



## OFCCP To Review Online Application Systems As Part of Compliance Evaluations

Many federal contractors and sub-contractors have adopted an online application system as their primary and sometimes exclusive method for accepting applications for employment. Section 503 (Rehabilitation Act) and VEVRAA (Vietnam Era Veterans Readjustment Assistance Act), require that federal contractors and sub-contractors provide equal opportunity to qualified individuals with disabilities and disabled veterans. In addition, federal contractors are required to take a affirmative action to employ and advance disabled individuals, including recruitment, advertising, and job application procedures which include online application systems, if applicable.

While some online application systems may be accessible to individuals with disabilities, others may be completely inaccessible or partially accessible because of technological limitations.

### Example of Accessibility Problems:

- A candidate with a visual disability may be unable to read the graphics on the website.
- An online application system may not operate with adaptive technology used by people with disabilities.
- Company kiosks may be inaccessible to people with mobility impairments.

Federal contractors must ensure that qualified individuals with disabilities, disabled veterans and special disabled veterans have an equal opportunity to apply and compete for jobs. This may include providing needed reasonable accommodations, unless doing so would cause undue hardship (significant difficulty or expense).

To ensure Federal Contractor Compliance with providing equal opportunity to qualified individuals with disabilities and disabled  
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## New OFCCP Electronic Recordkeeping Policy

The OFCCP has issued an Administrative Directive that addresses a frequently asked question from federal contractors regarding the use of electronic recordkeeping systems to comply with personnel and employment record retention regulations and the destruction of paper originals of these records that are otherwise "preserved" in electronic format.

Section 60-1.12(a) of the regulations implementing Executive Order 11246 requires any personnel or employment record that is made or kept by the federal contractor to be "preserved" for a minimum of two years. However, if the contractor has fewer than 150 employees or does not have a contract of at least \$150,000, the record retention period is a minimum of one year. The implementing regulations of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, and Section 503 of the Rehabilitation Act of 1973, as amended, contain similar record retention requirements to 60-1.12(a). The current regulations at 60-1.43, 60-250.81, 60-300.81 and 60-741.81 also require that contactors permit access to their premises so that the OFCCP may inspect and copy their books and records, including computerized records.

Since the regulation does not prescribe a particular format in which the records must be preserved and in light of the increased use of electronic media in all aspects of business administration and the advancements in the technology used for converting paper documents into electronic formats, the OFCCP concluded that it is permissible for federal contractors to transfer original paper records to an electronic format if:

- The medium used accurately reproduces the paper original and would constitute a duplicate or substitute copy of the original paper record under Federal law.
- The record can be converted back into a legible and readable paper copy and provided to OFCCP upon request.

### Retention Provisions

The OFCCP electronic record keeping policy also states that original paper records may be disposed of any time after the transfer to an electronic record system, provided the electronic record accurately reproduces the paper original record. If contractors use an electronic recordkeeping system, they must ensure that the electronic records comply with the record retention and access regulations. That is, the records must be accurate, complete and accessible.

It should also be noted that the electronic recordkeeping policy does not change the requirement that the federal contractor allow the OFCCP to inspect and copy records at the contractor's premises during a compliance evaluation or complaint investigation. This means that during a compliance evaluation, compliance officers may ask to see electronic records or that paper originals stored in electronic format be converted into legible and readable paper copies and provided to the OFCCP.

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## Compliance Evaluation Inspection Process for Revised Form I-9

The OFCCP issued an Administrative Directive on September 5, 2008 outlining the inspection process of the revised Form I-9 that went into effect on November 7, 2007. The major changes to the Form I-9 labeled [(Rev. 06/05/07)N] are the revised list of acceptable documents proving identity and employment eligibility and must be used as of 12/26/2007. Please refer to the AAPNews, January 2008 issue, on page 5 for additional information about the new Form I-9. To download the new Form and the Employer Handbook, go to [www.uscis.gov](http://www.uscis.gov).

The OFCCP has a Memorandum of Understanding (MOU) with the Immigration and Naturalization Service (now USCIS) and the Employment Standards Administration (ESA) to inspect the Form I-9 of federal contractors or subcontractors whenever an onsite review is performed during a compliance evaluation.

### Inspection Process

When reviewing the new Form I-9 during an on-site review, Compliance Officers may be inspecting the following:

- a. Use of the Form I-9 labeled [(Rev.06/05/07)N] for all employees hired, rehired, or reverified after November 7, 2007.
- b. The legibility, authenticity and integrity of the electronically reproduced or retrieved Form I-9.
- c. The audit trail of computer system access for electronically stored Form I-9.
- d. The availability of the electronically stored Form I-9 to be retrieved, read and reproduced.

