing their application for employment with a contractor – specifically, providing their separation form, the DD-214, and checking the appropriate boxes in the self-identification forms. To calculate the total number of protected veteran applicants, OFCCP reviewed DOL/ETA's 9002 B Quarterly Reports for the period July 1, 2008 to June 30, 2009, which shows 75,657 total priority referrals to federal contractors nationwide. We therefore estimate 75,657 applicants. At 1 minute per applicant, the total applicant burden would be $75,657 \times 1 / 60 = 1261$ **total hours** for documenting status as a protected veteran. Of course, veterans stand to benefit from this minimal time spent, as it will notify contractors of their status and the possibility that that may benefit from the protections of Section 4212. Further, the self-identification process is entirely voluntary, and veteran applicants may opt not to participate, and thus take on zero burden.

- Contractor is required to seek advice of applicants regarding reasonable accommodations, when applicable (.42(d)). We estimate **1 minute** for the contractor to note those applicants that have identified as a disabled veteran and to make the initial inquiry with the applicant about proper placement and reasonable accommodation. The FY 2008 VETS-100 report identified 62,000 Special Disabled Veterans (SDVs). Thus, there will be a total of 62,000 minutes, or **1,033**

total Federal contractor hours making this initial inquiry. OFCCP is aware that the contractor will undertake time to process these requests and keep records of these requests. However, processing these requests is covered by the ADA and recordkeeping is covered by Section 503 regulations, at 41 CFR 60-741.69.

OFCCP estimates that disabled veteran applicants will have a small amount of burden providing documentation concerning reasonable accommodation. The FY 2008 VETS-100 report identified 62,000 Special Disabled Veterans (SDVs). Not all SDVs will normally request and accommodation. OFCCP estimates 10% of referrals will be associated with an accommodation request and that the affected disabled veterans will have on hand the needed documentation. Thus the only burden will be in providing the documentation to the contractor which is estimated to take 1 minute. We therefore estimate $62,000 \times 10\% = 6,200 \times 1 \text{ minute} / 60 = \mathbf{103 \text{ total hours}}$ of burden on certain applicants for providing documentation of reasonable accommodation. Again, however, disabled veterans stand to benefit from this disclosure requirement if they choose to participate, as it is intended to help the veteran secure an accommodation that will allow him or her to perform the job.

- Contractor must maintain self-identification data (.42(e)). The contractor was required to maintain self-identification data prior to this proposed regulation. Reviewing the entire data collection process outlined in the first paragraph of this section, we estimate that simply maintaining the completed self-identification forms will take 1 minute per contractor, or $108,288 \text{ minutes} / 60 = \mathbf{1,805 \text{ total Federal contractor hours}}$.
- 60-250.44/300.44
 - Contractor must provide Braille, large print, or other versions of AA policy statement so that visually impaired may read the notice themselves (.44(a)). The FY 2008 VETS-100 report identified 62,000 Special Disabled Veterans (SDVs). Not all SDVs will normally request and accommodation, therefore the estimate is 10% of the SDVs may request an accommodation due to visual impairment. OFCCP estimates that it takes 5 minutes for the contractor to receive the accommodation request and 5 minutes for recordkeeping and providing this document in an alternative format, for a total of **10 minutes**. Therefore, 10 minutes times 6,200 SDVs equals 62,000 minutes divided by 60 minutes equals **1,033 total Federal contractor hours** complying with this paragraph.
 - Contractor must review personnel processes annually, and is required to go through a specific analysis for doing so which would include: (1) identifying the vacancies and training programs for which protected veteran applicants and employees were considered; (2) providing a statement of reasons explaining the circumstances for rejecting protected veterans for vacancies and training programs and a description of considered accommodations; and (3) describing the nature and type of accommodations for special disabled veterans who were selected for hire, promotion, or training programs (.44(b)).

