

PAUL W. DIEDERICH, President  
ALAN L. LANDES, Senior Vice President  
CHARLES L. GRECO, Vice President  
WM. BRIAN BURGETT, Treasurer  
STEPHEN E. SANDHERR, Chief Executive Officer  
DAVID LUKENS, Chief Operating Officer

**AGC of America**  
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA  
**Quality People. Quality Projects.**



## Analysis of Veterans' Unemployment Rates

### Summary

The Office of Federal Contract Compliance Programs (OFCCP) has proposed regulations that it states would strengthen the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended, on behalf of four categories of protected veterans: (1) special disabled veterans; (2) veterans of the Vietnam era; (3) veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized; and (4) recently separated veterans.

OFCCP has presented no evidence that veterans are being discriminated against in employment, or that additional affirmative action is required, let alone the extremely expensive and disruptive measures OFCCP is proposing. On the contrary, unemployment data show that **veterans—including categories of protected veterans—generally have comparable or lower rates of unemployment than nonveterans.**

- In 2012, the annual average unemployment rate for all veterans was 7.0%, lower than the 7.9% rate for nonveterans.
- In August 2012, the unemployment rate for veterans with service-connected disability was 6.5% and the rate for veterans with disability ratings of 30% or higher was 8.4%, both of which were lower than the 9.0% rate for nonveterans.
- In August 2012, the unemployment rate for veterans of the Vietnam era (plus the small number of Korean and World War II era veterans still in the labor force) was 5.2%, lower than the 9.0% rate for nonveterans.
- In August 2012, the unemployment rate for veterans of the Gulf War and other wars was 7.0%, lower than the 9.0% rate for nonveterans.
- In 2012, the annual average unemployment rate for Gulf War era II veterans (the category that includes all recently separated veterans, plus veterans who separated up to 11 years earlier) was 9.9%, slightly higher than the 9.0% rate for nonveterans. The rates for veterans aged 18-24 and 25-34 was higher than for nonveterans of those ages but this difference may reflect sampling and nonsampling errors in the data and the weak labor market, which makes it particularly hard for new entrants to the labor force to be hired.

The construction industry, in particular, has always sought out and welcomed veterans as employees. **A higher share of employed veterans than nonveterans work in the construction industry.**

In addition, an analysis in 2012 by The Center for Corporate Equality of data on discrimination complaints that have been filed with OFCCP showed **there have been virtually no valid complaints about workplace discrimination against veterans.** Between 2004 and the first half of 2012, federal officials identified only 63 total instances of possible discrimination against veterans or people with disabilities among the 285,390 federal contractor establishments over which the OFCCP has jurisdiction.

## Analysis of Veterans' Unemployment Rates

The Office of Federal Contract Compliance Programs (OFCCP) has proposed regulations that it states would strengthen the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended, on behalf of specified categories of protected veterans. The rationale for affirmative action is that, without it, the specified categories would not receive equal treatment, in this case in employment by federal contractors.

OFCCP provides no evidence that any new rules are needed, let alone these proposed regulations, which would impose extreme costs, disruption to efficient operations, and risk of liability for employers that are already employing protected veterans in proportion to their share of the workforce. On the contrary, unemployment data show that veterans—including categories of protected veterans—generally have comparable or lower rates of unemployment than nonveterans.

The proposed regulation is particularly unnecessary in the case of the construction industry. The industry has long recruited, hired and retained veterans at higher rates than other industries.

In lieu of citing relevant evidence, the proposed regulation only asserts:

increasing numbers of veterans are returning from tours of duty in Iraq, Afghanistan, and other places around the world, and many are faced with substantial obstacles in finding employment upon leaving the service. A March 2010 report from the Bureau of Labor Statistics found that the 2009 annual average unemployment rate for veterans 18-24 years old was 21.1%, compared with 16.6% for non-veterans in that age group. The unemployment rate for veterans 25 to 34 years old was 11.1%, compared with 9.8% for non-veterans in that age group.<sup>1</sup>

As a careful reading of Bureau of Labor Statistics (BLS) data shows, OFCCP has made a very selective and misleading use of unemployment data. As OFCCP states, "the purpose of the [VEVRAA], as amended, 38 U.S.C. 4212 (Section 4212), is twofold. First, Section 4212 prohibits employment discrimination against specified categories of veterans by Federal government contractors and subcontractors. Second, it requires each covered Federal government contractor and subcontractor to take affirmative action to employ and advance in employment these veterans."<sup>2</sup> Even if a comparison of unemployment rates between protected categories and others is a valid way of demonstrating the presence of employment discrimination or a lack of affirmative action, OFCCP has not provided such a comparison.

### OFCCP and BLS categories of veterans

The categories specified in the proposed regulation are: "(1) Special disabled veterans; (2) veterans of the Vietnam era; (3) veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized; and (4) recently separated veterans."<sup>3</sup> As discussed below, the data for three of these categories do not show

---

<sup>1</sup> Federal Register, Vol. 76, No. 80 (April 26, 2011), p. 23358

<sup>2</sup> *Ibid.*, p. 23358

<sup>3</sup> *Ibid.*, p. 23359

consistently higher unemployment rates, while the sample size for the fourth group is too small to allow any valid conclusion.

BLS posts either monthly or annual average unemployment rates for several categories of veterans, as well as nonveterans. As categorized by BLS,

Veterans are men and women who served on active duty in the U.S. Armed Forces and were not on active duty at the time of the survey. Nonveterans never served on active duty in the U.S. Armed Forces. Veterans could have served anywhere in the world during these periods of service: Gulf War era II (September 2001-present), Gulf War era I (August 1990-August 2001), Vietnam era (August 1964-April 1975), Korean War (July 1950-January 1955), World War II (December 1941-December 1946), and other service periods (all other time periods). Veterans are counted in only one period of service, their most recent wartime period. Veterans who served in more than one wartime period are classified in the most recent one. Veterans who served in both a wartime period and any other service period are classified in the wartime period.<sup>4</sup>

In its monthly employment situation report, BLS provides unemployment rates for nonveterans and veterans 18 years and over from each of these service periods (Table A-5). On its website, BLS provides unemployment rates by age cohort for nonveterans, total veterans and Gulf War era II veterans (Table A-40). In its annual report, "Employment Situation of Veterans," BLS provides additional data either for a single month (most recently, August 2012) or as an annual average (most recently, 2012). The analysis below relies on the latest annual or monthly data (July 2013 if available or August 2012). Rates for veterans and nonveterans are not seasonally adjusted, unlike the "headline" seasonally adjusted rate that is widely reported in the media.

#### Unemployment rates for all veterans

The one piece of data that OFCCP cites is both incomplete and very outdated, reflecting annual averages that are nearly four years old. The latest data, for July 2013, were posted by BLS on August 5.<sup>5</sup> The rate for all veterans was 6.4%, compared with 7.3% for nonveterans. The rates for 18-24-year-olds were 17.4% for veterans and 14.1% for nonveterans. The rates for 25-34-year-olds were 6.8% for veterans and 7.7% for nonveterans. The rates for 35-44-year-olds were 5.7% for veterans and 5.8% for nonveterans. The rates for 45-54-year-olds were 6.8% for veterans and 5.2% for nonveterans. The rates for persons 65 and over was 5.8% for veterans and 4.1% for nonveterans. In summary, in July 2013, the overall rate for veterans was lower than for nonveterans, as was the rate for one of the two age cohorts cited in the proposed regulation (25-34-year-olds).

In any case, OFCCP provides no rationale for selecting those two age cohorts, which are not closely related to the protected categories listed in the proposed regulation. In fact, there are unemployment rates available for groups that correspond more closely to the protected categories. Those data do not show any evidence of discrimination. In fact, like the overall unemployment rate for veterans, rates for protected categories in many cases are close to, or lower than, rates for nonveterans.