*It should be noted that Compliance Officers may request appropriate hardware, software, personnel and documentation necessary to locate, retrieve, read and reproduce any electronically stored Form I-9, supporting documents, and their associated audit trails, reports, and other data used to maintain the authenticity, integrity, and reliability of the record.*

- e. The availability of electronic summary file(s), such as a spreadsheet containing all the information fields on all the electronically stored Form I-9s.

### Future Inspection Process Changes

On June 9, 2008, Executive Order 12989 was amended to require, as a condition of future contracts, that federal contractors use an electronic verification system to confirm the employment eligibility of new hires and existing personnel assigned to perform work on a new federal contract. The Department of Homeland Security is authorized to issue implementing regulations for E.O. 12989 but has not yet done so. Once the implementing regulations are issued, the OFCCP has indicated that the Form I-9 Inspection procedure may be revised.

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## Update

### **New Federal Acquisition Regulation Requires Use of E-Verify System For Employee Identity and Employment Eligibility Verification**

On November 14, 2008, the Department of Defense (DOD), General Services Administration (GSA) and National Aeronautics and Space Administration (NASA) jointly released a final regulation, effective January 15, 2009, amending the Federal Acquisition Regulation (FAR) requiring the use of the E-Verify electronic employment verification system for federal contractors and subcontractors.

All new contracts (unless the type of federal contract is exempt) issued after January 15, 2009 will be covered under the new regulation. In addition, certain existing contracts such as "indefinite delivery/indefinite quantity" with more than 6 months remaining on the contract after January 15, 2009 and if expected to be substantial will also be covered.

For more information on this new regulation see Gerstco Alert issued December 2008. For further information on registration and use of E-Verify go to <http://www.dhs.gov/E-Verify>.

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### Active Case Management

In an effort to streamline procedures that maximize resources, the OFCCP has announced that the agency is working on an "Active Case Management" initiative. It is the OFCCP's intent to close the majority of compliance evaluations after desk audit without coming onsite. It will also incorporate quality audit standards to ensure compliance with VEVRAA and Section 503. One out of 50 compliance evaluations will be selected for an onsite visit for quality control purposes. These compliance evaluations will not be separate from regular evaluations, but will also involve an onsite visit. A new directive is forthcoming on these compliance evaluations.

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### First FY 2009 Compliance Evaluation Scheduling List Released

In early October 2008, the OFCCP released a new list of 2500 contractor establishments to its' regional offices for scheduling of compliance evaluations during the period October 1, 2008 through September 30, 2009. OFCCP generated this list through its Federal Contractor Selection System (FCSS) using multiple information sources and analytical procedures to select contractors for evaluation. The list also includes a number of establishments identified through external Federal contract databases as part of OFCCP's Contracts First Initiative.

OFCCP has mailed a Corporate Scheduling Announcement Letter (CSAL) to the Chief Executive Officer (or designated point of contact) of each parent company with more than one establishment listed for the scheduling of a compliance evaluation during the first release of this FCSS scheduling cycle. A second notice will be sent approximately two weeks prior to the release of the second list with 5000 establishments scheduled for March 2009.

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## OFCCP Launches Good-Faith Initiative for Veterans Employment (G-FIVE)

On July 17, 2008, the OFCCP launched a new good-faith initiative for Veterans Employment called the G-FIVE. The most recent study conducted by the Bureau of Labor Statistics, as of August 2007, estimated the total U.S. veteran population to be approximately 22.6 million. The new initiative reaffirms OFCCP's commitment to ensure federal contractor compliance with the requirements of VEVRAA (Vietnam Era Veterans' Readjustment Assistance Act), as amended, that requires federal contractors to take affirmative action to employ and advance qualified veterans. The new initiative also provides several contractor incentives to participate including public recognition of best practices and a three year exclusion from compliance evaluations.

### How G-FIVE Works

Each Fiscal Year, Regional OFCCP Directors will make G-FIVE recommendations to the National Office of contractors and sub-contractors that have demonstrated outstanding achievements in the employment of covered veterans, based on the outcome of a full compliance evaluation (i.e. desk audit, onsite, etc.) and the G-FIVE evaluation factors.

Contractors and subcontractors may also self-nominate by submitting a written statement of interest to the appropriate Regional Director. A full compliance review will be conducted if the nominated establishment has not undergone a full compliance review within 24 months of the nomination.

An OFCCP G-FIVE Committee will evaluate contractors according to the factors below and forward nominations to the Deputy Assistant Secretary for approval. It should be noted that not all factors are needed and that no additional paperwork is required other than the Affirmative Action Plan and VETS-100 and/or VETS-100A reports.