- The contractors need to identify vacancies as part of the review. According to the ETA 9002 B Quarterly Report from July 1, 2008 to June 30, 2009, State employment office staff referred 75,657 protected veterans (campaign, special disabled and recently separated veterans) to Federal contractor job vacancies. Therefore, OFCCP estimates Federal contractors and subcontractors will need to identify approximately 75,657 job vacancy listings during the above time period times **15 minutes** per listing equals $(75,657 \times 15 \text{ minutes} = 1,134,855 \text{ minutes} / 60 \text{ minutes} = \mathbf{18,914 \text{ total Federal contractor hours}}$ for gathering of records and recordkeeping.
 - OFCCP estimates 15 minutes per contractor per year to identify training programs for veteran applicants and employees, which means $15 \times 108,288 / 60 = \mathbf{27,072 \text{ total Federal contractor hours}}$.
 - For providing a statement of reasons explaining the circumstances for rejecting protected veterans for vacancies and training programs and a description of considered accommodations, OFCCP estimates 30 minutes per contractor per year, or $30 \times 108,288 / 60 = \mathbf{54,144 \text{ total Federal contractor hours}}$.
 - For describing the nature and type of accommodations for disabled veterans who were selected for hire, promotion, or training programs. The FY 2008 VETS-100 report identified 62,000 Special Disabled Veterans (SDVs). Thus, there will be a total of 62,000 inquiries. OFCCP estimates 10% of referrals leading to an accommodation request, and 30 minutes per accommodation request. Therefore, the hours would be $30 \times 62,000 \times 10\% / 60 = \mathbf{3,100 \text{ total Federal contractor hours}}$.
- Contractor must review physical and mental job qualifications annually to ensure that they are job-related and consistent with business necessity (.44(c)(1)). This provision exists in the current VEVRAA regulations (as well as the Section 503 regulations); the only difference is that the proposed regulations call for the review to occur “annually,” rather than “periodically.” Therefore, all existing or previous contractors should have experience in performing the required review.

For those contractors who have not previously performed the required review, OFCCP estimates that 1% of federal contractors are first-time contractors required to develop initial standards for the employee workforce. Therefore, 108,288 total federal contractors times 1% equals 1,083 contractors. According to the Bureau of Labor Statistics (BLS), the 2010 Standard Occupational Classification (SOC) system is used by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data. All workers are classified into one of 840 detailed occupations according to their occupational definition. To facilitate classification, detailed occupations are combined to form 461 broad occupations, 97 minor groups, and 23 major groups. Detailed occupations in the SOC with similar job duties, and in some cases skills, education, and/or training, are grouped together. OFCCP estimates that the average federal contractor will only have 20% of the 461 broad occupations in

their workforce, therefore, on average, the contractor will have 92 occupations for which to conduct an annual review. OFCCP estimates that the contractor will take **10 minutes** to review mental and physical job qualifications for each of the average 92 occupations. Therefore, 92 occupations times 10 minutes equals 920 minutes, multiplied by the estimated 1,083 first time contractors / 60 minutes per hour equals a total of **16,606 Federal contractor hours** for first-time contractors spent complying with this paragraph.

OFCCP estimates that 90% of contractors, or 97,459, will have no changes to their job descriptions in a given year. Therefore, for contractors that have already performed the required review as set forth in the current regulations, and have not changed the job descriptions or physical/mental job qualifications, OFCCP estimates that the time required to update the reviews is 0.5 minutes per job title x 92 occupations = $46 \times 97,459 / 60 =$ **74,719 total Federal contractor hours**.

OFCCP estimates that the remaining 9% of contractors, or 9,746, will have some changes to their job descriptions in a given year. We estimate this 9% of contractors will have changes to an average of 20% of their job titles, and that it will take 10 minutes on average to review the mental and physical job qualifications for each. Therefore, 10 minutes x (20% of 92 job titles) x 9,746 contractors / 60 minutes per hour = **29,888 total Federal contractor hours**.

- Contractor must document the results of its annual review of physical and mental job qualifications, and document any employment action taken on the basis of a believed “direct threat.” (.44(c))

OFCCP estimates that it will take the contractor **1 minute per job qualification** to save the information for recordkeeping purposes. Therefore, 1 minute x 92 occupations equals 92 minutes x 108,288 contractors / 60 minutes equals **166,042 total Federal contractor hours**.

- Contractor must enter into linkage agreement with nearest LVER, one of the organizations listed in (f)(1), and an organization listed in the National Resource Directory (.44(f)(1)).

Therefore, each contractor must enter into 3 linkage agreements. Linkage Agreement means an agreement describing the connection between the contractor and appropriate recruitment and/or training sources.

