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GERSTCO MID-YEAR AAP WEBINAR 2020 COMPLIANCE UPDATE

Wednesday, July 15 & Thursday, July 16
10:00 – 11:30am Pacific



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WEBINAR TOPICS

OFCCP Focused Reviews
Gerstco

Sylvia Gerst,

Evaluating Good Faith Efforts

Evaluation of Employee Compensation

Tim Witort, Gerstco

Applicant Recordkeeping & Recruiting

Sylvia Gerst, Gerstco

Performing an Effective Disability Survey

Discussion & Questions?



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OFCCP Compliance Update

Introduction to Focused Reviews (Section 503 & VEVRAA)



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Background

- **March 2018:** OFCCP issued Directive 2018-04 that ensures a portion of all future Compliance Evaluation Scheduling Lists to include Focused Reviews for each of the Laws enforced by OFCCP: **the EO., Section 503, and VEVRAA.**
- **November 2019:** OFCCP issued a Supplemental Compliance Evaluation Scheduling List that included 500 Contractor establishments scheduled for VEVRAA Focused Reviews!
- **April 2020 Status:** OFCCP received budget approval. Staff Training has been done, Contractor education and compliance assistance will be available.



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Compliance Reviews Formats

- **Compliance Evaluation (Regular)**
- **Desk Audit Only**
- **Corporate Management Review (CMCR)**
- **Multi-Site Review**
- **Discrimination Charge Review**
- **Compliance Check**
- **Functional Review**
- **Pre-Award Review**
- **Focused Reviews: EO11246, Section 503, VEVRAA**



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What is . . . A Focused Review?

A comprehensive OFCCP initiative to ensure compliance with EEO and anti-discrimination regulations. A portion of all future Compliance Evaluation Scheduling Lists will include “focused reviews” for each of the laws enforced by OFCCP: **the Executive Order, Section 503, and VEVRAA.**

The “focused review” assumes that OFCCP would routinely go onsite and conduct a compliance review covering the policies and practices of a Contractor’s workforce related solely to one of the above Laws.

Goals of the “focused review”: to perform more compliance evaluations (annually) and to provide more enforcement of VEVRAA and Section 503 requirements.



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Section 503 Focused Review

A Section 503 Focused Review anticipates that OFCCP *will routinely go onsite* to conduct a comprehensive review of the requirements only for compliance with Section 503 of The Rehabilitation Act of 1973 for Individuals with Disabilities.

The Review will cover:

- 503 Policies and practices.
- Interviews scheduled with managers responsible for EEO and Section 503.
- Employees affected by the policies may be identified and contacted.
- Hiring and compensation data for 503 will be evaluated to ensure EEO.
- Accommodation requests, and how they are handled, will be reviewed.



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VEVRAA Focused Review

A Focused Review for VEVRAA means that OFCCP will routinely go onsite and conduct a comprehensive review of the requirements solely for compliance with VEVRAA (Vietnam Era Veterans Readjustment Assistance Act of 1974) for Protected Veterans.

- The Review will cover:
- VEVRAA policies and practices.
 - Interviews with individuals responsible for VEVRAA compliance.
 - Employees affected by the policies may be contacted.
 - Hiring data and pay will be evaluated to ensure non-discrimination.
 - Job accommodations and results will be requested.

OFCCP's Supplemental List of 500 AAP Establishments issued November 2019 for VEVRAA Focused Review Compliance Evaluations, is now being implemented.



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Focused Reviews Desk Audit



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Section 503 Focused Review

Submission Materials for Desk Audit:

1. **Current Executive Order 11246 Program!**
2. **Current Section 503 AAP.**
3. **Results of evaluation of outreach and recruitment efforts for Individuals with Disabilities!**
4. **Documentation of computations/comparisons in (60.741.44(k) data collection.**
5. **Utilization Analysis evaluating the representation of individuals with disabilities!**
6. **Collective bargaining agreement, if applicable.**
7. **Copy of reasonable accommodation policy, requests received their resolutions!**
8. **Most recent assessment of personnel policies and any changes.**
9. **Most recent assessment of physical and mental job qualifications.**



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VEVRAA Focused Review

Submission Materials for Desk Audit:

- 1. Current Executive Order 11246 Program!**
- 2. Current VEVRAA Affirmative Action Program.**
- 3. Results of the evaluation of outreach and recruitment efforts to recruit qualified Protected Veterans!**
- 4. Documentation of computations/comparisons in (60.300.44(k) data collection.**
- 5. Documentation of hiring benchmark adopted, including methodology used.**
- 6. Collective bargaining agreement, if applicable.**
- 7. Copy of reasonable accommodation policy, any requests received, and resolutions!**
- 8. Most recent assessment of personnel policies and any changes made.**
- 9. Most recent assessment of physical and mental job qualifications.**



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Review of VEVRAA AAP for Acceptability