---

<sup>4</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Employment Situation of Veterans—2012," March 20, 2013, <http://www.bls.gov/news.release/pdf/vet.pdf>, Table 5

<sup>5</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Labor Force Statistics from the Current Population Survey," Table A-40 (online only), <http://www.bls.gov/web/empsit/cpseea40.htm>, accessed August 5, 2013

## Unemployment rates for protected categories

### 1. Special disabled veterans

Under the proposed rules, special disabled veteran means:

(i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability: (A) Rated at 30 percent or more; or (B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap; or (ii) A person who was discharged or released from active duty because of a service-connected disability. (2) Serious employment handicap, as used in paragraph (w)(1)(B)) of this section, means a significant impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes and interests.<sup>6</sup>

Table 6 in the BLS publication "Employment Situation of Veterans--2012" shows the employment status of veterans with different service-connected disability ratings: less than 30%, 30 to 50%, 60% or higher, disability rating not reported, without service-connected disability, and presence of disability not reported. The definition of "special disabled veterans" under Section 4212 would appear to encompass all veterans with a 30% or higher disability rating, plus an undetermined fraction of veterans with a less than 30% disability rating.

In August 2012 (the most recent available month), the unemployment rate for veterans with service-connected disability was 6.5%.<sup>7</sup> The combined rate for veterans with disability ratings of 30 to 50% and 50% or higher was 8.4%.<sup>8</sup> The unemployment rate for all nonveterans age 18 and over was 9.0%.<sup>9</sup> In other words, by either measure of disability, the unemployment rate that approximates the category "special disabled veterans" is lower than the rate for nonveterans.

### 2. Veterans of the Vietnam era

In Table A-5 of its monthly employment situation report, BLS reports the unemployment rate for "World War II, Korean War, and Vietnam-era veterans." BLS's definition of Korean War era veterans covers those who last served on active duty in January 1955. The youngest of these veterans would have been 18 years old in January 1955 and 75 years old in August 2012. World War II-era veterans, defined as those who last served in December 1946, would have been at least 83 years old in August 2012. Thus, the veterans in this BLS category who were still unemployed and looking for work were almost entirely Vietnam-era veterans.

The unemployment rate for World War II, Korean War, and Vietnam-era veterans in August 2012 was 5.2%, compared with a 9.0% rate for all nonveterans age 18 and over.<sup>10</sup> The most recent data

---

<sup>6</sup> Federal Register, Vol. 76, No. 80 (April 26, 2011), p. 23394

<sup>7</sup> "Employment Situation of Veterans—2012," Table 6

<sup>8</sup> Author's calculation from data in *ibid.*, Table 6

<sup>9</sup> U.S. Department of Labor, Bureau of Labor Statistics, "Employment Situation—August 2012," September 7, 2012, [http://bls.gov/news.release/archives/empsit\\_09072012.pdf](http://bls.gov/news.release/archives/empsit_09072012.pdf), Table A-5

<sup>10</sup> "Employment Situation of Veterans," Table 6

are for July 2013, when the rates were 6.7% for World War II, Korean War, and Vietnam-era veterans and 7.3% for nonveterans.<sup>11</sup> Again, the data do not show that veterans are being discriminated against.

3. Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized

BLS does not categorize individuals as to whether they served during a war or in a campaign or expedition for which a campaign badge has been authorized. However, BLS does report unemployment rates for “veterans of other service periods” than the Gulf and other war eras. By subtracting this category from total veterans, it is possible to approximate the Section 4212 protected category.

In August 2012, Gulf and other war era veterans had a combined unemployment rate of 7.0%<sup>12</sup>, compared with a 9.0% rate for nonveterans. In July 2013, Gulf and other war era veterans had a combined unemployment rate of 6.4%,<sup>13</sup> compared with a 7.3% rate for nonveterans. Once again, the data do not show that veterans are being discriminated against.

4. Recently separated veterans

Recently separated veterans are veterans who completed service within the previous 12 months. All such veterans since late 2002 would be included in the BLS category of Gulf War era II veterans, which covers veterans whose service ended in October 2001 or later. But that BLS category now covers far more veterans discharged over a year ago than ones discharged in the past 12 months.

As noted earlier, BLS also provides monthly average unemployment rates for veterans and nonveterans in several age ranges: 18-24, 25-34, 35-44, 45-54, 55-64 and 65 and over. If most military personnel are at least 18 when they enlist and serve for at least two years, then most 18-21-year-old veterans would be recently separated, as would many 22-24-year-olds. Some Gulf War era II veterans in older age groups would also be recently separated.

In July 2013, the unemployment rate (annual average) for Gulf War II era veterans ages 18-24 was 17.4%, compared with a 14.1% rate for nonveterans in the same age group.<sup>14</sup> The rate for veterans was three percentage points lower than the 2009 average cited in the proposed regulation, and the increment over the nonveteran rate was 3.3 percentage points, not 4.5 points as in 2009. While 3.3 points might seem like a noteworthy disparity, there is a wide range of uncertainty regarding the young veterans’ rate, and it should be viewed with caution.

BLS calculates unemployment rates each month based on responses from a sample of 60,000 households, known as the Current Population Survey (CPS), which are weighted to represent the entire civilian noninstitutional population age 16 and over. Of that total, unemployed Gulf War era II veterans

---

<sup>11</sup> U.S. Department of Labor, Bureau of Labor Statistics, “Employment Situation—July 2013,” August 2, 2013, [http://bls.gov/news.release/archives/empsit\\_08022013.pdf](http://bls.gov/news.release/archives/empsit_08022013.pdf), Table A-5

<sup>12</sup> Author’s calculation from “Employment Situation of Veterans—2012,” Table 6

<sup>13</sup> Author’s calculation from “Employment Situation—July 2013,” Table A-5

<sup>14</sup> “Labor Force Statistics from the Current Population Survey,” Table A-40

age 18-24 constituted 28,000 out of 234 million persons age 18 and over in July 2013, or 0.012%.<sup>15</sup> In a sample of 60,000, 0.012% amounts to just 7 respondents. As BLS explains in “Employment Situation of Veterans—2012”:

**Reliability of the estimates.** Statistics based on the CPS are subject to both sampling and nonsampling error. When a sample, rather than the entire population, is surveyed, there is a chance that the sample estimates will differ from the true population values they represent. The component of this difference that occurs because samples differ by chance is known as *sampling error*....The CPS data also are affected by *nonsampling error*. Nonsampling error can occur for many reasons, including the failure to sample a segment of the population, the inability to obtain information for all respondents in the sample, the inability or unwillingness of respondents to provide correct information, and errors made in the collection or processing of the data.<sup>16</sup>

In other words, the actual unemployment rate for 18-24-year-old veterans could differ from the 17.4% calculated rate by several percentage points. Even the actual rate for 18-24-year-old nonveterans, which is based on 2.9 million unemployed persons, could be somewhat larger or smaller than 14.1%.

As noted, the category “recently separated veterans” also includes some Gulf War era II veterans older than 24. The July 2013 unemployment ages 25-34 were 6.8% for Gulf War era II veterans and 7.7% for nonveterans—quite different from the 11.8% and 9.9% rates in 2009 cited in the proposed regulation.<sup>17</sup>

It is not possible to calculate from publicly available BLS data the unemployment rates for recently separated veterans in these (or older) age cohorts. But, given how much lower the overall rate is for each of the older cohorts (between 5.7% and 6.8%), the rate for all recently separated veterans is likely to be lower than the rate for the 18-24-year-olds, and likely to be closer—perhaps equal—to the rate for nonveterans. Thus, it is not reasonable to conclude that a statistically significant difference in unemployment rates exists between recently separated veterans and others on the basis of a tiny sample that both (a) includes some 22-24-year-old veterans who were not recently separated and (b) excludes some older veterans who were recently separated.

### Qualifications of young veterans

Even if recently separated 18-24-year-old veterans do, in fact, have higher unemployment rates than nonveterans of the same age, that fact does not imply discrimination or lack of affirmative action on the part of employers. While their service provides veterans with many opportunities, the training they receive and skills they develop may not be immediately transferable to the civilian labor market, especially for veterans who have recently returned from service outside the U.S. Meanwhile, their nonveteran counterparts may have more opportunity to learn about job openings, continue education and training, and work in internships or jobs that make them more employable. The requirements

---

<sup>15</sup> *Ibid.*

<sup>16</sup> “Employment Situation of Veterans,” Technical Note

<sup>17</sup> “Labor Force Statistics from the Current Population Survey,” Table A-40

imposed by the proposed regulation would do nothing to address these issues and, in fact, would detract from the amount of time and money employers could devote to recruiting and training veterans.