The contractor has a variety of ways to establish VEVRAA linkage agreements. The contractor can receive nationwide assistance from OFCCP Compliance Officers (COs) to help it establish the 3 linkage agreements. Secondly, during the normal course of an OFCCP compliance review, the CO will contact all appropriate linkage resources to obtain specific information on availability of applicants and potential trainees for positions in the contractor’s labor force. If

possible, the CO will arrange a meeting between the recruitment/referral resources and the contractor.

Where a resource indicates that it can provide applicants or trainees, the CO will include the contractor's commitment to utilize the linkage source along with other actions in the Letter of Commitment or in the Conciliation Agreement.

OFCCP estimates that 30% of the contractors, or 32,486, will accept OFCCP assistance to help set up their linkage agreements and it will take these contractors on average **1.5 hours** to establish one new linkage agreement. For the remaining 75,802 contractors, OFCCP estimates that establishing a new linkage agreement will take an average of **5.5 hours**. Beyond the first year after this rule becomes effective, it is estimated the contractor will set up one new agreement a year. It is estimated that maintaining a single, ongoing linkage agreement will take an average of 15 minutes for all 108,288 contractors.

For those contractors setting up linkage agreements on their own, OFCCP estimates that on average, a contractor will establish one new agreement and maintain two ongoing agreements in a given year, which would be 5.5 hours + .25 hours + .25 hours = **6 hours**. If the contractor establishes linkage agreements with OFCCP's assistance, we estimate an annual average of 1.5 hours per contractor to establish a new linkage agreement and .25 hours to maintain each of the two ongoing linkage agreements, which would be 1.5 hours + .25 hours + .25 hours = **2 hours**. Therefore, 6 hours times 75,802 contractors equals 454,812 hours, and 32,486 times 2 hours equals 64,972 hours, for a total of **519,784 Federal contractor hours** to establish and maintain three linkage agreements under the proposed NPRM.

- Contractor must send written notification of company AAP policies to subcontractors, vendors, and suppliers (.44(f)(1)).

OFCCP estimates that it would take the contractor **5 minutes** to prepare the notification and notify its subcontractors via the Internet in a group e-mail, and 1 minute to add or subtract any additions or deletions to the group. Therefore, 6 minutes per contractor times 108,288 equals 649,728 minutes, divided by 60 minutes equals **10,829 total Federal contractor hours**.

- Contractor must document its review outreach and recruitment efforts (.44(f)(3)).

OFCCP estimates that documenting this review of outreach and recruitment will take 5 minutes annually. OFCCP further estimates that 1% of federal contractors are first-time contractors during an abbreviated AAP year, therefore would not be able to complete an annual outreach and recruitment effort. Therefore, reducing the 108,288 by 1% (1,083 contractors) equals 107,205 contractors, at 5 minutes each equals 536,025 minutes, or **8,934 total Federal contractor hours**. The burden and cost of actually conducting the review does not fall under the PRA,

and is instead set forth in the Sections on Executive Order 12866 and the Regulatory Flexibility Act.

- Contractor must document (f)(1) linkage agreements and maintain these documents for 5 years (.44(f)(4))

Since establishing a linkage agreement includes its documentation, there is no additional burden for this paragraph beyond that already set forth in the burden calculation for .44(f)(1).

- Contractor is required to undertake several efforts to internally disseminate its EEO policy, including, if the contractor is a party to a collective bargaining agreement, meeting with union officials to inform them of the policy. (This is a third party disclosure burden). (.44(g)):

The January 22, 2010 Bureau of Labor Statistics News Release states that in 2009, union membership was 12.3%. In its most recent Supply and Service (S&S) PRA Justification, OFCCP estimated 30 minutes composition time for union notification. For this NPRM, we estimate 15 minutes preparation for this new notification requirement, as contractors party to a collective bargaining agreement already have a notification template in place. We also estimate 15 additional minutes to meet with union officials as they already do so in S&S. The total third party disclosure burden hours would be $108,288 \times 12.3\% \times 30 \text{ minutes} / 60 = \mathbf{6,660 \text{ total Federal contractor hours}}$.