- ✓ **Policy statement** commits to make affirmative efforts to employ and advance in employment qualified protected veterans. **Statement posted at all U.S. facilities.**
- ✓ **Personnel Processes** periodically (annually, on requisitions, etc.) reviewed and status documented.
- ✓ **Schedule to review physical and mental job qualifications** in the AAP.
- ✓ **Reasonable accommodations** are made to the physical and mental limitations of qualified disabled veterans.
- ✓ **Policy ensures employees are not harassed** because of their status as protected veterans.
- ✓ **Outreach and Positive Recruitment efforts are assessed for Protected Veterans.**
- ✓ **EEO Policy** is internally communicated annually to managers and employees.
- ✓ **internal audit systems summarized** in the AAP.
- ✓ **individuals responsible for ensuring EEO and AAP** are identified in the AAP.
- ✓ **Data collection and recordkeeping requirements for VEVRAA are documented and kept for 3 years.**
- ✓ **A Veteran Hiring Benchmark** is established, and methodology documented in the AAP



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Review of Section 503 AAP for Acceptability

- ✓ **Policy statement** affirms efforts to employ and advance in employment qualified Individuals with Disabilities.
- ✓ **Personnel Processes** periodically reviewed. All applicants and employees have equal access to personnel policies.
- ✓ **Schedule to review physical and mental job qualifications** in the AAP.
- ✓ **Reasonable accommodations** are made to the physical and mental limitations of qualified individuals with disabilities.
- ✓ **Policy developed that ensures employees are not harassed** because of their disability status.
- ✓ **Company EEO AAP Policy must be sent to all subcontracting vendors and suppliers!**
- ✓ **Outreach and Positive Recruitment efforts are designed to effectively recruit qualified individuals with disabilities.**
- ✓ **An acceptable AAP addresses procedures to disseminate the EEO Policy internally.**
- ✓ **The AAP must include internal audit systems** to monitor and measure the overall effectiveness of the AAP.
- ✓ **Identify the official assigned responsibility for implementing the AAP.**
- ✓ **Appropriate company personnel are trained in EEO AAP.**
- ✓ **Data collection requirements for Section 503 are documented and kept for 3 years.**
- ✓ **Annual AAP workforce utilization goal analysis is included in the affirmative action program.**



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Desk Audit **Documentation & Evaluation** **of Good Faith Efforts**



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“An acceptable affirmative action program engages in outreach and recruitment efforts that are reasonably designed to effectively recruit qualified protected veterans and individuals with disabilities.”

5.7% Hiring Goal for Protected Veterans!

- Local Veterans' Employment Rep (i.e., One-Stop)
- **EEO AAP policy sent to suppliers, vendors, etc.**
- - State Employment Service - Job Posting
- Department of Veterans Affairs Regional Office - local
- local Veterans' Counselors - Coordinators on Campuses
- Service Officers of National Veterans' groups - local
- Department of Defense Transition Assistance Program (TAP)
- Employer Resources Section of the National Resource Directory

Other Efforts.

- Onsite briefings, tours, working with recruiting sources
- Work-study programs with Dept. of VA Rehab facilities
- Protected Veteran employees available for recruitment efforts
- **Consider Veteran applicants for other positions**

7.0% Utilization Goal for Individuals with Disabilities!

- State Vocational Rehabilitation Service Agency
- **EEO AAP policy sent to suppliers, vendors, etc.**
- Local Employment Network organizations
- Local Disability groups, Center for IL
- National Organization for Disability (NOD)
- Entitles funded by the DOL
- Placement/Career Offices in Colleges, etc.
- Private Recruitment Sources

Other Efforts.

- Special efforts taken to reach disabled students
- Participate in Work-Study Programs for students
- Employees with disabilities available for recruitment
- **Consider applicants with known disabilities for other positions.**

Contractors may develop their own Outreach Programs.



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Documentation and Assessment for Good Faith Efforts & Recruitment

AAPs for Protected Veterans and Individuals with Disabilities must now include an evaluation of outreach and recruitment results over the AAP period.

1. Each outreach and recruitment activity must be evaluated separately.
2. Additionally, ALL outreach efforts, in their totality, must be evaluated for their effectiveness in identifying, recruiting, and retaining, protected Veterans and Individuals with Disabilities.
3. Over time, Contractors are expected to implement alternative efforts when current outreach activities are not 'effective'.





Criteria* for Evaluating Outreach & Good Faith Efforts

- A. Does the activity attract qualified Veterans and Individuals with Disabilities?
- B. Did the activity result in the hiring of qualified Veterans and Individuals with Disabilities?
- C. Did the activity expand the Contractor's outreach to Veterans and Individuals with Disabilities?
- D. Did the activity increase the Contractor's capacity/capability to include Veterans and Individuals with Disabilities in the workforce?

*Include responses to the above Criteria in the AAP.