### G-FIVE Evaluation Factors

- ★ Number of veterans in the workforce
- ★ Increase in veterans in the workforce
- ★ Partnerships with veterans groups
- ★ Liaison with State agencies
- ★ Recruitment at educational institutions
- ★ Recruitment efforts, e.g. job listings, advertisements, job fairs
- ★ Compliance by subcontractors
- ★ On-the-job training for veterans
- ★ Affirmative action efforts to attract special disabled or disabled veterans

### G-FIVE Recognition

Company establishments approved to receive a G-FIVE rating by the OFCCP Deputy Assistant Secretary will receive a selection notification letter, a certificate and be highlighted on OFCCP's Webpage in a "best practices" section. Company establishments that receive G-FIVE ratings will be also be excluded from an OFCCP compliance evaluation for three (3) years following the receipt of the rating unless the OFCCP has received a complaint or credible information that warrant a compliance evaluation or an EEOC or state fair employment practices agency investigation reveals a significant EEO issue.

The directive outlining this initiative, along with frequently asked questions, are available on OFCCP's Web site at [www.dol.gov/esa/offccp](http://www.dol.gov/esa/offccp).

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veterans, the OFCCP issued an Administrative Directive on July 10, 2008 that went into immediate effect, requiring compliance officers to review the contractor's online application system during all compliance evaluations. In addition to this compliance evaluation review, the OFCCP has stated that it will retain and investigate individual complaints involving a contractor's online application system.

### Does Your Online System Provide Reasonable Accommodation?

The following is a list of suggested actions that Federal Contractors can take to be proactive in providing reasonable accommodations to qualified individuals with disabilities and disabled veterans:

- ✓ Prominently display a notice of how to obtain reasonable accommodations, including contact and process information.
- ✓ Incorporate 'interoperable' technology into the online application system (Contact Gerstco for a self-assessment tool that will help you determine if your web site has any issues that would prevent accessibility from disabled candidates).
- ✓ Allow people who cannot use the online system because of a disability to apply for a job in an alternate way.
- ✓ If company kiosks are used, ensure that they are accessible to those with mobility impairments.

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## Free Job Accommodation Information and Resources

The Job Accommodation Network (JAN) is a service provided by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP). JAN's mission is to facilitate the employment and retention of workers with disabilities by providing employers, employment providers, people with disabilities, their family members and other interested parties with information on job accommodations, entrepreneurship, and related subjects.

JAN provides free consulting services for federal employers, including one-on-one consultation about all aspects of job accommodations, compliance assistance with section 501 of the Rehabilitation Act, information about federal initiatives and hiring programs, and referral to federal resources. They also offer free online tools such as SOAR, (Searchable Online Accommodation Resource), that provides information about accommodation options in work settings. For more information about JAN, visit their web site at [www.jan.wvu.edu](http://www.jan.wvu.edu).

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## 2009 Affirmative Action Compliance Training Workshops

Gerstco is pleased to announce the 2009 Series of "Affirmative Action Compliance Training". The two-day hands-on workshop is designed to provide attendees with experience in developing and implementing technically-compliant Affirmative Action Programs. In small groups, participants will work on practical pro-active approaches to implementing the AAP within your organization by formulating strategies for building internal partnerships to support a strong affirmative action policy and producing a highly effective affirmative action program. This comprehensive program covers the legal basis for the affirmative action requirements, the analysis of the AAP components, a review of OFCCP enforcement policy and new initiatives, development and implementation of an action plan, and internal self-monitoring of the plan. Past participants have valued the opportunity to get answers to real-world problems, practical solutions and learn and share from other industry HR professionals in a confidential setting.

### Who Should Attend?

This AAP workshop is suitable for those responsible for the development and implementation of Affirmative Action Programs, and staff members that support them (i.e. HR Managers, Staffing Analysts, and Recruiters).

### Workshop Agenda

Legal Framework for EEO & Affirmative Action Programs
AAP Raw Data
AAP Narratives and Statistical Reports
Adverse Impact Analysis and Statistical Significance
OFCCP Internet Applicant Regulations
Compensation Discrimination Analysis
OFCCP Recordkeeping Requirements
EEO and VETS Reporting
Developing an Action Plan to Implement the AAP
Communicating the AAP Results & Implementation Plan
Responsibilities for Implementation
Internal Auditing of the AAP
OFCCP Compliance Evaluation Strategy
OFCCP Compliance Evaluation Program (Audits)

### Registration is now open for workshops on:

February 19 & 20, 2009

April 23 & 24, 2009

September 10 & 11, 2009

December 3 & 4, 2009

To register for a workshop visit our website, [www.gerstco.com](http://www.gerstco.com) or call us at 1-800-700-0937 ext. 201