The burden and cost of other requirements of .44(g) does not fall under the PRA, and is instead set forth in the Sections on Executive Order 12866 and the Regulatory Flexibility Act.

- Contractor must document internal dissemination efforts in (g), retain these documents for 1-2 years (.44(g)(3))

Since much of the documentation will occur during the preparation time, OFCCP estimates an additional **5 minutes** of recordkeeping per contractor, which means $5 \text{ minutes} \times 108,288 = 541,440 \text{ minutes} / 60 = \mathbf{9,024 \text{ total Federal contractor hours}}$.

- Contractor must document the actions taken to comply with audit and reporting system, retain these documents for 1-2 years (.44(h))

Since much of the documentation will occur during the annual audit and reporting, OFCCP estimates an additional **5 minutes** recordkeeping burden per contractor, which means $5 \text{ minutes} \times 108,288 = 541,440 \text{ minutes} / 60 = \mathbf{9,024 \text{ total Federal contractor hours}}$.

- Contractor must identify responsible official for AAP on all internal and external communications regarding the AAP (.44(i))

That official should already be in place for current contractors. For 1% first time contractors, $108,288 \times 1\% = 1,083$ contractors, OFCCP estimates **5 minutes** per contractor, or $1,083 \times 5 \text{ minutes} = 5,415 \text{ minutes} / 60 = \mathbf{90 \text{ total Federal contractor hours}}$

- Contractor must document its training efforts as set forth by the regulation, and maintain these documents as required by 60-250.80 / 60-300.80 (.44(j)).

OFCCP estimates that much of the documentation will be included in the training preparation time. OFCCP estimates an additional **5 minutes** recordkeeping time per contractor, which means $5 \text{ minutes} \times 108,288 = 541,440 \text{ minutes} / 60 = \mathbf{9,024 \text{ total Federal contractor hours}}$. The burden and cost of the actual training preparation and conducting the training does not fall under the PRA, and is instead set forth in the Sections on Executive Order 12866 and the Regulatory Flexibility Act.

- Contractor must make several quantitative tabulations and comparisons using referral data, applicant data, hiring data, and the number of job openings; must maintain these records for 5 years (.44(k))

- (1) The number of priority referrals of veterans protected by this part that the contractor received from applicable employment service delivery system(s);
- (2) The number of total referrals that the contractor received from applicable employment service delivery system(s);
- (3) The ratio of priority referrals of veterans to total referrals (referral ratio);
- (4) The number of applicants who self-identified as protected veterans pursuant to § 60-300.42(a), or who are otherwise known as protected veterans;
- (5) The total number of job openings and total number of jobs filled;
- (6) The ratio of jobs filled to job openings;
- (7) The total number of applicants for all jobs;
- (8) The ratio of protected veteran applicants to all applicants (applicant ratio);
- (9) The number of protected veteran applicants hired;
- (10) The total number of applicants hired; and
- (11) The ratio of protected veterans hired to all hires (hiring ratio).

The calculations for #5, 6, 7, and 10 are already included in the Executive Order AAP. The calculations for #9 are included in the VETS-100/100A report. Therefore, there is no additional burden for #5, 6, 7, 9, and 10.

The remaining calculations, for #1, 2, 3, 4, 8, and 11, OFCCP estimates at 1 minute each per contractor, or 6 minutes recordkeeping time per contractor, which means $6 \text{ minutes} \times 108,288 = 649,728 \text{ minutes} / 60 = \mathbf{10,829 \text{ total Federal contractor hours}}$.

- 60-250.45/300.45
 - Contractor must set benchmarks for hiring annually, which would include reviewing numerous data sources. Contractor must document the benchmarks it sets and the specific criteria it uses, and maintain these records for 5 years. The non-documenting burden and cost associated with the actual setting of the benchmark does not fall under the PRA, and is instead set forth in the Sections on Executive Order 12866 and the Regulatory Flexibility Act.

OFCCP estimates 30 minutes recordkeeping time per contractor documenting the benchmark calculations, which means 30 minutes x 108,288 / 60 = **54,144 total Federal contractor hours.**

- 60-250.60/300.60
 - Contractor must provide documents to OFCCP on-site or off-site at OFCCP's request, not at the contractor's option (.60(a)(3))
These hours not included in burden as they are excepted under 5 CFR 1320.4(a)(2) ("an administrative action, investigation, or audit involving an agency against specific individuals or entities").