### **Construction and veterans**

The construction industry has a long record of recruiting and hiring veterans. Recent data show that veterans are slightly more likely than nonveterans to be employed in construction. Specifically, in 2012, 5.4% of employed veterans worked in the construction sector, compared with 4.9% of nonveterans.<sup>18</sup>

Unfortunately, the long slump in construction has meant that the industry has not been hiring nearly as many workers as it did before the recession. In fact, the recession began earlier, ended later, and has been much steeper in construction than in the overall economy. Construction employment (seasonally adjusted) topped out in March 2006 at 7.7 million and declined 30% until bottoming out at 5.4 million in January 2011.<sup>19</sup>

The industry's recovery since early 2011 has been slow and uneven. Total hires in construction averaged 5.4 million per year from 2000 through 2006 but only 4.0 million per year in 2010 through 2012. Meanwhile, total hires in the economy have risen for three years in a row, increasing 12% from 46 million in 2009 to 52 million in 2012.<sup>20</sup> As a result, young veterans (and nonveterans) are more likely to be employed outside of construction than they were previously. In 2012, 4.5% of all employed Gulf War era II veterans were employed in construction. That was still close to the industry's share of nonveteran employment despite the lack of ability to hire recently, and was a sign of the industry's weak economic condition, not of discrimination.

### **Other evidence**

It is striking that OFCCP did not rely on its own compliance information in providing a justification for imposing additional burdens on employers. An examination of the complaints filed with OFCCP and their resolution shows that there is no record of discrimination.

Specifically, in July 2012, the Center for Corporate Equity issued a report, "A Review of OFCCP Enforcement Statistics Related to Section 503 of the Rehabilitation Act and the Vietnam Era Veterans Readjustment Assistance Act" that analyzed OFCCP enforcement data between 2004 and the first half of 2012<sup>21</sup>. OFCCP identified only 63 total instances of possible discrimination against veterans or people with disabilities among the 285,390 federal contractor establishments over which the OFCCP has jurisdiction. The report found that federal officials, when responding to reported complaints, determined that only 0.02 percent of all federal contractors could be seriously suspected of having

---

<sup>18</sup> *Ibid.*, Table 5

<sup>19</sup> U.S. Department of Labor, Bureau of Labor Statistics, Current Economic Statistics, [www.bls.gov/ces/#data](http://www.bls.gov/ces/#data)

<sup>20</sup> U.S. Department of Labor, Bureau of Labor Statistics, Job Openings and Labor Turnover Survey, [www.bls.gov/ilt/#data](http://www.bls.gov/ilt/#data)

<sup>21</sup> <http://www.cceq.org/PDFs/cce-vevraa.pdf>

discriminated against veterans or people with disabilities. The agency found discrimination among in only 0.01 percent of firms it audited each year as part of its routine compliance review process.

Thus, the rule would impose new burdens on more than 285,000 federal contractors to address possible discrimination that has been identified among only 0.02% of them. As with the BLS data on unemployment rates, there is no credible evidence of discrimination that warrants adoption of this rule.

Kenneth D. Simonson  
Chief Economist  
Associated General Contractors of America  
[simonsonk@agc.org](mailto:simonsonk@agc.org)  
703-837-5313





*- Our mission is to create workplaces free from bias and unlawful discrimination by harnessing the synergies between human resource functions and promoting affirmative action and equal employment regulatory compliance.*

**A Review of OFCCP Enforcement Statistics Related to  
Section 503 of the Rehabilitation Act and the Vietnam Era Veterans Readjustment Assistance Act**

**David Cohen, M.S., Sr. Vice President**

**Amanda Shapiro, M.S., Consultant**

**July 2012**

**The Center for Corporate Equality (CCE)**

**1920 I Street NW, Suite 400**

**Washington, DC 20006**

**Phone: 202-293-2220**

**[www.cceq.org](http://www.cceq.org)**

### Executive Summary

In 2011, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) proposed to revise the regulations implementing the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act (Section 503). In light of these proposed changes, the Center for Corporate Equality (CCE) conducted an evidence-based analysis of enforcement data related to charges of discrimination against protected veterans and individuals with disabilities. If the proposed regulations are implemented they would redefine affirmative action and significantly increase the emphasis on anti-discrimination policies for these protected groups. This study seeks to answer the question of whether there is evidence available to support the implementation of the proposed changes. That is, do the data indicate that systemic discrimination against protected military veterans and the disabled is occurring at a rate high enough to justify major changes in the regulations that govern VEVRAA and Section 503?

Three publicly available data resources were used to summarize and interpret OFCCP's enforcement of VEVRAA and Section 503 since fiscal year 2004. These three sources include two Department of Labor databases of OFCCP compliance evaluations and complaint investigations, as well as CCE's database of OFCCP compliance reviews that resulted in a conciliation agreement alleging discrimination against a protected group. The data cover almost a nine-year period and presumably include a universe of approximately 285,390 federal contractor establishments. These data sources were analyzed using descriptive statistics to summarize historical enforcement patterns from September 2004 to June of 2012. Results are organized into two different types of OFCCP enforcement; proactive compliance evaluations and reactive complaint investigations. We found several interesting findings.

With regard to Complaint Investigations:

- Of the approximately 285,390 federal contractor and subcontractor establishments:
  - OFCCP fielded 871 veteran and/or disability complaints between 2004 and June of 2012. Of these 871 complaints, 60 (6.89%) resulted in a violation, an average of 6.67 violations per year.
  - Approximately 95% of all complaints closed without a finding of discrimination involving protected veterans and/or individuals with disabilities.
  - Importantly, the vast majority of these 60 settlements were technical violations (e.g., record-keeping), rather than violations indicating systemic discrimination.

## OFCCP Enforcement Summary

- Based on analyses of complaint data from 2004 to June 2012, it is estimated that less than 0.021% of the 285,390 federal contractor establishments are likely to have a finding of discrimination with regard to protected veterans or individuals with disabilities.

### With regard to Compliance Evaluations:

- From 2007 through 2011, OFCCP conducted 22,104 compliance reviews of federal contractor establishments. Of those, OFCCP alleged discrimination against protected veterans and individuals with disabilities in three (less than 1 tenth of a percent) instances.
- Two of the cases alleged discrimination against protected veterans, while one alleged discrimination against disabled veterans.

After considering the number of violations that result from routine compliance evaluations as well as complaint investigations, it is estimated that less than one percent of federal contractor establishments are likely to have a finding of discrimination against protected veterans or individuals with disabilities. While the data in this report do not prove, nor disprove, the existence of discrimination against protected veterans and individuals with disabilities, the above results fail to provide the evidence needed to make an evidence-based policy decision such as those proposed in the regulations. These results suggest that discrimination against protected veterans and individuals with disabilities, especially with regard to hiring, is not a frequent finding by OFCCP and may not support the major shift in policy that the proposed regulations would necessitate. It is important to note that this report is not a criticism of the agency or the quality of its work. Instead, it is an attempt to neutrally summarize the findings of OFCCP's audit and enforcement efforts.

## Introduction

The Center for Corporate Equality (CCE) is a national, non-profit research organization focused on Equal Employment Opportunity. Our mission is to help leaders from various human resource functions harness their natural synergies, understand a breadth of EEO topics, and work together to promote affirmative action and equal employment compliance in their workplaces. Toward this end, CCE conducts research and publishes reports on EEO enforcement, emerging legal topics, and methodological issues.

In response to the return of our military service members, the federal government has proposed various initiatives intended to increase veterans' employment opportunities in the civilian workforce. Relatedly, employment opportunity for individuals with disabilities is an important topic for the current administration and is also the focus of current initiatives.

As a result, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) announced two Notices of Proposed Rulemaking (NPRM) to amend and revise regulations related to individuals with disabilities and protected veterans. Specifically, on April 26, 2011, OFCCP proposed to revise the federal regulations implementing the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) and on December 9, 2011, OFCCP proposed to make similar revisions to the federal regulations implementing Section 503 of the Rehabilitation Act (Section 503). VEVRAA prohibits discrimination against, and requires affirmative action to employ, the veterans that fall into one or more of four categories.<sup>1</sup> Section 503 prohibits discrimination against, and requires affirmative action to employ, individuals with disabilities.