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Resources for Good Faith Efforts & Outreach*

- **Data-Gathering of good faith efforts and outreach: Gerstco's Excel Spreadsheet.**
- **Documentation of good faith efforts and outreach: Gerstco sample format and OFCCP website example.**
- **Totality Evaluation Format of good faith efforts and outreach: Use Action Plan format or narrative based on an assessment of total activities and efforts. Additional formats?**

*please request



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Focused Reviews 503/VEVRAA **On-Site Review**



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On-Site Entrance Conference - Goals

- **Positive, objective.**
- **Brief, informal meeting with management.**
- **Legal representation?**
- **Convey . . .**
 - ✓ **Welcome**
 - ✓ **Commitment to EEO/AA**
 - ✓ **Other information**
- **Compliance Officer role.**
- **Gain understanding of needs.**
- **Timeframe.**



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On-Site Preparation - Section 503

1. **Separate Letter sent by OFCCP for the On-Site Review.**
2. **Schedule Interviews with managers and named employees.**
3. **Job Application Process:**
 - **If onsite, OFCCP will inspect the location.**
 - **If online, OFCCP will inspect the website.**
 - **Interview individuals responsible for the website portal/process.**
 - **A blank application requested to ensure self-identification initially offered.**
4. ***Flexible workplace policies;* interviews with those responsible for implementation.**
5. **If the Contractor has Disability Employee Groups, names will be requested.**



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Onsite Preparation - VEVRAA

1. **Interviews: Prepare individuals responsible for VEVRAA compliance and Programs.**
2. **Onsite interviews may be scheduled at the Contractors' HQ Unit and AAP location.**
3. **The application process will be reviewed to determine if self-identification is initially offered to applicants.**
4. **Copies of flexible workplace policies will be requested and names of individuals responsible for implementation.**
5. **If the Contractor has Veteran Employee Groups, names will be requested for interviews.**





Section 503 On-Site Review

- **The on-site review will be used to investigate and resolve any problem areas for individuals with disabilities that were identified during the desk audit. Examples:**
 - **Compliance Officer examines hire and promotion data for barriers to equal employment opportunity for individuals with disabilities.**
 - **A facility inspection will look for the mandatory notices, postings, laws, statements, and accessibility methods, in place for IDW.**
- **Information on employees and applicants requesting an accommodation will be reviewed, including hire salary, promotion history, and current status.**
- **The on-boarding process and recordkeeping for applicants will be reviewed to ensure confidentiality and privacy of disability information.**
- **Evidence of personnel policies implementation?**

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On-site Review – VEVRAA

- **Compliance Officers will use the on-site review to investigate problem areas for protected Veterans under the VEVRAA that were identified during the desk audit.**
- **Officials of the Company, employees, and others, will be interviewed to learn more about implementation of the VEVRAA and Section 503 Programs.**
- **EEO policy statement posted, accessible, and understandable for all employees.**
- **A review of personnel policies in the VEVRAA AAP will be done to ensure implementation of all the policies and statements in the Plan. This may require evidence.**
- **Applicant recordkeeping data reviewed to ensure that applicants and employees who are known to be protected veterans are considered for job vacancies (either hires or promotions), and for all training opportunities.**



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OFCCP Resources for Section 503 and VEVRAA

- **American Job Center Network (access to the Veterans Job Bank)**
- **CareerOneStop Business Center (Veteran Service for professionals by geography)**
- **Hire Heroes USA (a free resource for transitioning military personnel)**
- **National Labor Exchange (free job posting)**
- **Paralyzed Veterans of America Paving Access to Veterans Employment (US-sponsored)**
- **RecruitMilitary (Veteran-Owned firm assisting transitioning military members)**
- **Veterans' Employment and Training Service (US/DOL provides resources to Veterans)**



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Management Interviews During On-Site

- **Scheduling: At the Contractor's Discretion**
- **Compliance Officer May Designate Interviewees**
- **Contractor Representative Present**
- **Assumed to Speak for Company**
- **Questions Regarding Employment Policies.**
- **Experience with EEO AAP.**
- **Demographics of their Organization.**



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Employee Interviews During On-Site

- **Employee Participation is Voluntary**
- **Company Representative Present?**
- **Questions Regarding Company Employment Policy, Practices, Treatment**
- **Signature of Compliance Officer's Notes**
 - ✓ **Interviewee Has Discretion**
 - ✓ **Contractor May Not Prohibit or Require**



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On-Site Exit Conference

- **Objective is to Resolve Any Open Issues**
- **Reaffirm Commitment to EEO**
- **Discuss Next Steps and Who is Responsible**
- **Discuss Type of Closing Document**
- **Discuss Work Remaining & Timeline**



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The Compliance Evaluation Off-Site Analysis



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Purpose of the Off-Site Analysis

- **To Complete Analyses Not Finished Onsite**
- **Keep Contact with Compliance Officer?**
 - ✓ **Keep Review Moving**
 - ✓ **Resolve All Open Issues**



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Focused Review Close-Out

A. Closure Letter - No Apparent Violations

B. Notice of Violations/Conciliation Agreement

✓ **Violations Spelled Out**

✓ **Corrections/Remedies Proposed**





Summary Section 503 & VEVRAA

- **The Focus Review is a comprehensive evaluation of a specific affirmative action program.**
- **A written Executive Order AAP must be submitted along with the AAP being reviewed.**
- **The on-site phase will be a regular part of every Focused Review to review 503 & VEVRAA Program implementation.**