- New procedure for pre-award compliance evaluations (.60(d))

These hours not included in burden as they are excepted under 5 CFR 1320.4(a)(2) ("an administrative action, investigation, or audit involving an agency against specific individuals or entities").

- 60-250.80/300.80
 - See new 5 year recordkeeping requirements in previous sections.

No additional burden hours as they are included in the individuals calculations above.

- 60-250.81/300.81
 - Contractor must provide off-site access to documents if requested by OFCCP. Such records are never requested except during the course of a specific investigation of a particular contractor.

Consequently, these hours not included in burden as they are excepted under 5 CFR 1320.4(a)(2) ("an administrative action, investigation, or audit involving an agency against specific individuals or entities").

- Contractor must specify to OFCCP all formats in which its records are available.

These hours not included in burden as they are excepted under 5 CFR 1320.4(a)(2) ("an administrative action, investigation, or audit involving an agency against specific individuals or entities").

Table 1 – Reporting, Recordkeeping, and Third Party Disclosure Burden

Burden Description	Section of proposed regulation	One-time burden hours per contractor	Recurring burden hours per contractor	Recurring burden hours per element
Contractor must provide job vacancy information to appropriate employment service delivery system (ESDS) in usable format (§2 of EO Clause)	60-250.5/300.5		30 minute per contractor. Total Hours 54,144	
Contractor must provide ESDS additional information, updated on an annual basis (§4 of EO Clause)	60-250.5/300.5		15 minutes reporting burden per contractor for ESDS. Subtotal Hours 27,072 5 minutes reporting burden per contractor for outside job search. Subtotal Hours 2,256 Total Hours 29,328	
Contractor must maintain records, for five years, of the total number of, priority referral of veterans (already must keep applicant data), and ratio of veteran referrals to total referrals (§5 of EO Clause)	60-250.5/300.5			30 minutes per referral. Total Hours 37,829
Contractor must include the entire clause verbatim in Federal contracts (.5(d), .5(e))	60-250.5/300.5		1 minute third party disclosure burden per contractor. Total Hours 1,805	
Contractor must provide Braille, large print, or other versions of notice so that visually impaired may read the notice themselves (§10 of EO Clause).	60-250.5/300.5			10 minutes per accommodation request. Total Hours 1,033
Contractor must provide notice to offsite employees (§10 of EO Clause).	60-250.5/300.5	5 minutes per contractor. Total Hours 902		
Contractor must state in all solicitations and advertisements that it is an EEO employer of veterans (§13 of EO Clause).	60-250.5/300.5		1 minute third party disclosure burden per contractor. Total	

			Hours 1,805	
Contractor must inform employees who do not work at contractor's physical establishment regarding the availability of AAP for review. (.41)	60-250.41/300.41	5 minutes per contractor. Total Hours 902		
Contractor must invite all applicants to self-identify as protected veteran prior to offer of employment (.42(a)).	60-250.42/300.42			1 minute per application. Total Hours 1,805
Contractor is required to seek advice of applicants regarding appropriate accommodations, when applicable (.42(d)).	60-250.42/300.42			1 minute per accommodation. Total Hours 1,033
Contractor must maintain self-identification data (.42(e))	60-250.42/300.42		1 minute per contractor. Total Hours 1,805	
Contractor must provide Braille, large print, or other versions of AA policy statement so that visually impaired may read the notice themselves (.44(a)).	60-250.44/300.44			10 minutes per accommodation request. Total Hours 1,033
Contractor must review personnel processes annually, and is required to go through a specific analysis for doing so which would include: (1) identifying vacancies and training programs; (2) providing a statement of reasons for rejecting protected veterans; and (3) describing the nature and type of accommodations for (special) disabled veterans (.44(b)).	60-250.44/300.44		15 minutes per contractor (training) Subtotal Hours 27,072 30 minutes per contractor (statement of reasons) Subtotal Hours 54,144	15 minutes per job listing (vacancies). Subtotal Hours 18,914 30 minutes per accommodation request Subtotal Hours 3,100 Total Hours 103,230
Contractor must review physical and mental job qualifications annually (.44(c)).	60-250.44/300.44	10 minutes per occupation for first time contractors. Subtotal Hours 16,606		.5 minutes per occupation (no changes). Subtotal Hours 74,719. 10 minutes per occupation, 20% of occupations. Subtotal Hours 29,888. Total Hours 121,213