The current requirements of Section 503 and VEVRAA have an anti-discrimination component but primarily focus on affirmative action efforts to engage in positive outreach and recruitment to employ and advance members of these protected groups. Thus, many of the current requirements focus on effective outreach, recruitment and good faith efforts; activities which serve to increase the qualified applicant pool for contractors. If the proposed regulations are implemented a major shift would occur, redefining affirmative action, while placing significant emphasis on anti-discrimination. While the proposals would increase the current requirements to engage in affirmative action and eliminate discrimination, they would clearly increase the latter as much if not more than the former. The proposed rules would, for example, require employers to track in detail the disability and veteran status of all job applicants and employees, provide a written justification for why each disabled or veteran applicant was not hired, and annually conduct statistical analyses of both employment and hiring data. Above and beyond the proposed

---

<sup>1</sup> VEVRAA covers disabled veterans, recently separated veterans, armed forces service medal veterans and other protected veterans.

regulations' requirement to develop relationships with local groups, few, if any of the new requirements, would have any direct impact on the applicant flow and subsequent hiring for either veterans or individuals with disabilities<sup>2</sup>.

A recent article in the *New York Times* succinctly addressed the issue of government policies and the utilization of the behavioral sciences<sup>3</sup>. In the article, economist Richard H. Thaler proposed two mantras when it comes to forming new policies:

- If you want to encourage some activity, make it easy
- You can't make evidence-based policy decisions without evidence

Given this major shift in policy and focus to anti-discrimination efforts, one would expect that past enforcement of Section 503 and VEVRAA shows evidence of significant, if not widespread, discrimination against protected veterans and individuals with disabilities.

OFCCP's proposed rulemakings for both VEVRAA and Section 503 do not provide past enforcement data (i.e., evidence) as part of the impetus for the changes to the regulations<sup>4</sup>. Thus, in an effort to address the question of whether there is evidence to support either an increase or shift in discrimination patterns against protected veterans or individuals with disabilities, this report summarizes several OFCCP sources of enforcement data related to protected veterans and persons with disabilities. These sources include data regarding OFCCP compliance evaluations and complaint investigations of federal contractors and subcontractors. The data cover almost a nine year period and include a universe of approximately 285,390 federal contractor establishments<sup>5</sup> (see Appendix A). Presumably, the data from these two methods would reflect a need for increased anti-discrimination requirements for contractors and are behind the shift in policy that the proposed regulations reflect.

---

<sup>2</sup> Proposed changes, in addition to the detailed tracking of applicants (and employees for training opportunities), include: local job posting requirements (national posting does not fulfill requirement), statistical analysis of efforts (referral ratios, applicant ratio, job fill ratio, and hiring ratio), increased record-keeping requirements (5 years), and solicitation of status pre and post-offer for applicants and annually for employees.

<sup>3</sup> Thaler, R. H., (2012, July 8). Watching behavior before writing the rules. *The New York Times*, p. BU4. (<http://www.nytimes.com/2012/07/08/business/behavioral-science-can-help-guide-policy-economic-view.html?pagewanted=all>)

<sup>4</sup> Rather, the agency cited the unemployment rates for the members of these groups in the NPRM preambles. According to the Bureau of Labor Statistics (BLS), the 2009 unemployment rate for veterans 18 to 24 years old was 21.1% (in comparison to 16.6% for non-veterans in the same age group). It should be noted that this refers to all veterans and not just those covered under VEVRAA. Additionally, the Section 503 NPRM preamble reported BLS data that captured the 2010 unemployment rate for working age individuals with disabilities in the workforce as 14.8% compared to 9.4% for working age individuals without disabilities (note, BLS reports that only 21.8% of working age people with certain functional disabilities are included in the labor force).

<sup>5</sup> Federal contractor establishments were used, rather than total companies, because affirmative action plans (and thus audits) are establishment based.

In the current study, we seek to answer the question of whether there is evidence to support the implementation of the currently proposed changes to the regulations governing Section 503 and VEVRAA. The goal of this study is not to prove (or disprove) that discrimination is occurring, but rather to investigate whether the current, available data support the acceptance of rules that require such a major shift in policy. It is important to note that this report is in no way a criticism of the agency or the quality of its work; CCE reports and interprets the available data without making assumptions or unreasonable inferences.

## Method

### Data Overview

This report predominately utilizes three sources of information to summarize and interpret enforcement of VEVRAA and Section 503 since fiscal year 2004. Each of these sources provides a different piece of information for the enforcement of these two important regulations over the last nine years. Although there may be other data to consider, CCE exhausted the relevant (and available) data to address whether evidence exists to support the proposed regulations. The following sections summarize each of the data sources, including the method of collection and any possible ambiguity or error that may have existed within the source. Interpretation of these sources occurs in the following section. The data sources utilized were:

- OFCCP enforcement database: *Complaint Investigations* (2004-2012)
- OFCCP enforcement database: *Compliance Evaluations* (2004-2012)
- *CCE database* of OFCCP compliance reviews that resulted in a conciliation agreement alleging discrimination against a protected group (2007-2011)

To add some context to the databases, there are approximately 285,390 federal contractor and subcontractor establishments that are subject to routine compliance evaluations (i.e. audits) and possible complaints.

### Complaint Investigations

The first data source utilized was an OFCCP enforcement database for complaint investigations<sup>6</sup> made publically available by the Department of Labor (DOL). A complaint investigation occurs when a protected individual, or group of individuals, files a complaint with the OFCCP against a federal contractor establishment. This source provides useful information with regard to the question of whether

---

<sup>6</sup> [http://ogesdw.dol.gov/raw\\_data\\_catalog.php](http://ogesdw.dol.gov/raw_data_catalog.php)

or not discrimination has previously occurred, as all 285,390 contractor establishments are susceptible to have complaints filed each year. The available database includes records from fiscal year 2004 through “present.” It is assumed that “present” refers to June 5, 2012 as that is the last reported “update date” on the website. However, the website does not define what “update” means, so it is unclear if the data reflect activity as of June 5, 2012 or if the cutoff date is an earlier point of time. Based on data in the compliance evaluation database discussed below, we believe the “present” data reflect September 1, 2011 to June 1, 2012. The website reports that it is updated monthly.

The database includes information regarding the basis of the complaint (e.g., gender, race, veteran status) as well as the investigative authority. OFCCP enforces Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA), thus each complaint investigation is covered by one of these three investigative authorities. As Table 1 shows, there were 1,124 complaints investigated and closed from 2004 through present. The majority of complaints were under the investigative authority of VEVRAA or Section 503 (40.21% and 35.05% respectively), with the remaining 25 percent under EO 11246 or “other”. The database did not define what “other” refers to for the investigative authority.

**Table 1. Summary of OFCCP Complaint Investigations: Investigative Authorities (2004-2012)<sup>1</sup>**

Investigative Authority	# of Complaints	% of Total Complaint Investigations
VEVRAA	452	40.21%
503	394	35.05%
Executive Order 11246	260	23.13%
Other <sup>2</sup>	18	1.60%
<b>Total</b>	<b>1124</b>	<b>100.00%</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Not defined in OFCCP database

Those complaints that involved protected veterans and/or individuals with disabilities were the main focus of this study. To determine if the complaint involved a veteran claim or an individual with a disability claim, the investigative authorities as well as the basis for the complaint were considered. As Table 2 shows, complaints could be filed with a basis of discrimination for veteran or disability. If the complaint did not include a “yes” under at least one of the two categories of interest, it was not included as a “disability-related” or “veteran-related” complaint. Overlap exists between the basis of the complaint, and the investigative authority for the complaint, within and across the two groups (i.e., protected veterans and individuals with disabilities), so the basis columns cannot be summed to reach the total number of “related” complaints for the year. It should be noted that there is not a complete overlap

OFCCP Enforcement Summary

between related columns. That is, all complaints covered under Section 503 do not necessarily have a basis of disabled and all complaints involving disability were not necessarily filed under Section 503 (see Appendix B for a detailed breakdown of investigative authority and basis for veteran and/or disability-related complaints). Only complaints related to disability or veteran status are included in Tables 1 and 2.