Contractor must document the results of its annual review of physical and mental job qualifications, and document any employment action taken on the basis of a believed “direct threat.” (.44(c))	60-250.44/300.44			1 minute per occupation. Total Hours 166,042
Contractor must enter into linkage agreement with nearest LVER, one of the organizations listed in (f)(1), and an organization listed in the National Resource Directory (.44(f)(1)).	60-250.44/300.44		2 hours per contractor with OFCCP assistance. Subtotal Hours 64,972 6 hours per contractor without OFCCP assistance. Subtotal Hours 454,812 Total Hours 519,784	
Contractor must send written notification of company AAP policies to subcontractors, vendors, and suppliers (.44(f)(1)).	60-250.44/300.44		6 minutes per contractor. Total Hours 10,829	
Contractor must review outreach and recruitment efforts on an annual basis and evaluate their effectiveness; contractor must identify and implement further outreach efforts if existing efforts are found ineffective (.44(f)(3)).	60-250.44/300.44		5 minutes per contractor (non first time contractors). Total Hours 8,934	
If the contractor is a party to a collective bargaining agreement it must meet with union officials to inform them of the policy. (.44(g))	60-250.44/300.44		30 minutes per unionized contractor. Total third party disclosure burden hours 6,660	
Contractor must document internal dissemination efforts in (g), retain these documents for 1-2 years (.44(g)(3))	60-250.44/300.44		5 minutes per contractor. Total Hours 9,024	
Contractor must document the actions taken to comply with audit and reporting system, retain these documents for 1-2 years (.44(h))	60-250.44/300.44		5 minutes per contractor. Total Hours 9,024	
Contractor must identify responsible official for AAP on all internal and	60-250.44/300.44	5 minutes per first time contractor.		

external communications regarding the AAP (.44(i))		Total Hours 90		
Contractor must document its training efforts as set forth by the reg, and maintain these documents for 1-2 years (.44(j))	60-250.44/300.44		5 minutes per contractor. Total Hours 9,024	
Contractor must make several quantitative tabulations and comparisons using referral data, applicant data, hiring data, and the number of job openings; must maintain these records for 5 years (.44(k))	60-250.44/300.44		6 minutes per contractor. Total Hours 10,829	
Contractor must document the benchmarks it sets and the specific criteria it uses, and maintain these records for 5 years(.45)	60-250.45/300.45		30 minutes per contractor. Total Hours 54,144	
Total Recordkeeping burden hours	1,122,653			
Total Reporting burden hours	29,328			
Total Third Party burden hours	10,270			
Total all hours	1,162,251			

Table 2– Burden for Protected Veterans

Burden Description	Section of proposed Regulation	Burden hours per protected veteran
Protected veteran must provide DD-214 to contractor to document status as a protected veteran	<u>60-250.42/300.42</u>	1 minute per individual Total hours 1261
Disabled veteran must provide documentation for reasonable accommodation.	<u>60-250.42/300.42</u>	1 minute per individual Total hours 103
Total Burden Hours		1,364

The estimated annualized cost to respondent contractors is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (June 2010), which lists total compensation for management, professional, and related occupations as \$48.74 per hour and administrative support as \$23.25 per hour. OFCCP estimates that 52% percent of the burden hours will be management, professional, and related occupations and 48% percent will be administrative support. We have calculated the total estimated annualized cost as follows:

Mgmt. Prof. 1,162,251 hours x .52 x \$48.74 =	\$29,457,019
Adm. Supp. 1,162,251 hours x .48 x \$23.25 =	\$12,970,721
Operations & Maintenance Cost (see discussion below)	\$418,129
Total annualized cost estimate =	\$42,845,869

Estimated average cost per establishment is: \$42,845,869/ 108,288 = \$396

13. Start-Up/Capital and Operations and Maintenance Costs

OFCCP estimates that the contractor will have some operations and maintenance costs in addition to the time burden calculated above associated with this collection.