**Table 2. Summary of OFCCP Complaint Investigations: Basis of Veteran or Disability (2004-2012)<sup>1</sup>**

<b>Fiscal Year</b>	<b>Alleged Discrimination on the Basis of Veteran Status</b>	<b>Alleged Discrimination on the Basis of Disability</b>	<b>Total Veteran- and Disability-Related Complaints<sup>2</sup></b>
2004	73	65	124
2005	66	50	114
2006	53	50	93
2007	54	40	85
2008	79	70	134
2009	39	48	69
2010	41	50	80
2011	62	63	110
2012 <sup>1</sup>	22	43	62
<b>Total</b>	<b>489</b>	<b>479</b>	<b>871</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Overlap exists between the basis of the complaint, and investigative authority for the complaint, within and across the two groups (i.e., protected veterans and individuals with disabilities), so the investigative authority counts (from table 1) and basis counts cannot be summed to reach the total of complaints for the year.

Tables 3 and 4 show, by fiscal year, the number of filed complaints that are considered veteran or disability-related. From 2004 to present, there were 141 veteran- and disability-related complaints that overlapped; thus, there are 871 unique complaints that involve veterans and/or individuals with disabilities over the almost nine year period (Table 5). In addition to the investigative authority and basis of alleged discrimination for the complaint, the enforcement database also reports whether the complaint resulted in a finding of a violation (Tables 3-5). It should be noted that the database does not specify whether or not the violation is a technical violation (i.e., no monetary remedies, typically just reporting requirements) or a finding of discrimination (e.g., payment of back pay, payment of benefits). However, the database does specify the categorical type of violation (e.g., hiring, termination, failure to accommodate). Table 6 provides a count of the violations found in veteran and/or disability-related complaint investigations. Tables 3-6 are discussed in further detail in the analysis section.

*Database Integrity Issues*

It should be noted that there are some data inconsistencies within the database. For example, there were 17 complaints where the basis is “disabled” yet the complaint is not labeled under Section 503 or



VEVRAA as the investigative authority. Instead, the investigative authority is listed as Executive Order 11246 or “other”. Additionally, there are 8 complaints where the basis of the complaint is veteran status, yet EO 11246 or “other” was listed as the investigative authority rather than VEVRAA or Section 503. Similarly, there are 13 complaints where Section 503 is listed as the investigative authority, yet the basis of the complaint is not related to disabled or veteran status. Additionally, some of the violations are not intuitive given the basis of the complaint. For example, in one case the basis of the complaint was veteran status yet the violation was for pregnancy leave. There are two possibilities for this inconsistency; either there is an error in the database or the violations were found during an investigation although they were not the basis of the initial complaint.

Further, there may be duplicate records in the database (i.e., same company, location, fiscal year, and basis). At a minimum, 79 records within the complete database appear to be a duplicate, yet due to abbreviated names or address, not all duplicate records are easily identifiable. That being said, CCE is unable to determine if these 79 are true duplicates or whether more than one complaint of the same nature was filed at a facility during the same fiscal year. Due to the inability to differentiate between a duplicate record and an instance in which two complaints were filed at the same location within a year, these duplicate records were included in the analyses.

### Compliance Evaluations

In addition to complaint investigations, OFCCP also conducts routine compliance evaluations based on an administratively neutral selection system of federal contractor establishments. The DOL also makes an enforcement database of compliance evaluations<sup>7</sup> publicly available that is housed separate from the complaint investigation database. As with the complaint investigation database, the compliance evaluation database covers fiscal years 2004 to present and it is assumed that “present” refers to June 2012. Unlike the complaint database, the compliance evaluation database includes a closure date, of which the latest closure date is June 1, 2012; so it is assumed that June 1, 2012 is the cutoff date for the current data<sup>8</sup>. Similar to the complaint file, the compliance evaluation file also includes company information and the types of found violations. However, the compliance evaluation file does not include information regarding the protected class for audits that close with a violation. Thus it is impossible to

---

<sup>7</sup> [http://ogesdw.dol.gov/raw\\_data\\_catalog.php](http://ogesdw.dol.gov/raw_data_catalog.php)

<sup>8</sup> Another issue to note is that the public enforcement database has appeared to fluctuate depending on when the records were pulled. CCE has pulled the database previously, but when comparing a year of data to an old pull, the records do not match up exactly (note, this occurs for all years and not just the current fiscal year at the time of the data pull). For example, in 2011 CCE pulled the OFCCP database to use for another purpose. At that time, the reported number of compliance evaluations for fiscal year 2010 was 4,960; however, the most recent pull of the database reports 4,942 compliance evaluations for 2010. As with the data issues noted above, it is unknown whether this reflects an error. Without evidence to remove data reflecting these issues, CCE believes the data to be the best that are available and appropriate for analysis.

identify specific cases related to protected veterans or individuals with disabilities. To inform on this issue, CCE has performed other data collection methods to build a database that will be discussed in the next section.

Unlike the complaint investigation database, the compliance evaluation database includes the type of closure for each audit, identified as one of the following: closure letter, conciliation agreement, consent decree, or financial remedy. A closure letter is issued when an audit closes in full compliance with no violations. If the audit did not end with a closure letter, a notice of violation (NOV) was issued that resulted in a voluntary conciliation agreement, court-ordered consent decree, or financial remedy. Each of these NOV's results in the federal contractor being required to engage in follow-up reporting activities. For those violations that involve alleged discrimination, financial remedies are included. Appendix C provides the counts for the total number of compliance evaluations closed during each fiscal year from 2004 to present, as well as the manner in which they closed (i.e., closure letter or notice of violation).

#### CCE Database: OFCCP Settlements Alleging Discrimination

In addition to reviews of the public enforcement database, CCE annually submits a Freedom of Information Act (FOIA) request to OFCCP, requesting a copy of all conciliation agreements or consent decrees that included violations that alleged discrimination against a protected group. Conciliation agreements that result in technical violations only (e.g., record-keeping, failure to post with the state) are not reviewed as a part of CCE's annual analysis. Instead, the focus is on those violations where there is a finding of discrimination and some sort of financial settlement is paid to victims for alleged discrimination in hiring, compensation, promotions, or terminations. CCE has annually requested these data since fiscal year 2007 in order to inform the public about the types of audits and OFCCP strategies that end with a conciliation agreement or consent decree.<sup>9</sup> The actual conciliation agreements and consent decrees provide detailed information about each violation and remedy, and thus the CCE database will be used to provide context to the publically available OFCCP databases discussed above.

For the current study, those conciliation agreements from 2007 through 2011 that involved systemic discrimination against protected veterans and/or individuals with disabilities were reviewed (Table 7). Conciliation agreements can be the result of an administratively neutral scheduled compliance evaluation or complaint investigation. These data provide a piece of information that was lacking from the compliance evaluation database (i.e., protected class members) and thus allows those veteran- and

---

<sup>9</sup> CCE submitted an additional FOIA request on May 24, 2012 requesting all conciliation agreements and consent decrees alleging discrimination against protected veterans and individuals with disabilities from 2004 through present. To date, CCE has not received the requested information. Once this information is received, the report will be updated to reflect the additional data.

disability-related settlements to be identified. It also provides information to identify whether the complaint investigations with violations included systemic discrimination violations or only technical violations.

In reviewing the annual enforcement database and those records obtained through FOIA requests, CCE noticed that not all conciliation agreements that are listed in the public enforcement database as having a financial agreement (see Appendix C) were sent to CCE, specifically for fiscal year 2011. Specifically, there were 17 financial remedies identified in the database that were not received. After further inquiry with OFCCP, CCE received these missing conciliation agreements and noted that a label of “financial remedy” in the OFCCP database does not necessarily mean that discrimination was identified where remedies for protected class members was present. Instead, OFCCP included estimated financial remedies that a contractor anticipated using to implement the remedy for a technical violation as part of the settlement dollars that OFCCP obtains each year. Thus, in some cases, OFCCP reports settlements that do not go to victims of discrimination. For example, in one of the conciliation agreements obtained through the follow-up request, the violation states that the contractor failed to “provide access for mobility-impaired applicants and potential employees seeking employment”. The remedy was to modify the entrance to its Human Resources office to provide access for individuals with mobility disabilities; the estimated modification cost was \$385. OFCCP has coded this cost as a financial remedy even though the amount was not paid to an individual or class of victims. In another example, the contractor received a violation where the remedy included building modifications such as doorbells and restroom modifications to provide access for individuals with mobility disabilities. These changes were estimated to cost \$20,512.08. Again, this conciliation agreement did not include monetary retribution for victims of discriminations, but rather building modifications and technical violations. This classification of estimated building modification costs as a financial remedy should be considered when interpreting results from Appendix C, especially for 2011, as the number of contractors with a financial settlement is likely less than what is reported in the enforcement database. These data issues reinforce the importance of using the CCE database when interpreting enforcement statistics from the complaint investigation and compliance evaluation databases.

## **Analyses**

### Complaint Investigations

Tables 3 and 4 provide detailed information about the number of complaints investigated and closed each year for protected veterans and individuals with disabilities, as well as the number of violations resulting from those investigations. In reviewing the annual breakdown of veteran- and disability-related

OFCCP Enforcement Summary

complaints, the number of complaints filed per year remains fairly consistent. Note that, based on Table 3, veteran complaints are declining and approaching an all-time low with only 22% of complaints in 2012 related to veteran status<sup>10</sup>. This is interesting given the number of veterans returning from combat, the high-profile nature of the issue, and the fact that OFCCP is the only agency to enforce VEVRAA.

The percentage of veteran-related complaint investigations that resulted in a violation each year ranged from 1.30% to 15.63%, with an overall percentage of 7.18%. Considering all 1,124 complaints that were filed over the almost nine year period, only 3.29% were veteran-related and closed with a violation. To put this into context, approximately 97% of all complaints filed over the last eight plus years closed without a finding of discrimination in regard to discrimination against protected veterans.

**Table 3. Veterans-Related Complaint Investigations by Year (2004 - 2012)<sup>1</sup>**

Fiscal Year	# of Veteran-Related Complaint Investigations	Veteran Complaints Resulting in a Violation	% of Veteran Complaints	% of Total Complaints	Total Complaint Investigations <sup>2</sup>
2004	77	1	1.30% (1/77)	0.61% (1/165)	165
2005	71	3	4.23% (3/71)	2.27% (3/132)	132
2006	57	2	3.51% (2/57)	1.87% (2/107)	107
2007	55	2	3.64% (2/55)	1.83% (2/109)	109
2008	83	6	7.23% (6/83)	3.51% (6/171)	171
2009	39	6	15.38% (6/39)	7.06% (6/85)	85
2010	46	5	10.87% (5/46)	4.67% (5/107)	107
2011	64	10	15.63% (10/64)	6.94% (10/144)	144
2012 <sup>1</sup>	23	2	8.70% (2/23)	1.92% (2/104)	104
<b>Total</b>	<b>515</b>	<b>37</b>	<b>7.18%</b> (37/515)	<b>3.29%</b> (37/1124)	<b>1124</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Total complaints in the database include non-veteran or disability-related complaints (e.g., race, gender, etc.). Note, there is overlap between the veteran- and disability-related complaints

The percentage of disability-related complaint investigations that resulted in violations each year ranged from zero percent to 17.31%, with an overall percentage of 7.44%. Considering all 1,124 complaints there were filed over the almost nine year period, only 3.29% were disability-related and closed with a violation. As noted in the veteran-related complaints, we see that approximately 97% of complaints closed without merit with regard to discrimination against individuals with disabilities.

<sup>10</sup> It is important to keep in mind that 2012 only represents approximately nine months of data (i.e., September 1, 2011 to June 1, 2012) and thus the totals may look different once the fiscal year ends.

**Table 4. Disability-Related Complaint Investigations by Year (2004 - 2012)<sup>1</sup>**

Fiscal Year	# of Disability-Related Complaint Investigations	Disability Complaints Resulting in a Violation	% of Disability Complaints	% of Total Complaint	Total Complaint Investigations <sup>2</sup>
2004	66	0	0.00% (0/66)	0.00% (0/165)	<b>165</b>
2005	53	1	1.89% (1/53)	0.76% (1/132)	<b>132</b>
2006	53	2	3.77% (2/53)	1.87% (2/107)	<b>107</b>
2007	41	1	2.44% (1/41)	0.92% (1/109)	<b>109</b>
2008	73	7	9.59% (7/73)	4.09% (7/171)	<b>171</b>
2009	48	4	8.33% (4/48)	4.71% (4/85)	<b>85</b>
2010	52	9	17.31% (9/52)	8.41% (9/107)	<b>107</b>
2011	65	6	9.23% (6/65)	4.17% (6/144)	<b>144</b>
2012 <sup>1</sup>	46	7	15.22% (7/46)	6.73% (7/104)	<b>104</b>
<b>Total</b>	<b>497</b>	<b>37</b>	<b>7.44% (37/497)</b>	<b>3.29% (37/1124)</b>	<b>1124</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Total complaints in the database include non-veteran- or disability-related complaints (e.g., race, gender, etc.). Note, there is overlap between the veteran- and disability-related complaints for each year

As discussed in the methods section, there is an overlap between 141 of the veteran and disability-related complaints, thus there are 871 complaints total that are veteran and/or disability-related (Table 5). Of these 871 complaints, 60 resulted in a violation, with an average of 6.67 violations per year. As noted in the following section, the vast majority of these complaints involve technical violations rather than an allegation of discrimination. Based upon these data, from 2004 to present, only 6.89% of disability and veteran-related complaints that were investigated and closed were found to have merit. Further, these findings represent only 5.34% of all complaints filed from 2004 to present. Thus, approximately 95% of all complaints closed without a finding of discrimination involving protected veterans and/or individuals with disabilities. Notably in 2012, 8 of 62 veteran and disability-related complaints (12.9%) have settled with a notice of violation.

Table 6 summarizes the type of violations found as a result of veteran and disability-related complaints. For both groups, the most common violation was “other”, which was not defined by the OFCCP enforcement database. After that, terminations, accommodations, and hiring were the most common violations. As noted in Table 6, 14 of the complaints that result in a violation were both veteran- and disability-related, thus the veteran and disability columns do not necessarily sum to the total number of violations found for the unique complaints filed. Additionally, one complaint may result in more than one type of violation. For example, in one of the disability-related complaints, there was a violation for

**Table 5. Overview of Veteran- and Disability-Related Complaint Investigations and Violations (2004 - 2012)<sup>1</sup>**

Type of Complaint	Complaints			Violations				
	# of Complaints	Avg. # Complaints Per Year	Median # Complaints Per Year	# of Complaints Resulting in a Violation	Avg. # Violations Per Year	Median # Violations Per Year	% Resulting in a Violation	% Resulting in a Violation
Veterans and/or Disability Complaint Investigations <sup>2</sup>	871	96.77	93	60	6.67	7	6.89% (60/871)	5.34% (60/1124)
Non-Veteran or Disability Related Complaints (i.e., race, gender) <sup>3</sup>	253	28.11	27	31	3.44	3	12.25% (31/253)	2.76% (31/1124)
<b>Total Complaints</b>	<b>1124</b>	<b>124.89</b>	<b>109</b>	<b>91</b>	<b>10.11</b>	<b>9</b>	<b>8.10% (91/1124)</b>	<b>8.10% (91/1124)</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>There are 141 complaints that overlap for veteran- and disability-related, so there are 871 total complaints that are veteran, disabled or both

<sup>3</sup>Non-Veteran or Disability complaints represent the remaining filed complaints under other bases of discrimination (e.g. race) or investigative authority (e.g., EO 11246)

termination, layoff, harassment, job benefits, retaliation, accommodation, and “other”. Interestingly, Table 6 shows that over almost nine years, there were only 10 veteran and/or disability –related complaints that resulted in a hiring violation, with six hiring violations per related complaint. Further, when looking at unique veteran-only related complaints (i.e., those with no overlap with disability status), there are only 4 violations for hiring since 2004. This is surprising given the current administration’s focus on discrimination in hiring against veterans.