60-250.5/300.5

Contractor must provide EO Clause notices to employees and applicants, including alternative formats such as copy of Braille, large print, or other versions of notice so that visually impaired protected veterans may read the notice themselves (§10 of EO Clause). OFCCP estimates that the contractor will have some operations and maintenance cost associated with posting the EO Clause. We estimate an average copying cost of 10 cents per page. We estimate the average size of the EO Clause to be 3 pages. The estimated total cost to contractors will be: 3 pages x \$.10 x 108,288 federal contractor establishments = **\$32,486**

OFCCP estimates that the contractor will have some operations and maintenance costs associated with providing the EO Clause in an alternative format. We estimate that the cost of an alternative format, such as Braille or audio, to be \$1.00 per contractor. The estimated total cost to contractors will be: \$1.00 x 108,288 federal contractor establishments = **\$108,288**

60-250.42/300.42

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitation to self-identify. The contractors must invite all applicants with the pre-offer invitation, and must also invite those individuals who were offered positions and declared themselves protected veterans with the post-offer invitation. Given the increasingly widespread use of electronic applications, any contractor that uses such applications would not incur copy costs. Therefore, we estimate 1 page for the pre-

offer invitation printed for 10 applicants per year, and 2 pages for the post-offer invitation printed for 2 applicants per year. We also estimate an average copying cost of 10 cents per page. The estimated total cost to contractors will be: pre-offer - $108,288 \times 1 \times 10 \times \$1.0 = \$108,288$; post-offer - $108,288 \times 2 \times 2 \times \$10 = \$43,315$; **total cost** $\$108,288 + \$43,315 = \mathbf{\$151,603}$

60-250.44/300.44

Contractor must provide Braille, large print, or other versions of AA policy statement so that visually impaired may read the notice themselves (.44(a)). OFCCP estimates that the contractor will have some operations and maintenance costs associated with providing the AA policy statement. We estimate that the cost of an alternative format, such as Braille or audio, to be \$1.00 per contractor. The estimated total cost to contractors will be: $\$1.00 \times 108,288$ federal contractor establishments = **\$108,288**

60-250.44/300.44

Contractor must provide its AAP to OFCCP during a desk audit. For Supply & Service compliance evaluations, the contractor copies its AAPs and mails the AAPs to OFCCP. We estimate an average copying cost of \$.07 per page. We estimate the average size of an AAP to be 7 pages. The estimated total copying cost to contractors will be: $7 \text{ pages} \times \$0.07 \times 5,004$ (FY 2009 Compliance Evaluations) = \$2,452. In addition, we estimate an average mailing cost of \$3.00 per contractor. The total mailing cost for contractors will be $\$3.00 \times 5,004 = \$15,012$. The total estimated costs would be $\$2,452 + \$15,012 = \mathbf{\$17,464}$.

Table 3 -- Operations and Maintenance Costs

Contractor must provide EO Clause to employees and applicants (§10 of EO Clause).	60-250.5/300.5	\$32,486
Contractor must provide Braille, large print, or other versions of EO Clause so that visually impaired may read the notice themselves (§10 of EO Clause).	60-250.5/300.5	\$108,288
Contractor must invite all applicants to self-identify as protected veteran prior to offer of employment (.42(a)).	60-250.42/300.42	\$151,603
Contractor must provide Braille, large print, or other versions of AA policy statement so that visually impaired may read the notice themselves (.44(a)).	60-250.44/300.44	\$108,288
Copying and mailing costs of AAPs (.44)	60-250.44/300.44	\$17,464
Total O&M Costs		\$418,129

14. FEDERAL COSTS

DOL associates no Federal costs with this information collection.

15. REASONS FOR PROGRAM CHANGES AND ADJUSTMENTS.

OFCCP has proposed new regulations that will require information collections and increase paperwork burden by an estimated 190,152 responses, 1,163,615 hours, and \$418,129 per year.

16. PUBLICATION OF DATA

OFCCP will not publish the data collected.

17. APPROVAL TO NOT DISPLAY THE EXPIRATION DATE

OFCCP does not seek approval not to display the expiration date.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions.

SUPPORTING STATEMENT B—STATISTICAL METHODS

This information collection does not employ statistical methods.