**Table 6. Type of Found Violations as a Result of Complaint Investigations for Veteran- and Disability-Related Complaints (2004-2012)<sup>1</sup>**

	Protected Veterans	Individuals with Disabilities	Total <sup>2</sup>
<b>Terminations</b>	6	11	13
<b>Accommodations</b>	6	9	11
<b>Hiring</b>	6	6	10
<b>Promotions</b>	4	3	7
<b>Job Benefits</b>	--	4	4
<b>Wages</b>	3	2	4
<b>Retaliation</b>	1	2	3
<b>Layoffs</b>	--	2	2
<b>Demotions</b>	2	--	2
<b>Harassment</b>	1	2	2
<b>Recall</b>	1	--	1
<b>Seniority</b>	1	--	1
<b>Pregnancy Leave</b>	1	--	1
<b>Religious Observance</b>	1	1	1
<b>Other<sup>3</sup></b>	14	11	21

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>There is overlap between 14 veteran and disability-related complaints that result in a violation, thus the veteran and disability columns may not add to the total number of violations for these two groups. Additionally, a complaint can close with more than one violation, so the individual columns cannot be totaled to the total number of complaints with violation(s).

<sup>3</sup>Not defined in OFCCP database

### Compliance Evaluations

As noted in the methods section, Appendix C summarizes the enforcement database for the compliance evaluations opened and closed from 2004 to present. The compliance evaluation database does not provide information regarding protected classes (e.g., veterans, individuals with disabilities, females, etc.), thus veteran- and disability-related compliance evaluations cannot be specifically identified through the database, as is possible with the complaint investigation database. As Appendix C shows, 84.18% of compliance evaluations ended with a closure letter between 2004 and present. The remaining

15.82% of compliance evaluations resulted in a notice of violation, which OFCCP coded in the database as a conciliation agreement (13.88%), consent decree (0.08%), or financial remedy (1.86%).

Importantly, there are a declining percentage of compliance evaluations closing with a letter of compliance in later years as compared with earlier in the time period. Thus, the number of conciliation agreements has increased, with the most drastic increases occurring in 2011 and 2012. The number of audits that close with financial agreements also appears to have increased over time which is likely the result of the current administration's practice of citing a building modification cost as a financial remedy in the database (as discussed in the data methods section above) versus a finding of discrimination.

#### CCE Database: OFCCP Settlements Alleging Discrimination

As noted previously in the data methods section, CCE annually requests the conciliation agreements and consent decrees from OFCCP that allege systemic discrimination against a protected group. As Table 7 shows, from 2007 to 2011 there were four instances in which a protected veteran or individual with a disability received financial remedies as a result of alleged discrimination. There were no conciliation agreements or consent decrees in 2007 or 2009 that resulted in monetary relief for protected veterans or individuals with disabilities. The four conciliation agreements in Table 7 represent 1.12% of the total systemic settlements from 2007 to 2011. Table 7 outlines the type of violation, protected class, and type of review for each case to provide context for the settlements.

The conciliation agreement from 2008 collected monetary relief for protected veterans. The company received a violation for a failure to "hire any protected veteran applicants ... although there were qualified candidates" for the job title in question. Back pay and interest were paid to affected class members. As Table 7 reflects, there were no findings of systemic discrimination in 2009. However, it should be noted there was a conciliation agreement included in the FOIA request for 2009 that CCE deemed inappropriate to include in our annual report. In reviewing the violation, it appears that the company failed to "provide directions for entrance into its facility to individuals with known physical limitations and modifications to its restrooms". Thus, the "remedy" is the estimated costs of those building and restrooms modifications. Remedies were not paid to individuals with disabilities, thus this conciliation was not included in Table 7.



**Table 7. Findings of Discrimination by OFCCP as a Result of all Audits (Compliance Evaluations and Complaint Investigations)<sup>1</sup> (2007-2011)**

Fiscal Year	Type of Violation	Protected Class	# of Audits with Findings of Discrimination	Type of Review
2007	--	--	0	--
2008	Hiring	Veteran	1	Compliance Evaluation
2009	--	--	0	--
2010	Hiring	Veteran	1	Compliance Evaluation
2011	Hiring	Disabled Veterans	2	Compliance Evaluation
	Termination & Retaliation	Individual with a Disability		Complaint Investigation

<sup>1</sup>Findings were obtained through a FOIA request by CCE for all OFCCP cases that settled and alleged systemic discrimination against a protected group

The conciliation agreement in 2010 was for a failure to employ protected veterans. Included in the description of the failure to hire violation is the company’s failure to “immediately list” (i.e., post) with the state employment office. Typically this posting violation is listed as a technical violation, separate from any disparate treatment or impact violations. The violation further explains that data from the state employment office was used to conduct the hiring adverse impact analyses. This is atypical as analyses should include those job seekers who apply to a position and are considered applicants per the Internet Applicant Regulation. Instead, this violation considered the constructed pool of applicants to be the 79 protected veterans enrolled with the state office, even though they never applied to a position at the organization. The conciliation agreement asserted that the failure to post with state prevented qualified veterans from applying to open positions with the organization and thus should be considered in the pool. This selection rate of 0% for veterans was compared to the actual applicant pool of “non-veterans” selection rate in order to determine whether there was impact. The organization was thus required to pay back pay and interest to veterans who registered with the state, but never actually applied to the organization. As noted above, this violation and remedy are atypical.

As Table 7 shows, there were two conciliation agreements in 2011 with violations for alleged systemic discrimination. The first conciliation agreement was for a failure to hire disabled veterans. Specifically, the company did not uniformly apply its selection procedures and criteria for employment of disabled veterans. Note that this company also received a technical violation for obtaining disability status

from applicants prior to making an offer<sup>11</sup>, yet this information was used in order to perform the selection rate analysis of veteran applicants.

The second conciliation agreement in 2011 was the result of a filed complaint (not randomly scheduled compliance evaluation). It may not be appropriate to interpret this violation in conjunction with the other three conciliation agreements; however the complaint did result in remedies paid to the complainant for what the OFCCP considers to be retaliation and termination violations (as reported in Table 6 above). The violation states that the company failed to reemploy the complainant after long-term disability when it failed to interview or select for a posted position “in retaliation for engaging in protected activity”. Because the violation is unclear and has several redacted sections, it is difficult to interpret. However, this complaint is recorded in the OFCCP enforcement database as having a violation for termination and retaliation. It is also unclear exactly what remedies the complainant received. The remedy states that \$24,640 of the \$99,000 that the company was required to pay, is for reimbursement for medical insurance premiums and expenses. The remedy does not specify to how the remaining \$74,360 was applied (e.g., back pay, interest, benefits, etc.).

#### OFCCP and CCE Databases

To provide an accurate picture of all available enforcement activity and findings of discrimination, data from the DOL enforcement databases for complaint investigations and compliance evaluations, as well as the data by CCE on systemic discrimination settlements, have been combined in Tables 8 and 9. Table 8 summarizes the total compliance evaluations completed from 2007 to 2011. Analysis is limited to these four years as the CCE database does not provide data for 2004-2006 or 2012. As noted in Table 8, from 2007 to 2011 only three compliance evaluations closed with an alleged finding of discrimination against veterans. These three findings constitute 0.014% of all compliance evaluations. Additionally, only one compliance evaluation closed with an alleged finding of discrimination for individuals with disability, which constitutes 0.005% of all compliance evaluations. Overall, out of 22,104 compliance evaluations conducted from 2007-2011, only three closed with an alleged finding of discrimination for protected veterans or individuals with disability<sup>12</sup>. These three findings represent 0.014% of all compliance evaluations conducted from 2007 through 2011.

---

<sup>11</sup> Both ADA and Section 503 preclude employers from inquiring into disability status prior to an offer of employment.

<sup>12</sup> The conciliation agreement in 2011 was for disabled veterans, thus there is overlap for the findings in 2011 giving only 3 total from 2007 to 2011.

**Table 8. Estimated Percentage of Federal Contractor Establishments with findings of Discrimination involving Protected Veterans and/or Individuals with Disabilities based on Compliance Evaluations (2007-2011)<sup>1</sup>**

Fiscal Year	Total Evaluations Completed <sup>2</sup>	Veterans		Individuals with a Disability		Total <sup>3</sup>	
		#	%	#	%	#	%
2007	4,923	0	0.000%	0	0.000%	0	0.000%
2008	4,325	1	0.023%	0	0.000%	1	0.023%
2009	3,907	0	0.000%	0	0.000%	0	0.000%
2010	4,942	1	0.020%	0	0.000%	1	0.020%
2011	4,007	1	0.025%	1	0.025%	1	0.025%
<b>Total</b>	<b>22,104</b>	<b>3</b>	<b>0.014%</b>	<b>1</b>	<b>0.005%</b>	<b>3</b>	<b>0.014%</b>

<sup>1</sup>Results based on the CCE Database, so time period only include 2007-2011

<sup>2</sup>Based on Enforcement Database: Compliance Evaluations. Numbers are reported in Appendix C.

<sup>3</sup>Based on numbers reported in table 7. Does not include the 2011 conciliation agreement that was the result of a complaint investigation. This is included in the number of findings reported for complaint investigations in 2011.

Table 9 provides an overview of the number of complaint investigations related to veterans or individuals with a disability that result in a violation. Additionally, it estimates the percentage of federal contractor establishments that you would expect to result in findings of discrimination based on the total number of contractor establishments in the country. Because every location is subject to having at least one complaint filed each year, the percentage of findings based on actual complaints was compared to the total number of contractor establishments. The estimated number of federal contractor establishments<sup>13</sup>, 285,390, was obtained from the Veterans Employment and Training Services (VETS) and is based on the number of establishments for which contractors completed VETS100A reports in 2010 (see Appendix A). This helps to estimate the percentage of federal contractor establishments that are likely to have a violation if investigated. Based on findings of violations from veteran-related complaints from 2004 to present, approximately 0.013% of federal contractor establishments are likely to have a finding of discrimination. The findings for disability-related complaints are also likely to be found in 0.013% of federal contractor establishments. Considering the unique veteran and disability-related complaints that resulted in a violation (60), only 1 in every 4,756 (0.021%) federal contractor establishments are likely to have a finding of discrimination for protected veterans and/or individuals with a disability.

<sup>13</sup> For a variety of reasons (e.g. incorrect filing, no filing) the number of estimated federal contractor establishments is likely a gross underestimation. For estimation purposes, the total number of reports submitted for the 2010 VETS100A was used as the estimated number of contractor establishments.

**Table 9. Estimated Percentage of Federal Contractor Establishments with Violations Involving Protected Veterans and/or Individuals with Disabilities based on Complaint Investigations (2004-2012)**

Fiscal Year	Estimated Number of Federal Contractor Establishments <sup>1</sup>	Veterans Complaints Resulting in a Violation <sup>2</sup>		Disability Complaints Resulting in a Violation <sup>2</sup>		Total	
		#	%	#	%	#	%
2004	285,390	1	0.000%	0	0.000%	1	0.000%
2005	285,390	3	0.001%	1	0.000%	4	0.001%
2006	285,390	2	0.001%	2	0.001%	2	0.001%
2007	285,390	2	0.001%	1	0.000%	3	0.001%
2008	285,390	6	0.002%	7	0.002%	11	0.004%
2009	285,390	6	0.002%	4	0.001%	7	0.002%
2010	285,390	5	0.002%	9	0.003%	12	0.004%
2011	285,390	10	0.004%	6	0.002%	12	0.004%
2012	285,390	2	0.001%	7	0.002%	8	0.003%
<b>Total</b>	<b>285,390</b>	<b>37</b>	<b>0.013%</b>	<b>37</b>	<b>0.013%</b>	<b>60</b>	<b>0.021%</b>

<sup>1</sup>Number of federal contractor establishments is based on 2010 VETS100A output. This is likely an underestimation of the number of federal contract establishments

<sup>2</sup>Based on numbers reported in table 7. Does not include the 2011 conciliation agreement that was the result of a complaint investigation. This is included in the number of findings reported for complaint investigations in 2011.

Based on the findings in Tables 8 and 9, it is estimated that fewer than one percent of federal contractor establishments are likely to have a finding of discrimination for protected veterans or individuals with disabilities in either a routine compliance evaluation or complaint investigation.

It should be noted that the findings of systemic discrimination from the CCE report only provides information from 2007-2011 for Table 8, whereas the enforcement databases provide information from 2004 to present (Table 9). However, based on the low frequency of findings in the CCE database for protected veterans or individuals with disabilities from 2007 to 2011 we suspect there are few, if any, that are missing. Even taking into consideration these limitations, CCE feels that the estimates provided in Tables 8 and 9 give appropriate context to the enforcement over the last nine years.

### Conclusion

This report leveraged multiple data sources to assess current levels of OFCCP enforcement related to protected veterans and persons with disabilities. A limitation of this research is the missing information from 2004 to 2006 for the CCE database. However, CCE has recently submitted a FOIA to OFCCP seeking to obtain all settlements with findings of discrimination against protected veterans and/or

individuals with disabilities from 2004 to present. A follow-up report will be produced once the data are received.

Given the available data, there does not appear to be an inference of support for the proposed regulations. While the data in this report do not prove, nor disprove, the existence of discrimination against protected veterans and individuals with disabilities, the above results fail to provide the evidence needed to make an evidence-based policy decision like those proposed in the regulations. These results suggest that discrimination against protected veterans and individuals with disabilities, especially with regard to hiring, is not a frequent finding by OFCCP and may not support the major shift in policy that the proposed regulations would necessitate.

**Appendix A.**  
**Annual Federal Contractor Reporting Comparison Table (January 31, 2011)**

Category	2010 VETS-100A	2010 VETS-100	2009 VETS-100A	2009 VETS -100	2008 VETS -100
Total Federal Contractors	13,536	8,880	13,011	11,919	22,159
Single Establishments	9,664	6,461	10,618	9,717	18,943
Multiple Establishment Organizations	5,665	3,543	7,340	4,861	8,690
Multiple Establishment Hiring Organizations	208,435	85,998	144,896	76,631	46,903
Multiple State Consolidated Reports	61,626	17,099	26,684	13,964	10,177
Total Reports Submitted	<b>285,390</b>	113,101	190,190	105,251	84,713
Regular Vietnam Era Veterans		217,600	n/a	199,055	341,000
Regular Special Disabled Veterans		49,368	n/a	45,800	62,020
Recently Hired Vietnam Era Veterans		15,968	n/a	14,285	32,007
Recently Hired Special Disabled Veterans		8,131	n/a	7,436	15,466
Regular Other Protected Veterans	784,593		669,265	n/a	n/a
Regular Disabled Veterans	155,386		154,002	n/a	n/a
Regular Armed Forces Service Medal	161,759		142,677	n/a	n/a
Regular Recently Separated	124,523		118,263	n/a	n/a
Recently Hired Other Protected Veterans	133,333		116,769	n/a	n/a
Recently Hired Disabled Veterans	54,601		50,053	n/a	n/a
Recently Hired Armed Forces Service Medal	58,056		51,332	n/a	n/a
Recently Hired Recently Separated Veterans	52,118		49,194	n/a	n/a

**Appendix B.**  
**Summary of Complaints that Include Protected Veterans**  
**or Individuals with a Disability (2004-2012)<sup>1</sup>**

Fiscal Year	Disability-Related Complaints		Veteran-Related Complaints		Total Veteran- and Disability-Related Complaints <sup>2</sup>
	Section 503 Authority	Disabled Basis	VEVRAA Authority	Veteran Basis	
2004	52	65	70	73	124
2005	43	50	69	66	114
2006	44	50	46	53	93
2007	31	40	50	54	85
2008	58	70	75	79	134
2009	38	48	29	39	69
2010	34	50	43	41	80
2011	53	63	51	62	110
2012 <sup>1</sup>	41	43	19	22	62
<b>Total</b>	<b>394</b>	<b>479</b>	<b>452</b>	<b>489</b>	<b>871</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Overlap exists between the basis of the complaint, and investigative authority for the complaint, within and across the two groups (i.e., protected veterans and individuals with disabilities), so the basis and investigative authority columns cannot be summed to reach the total of complaints for the year. It should be noted that there is not complete overlap between related columns (i.e., all complaints covered under Section 503 do not necessarily have a basis of disabled and vice versa), so all related columns are represented.

**Appendix C.**  
**Summary of All OFCCP Enforcement Outcomes as a Result**  
**of Compliance Evaluations<sup>1</sup> (2004-2012)<sup>2</sup>**

Fiscal Year	Closure Letter <sup>3</sup>		Notice of Violation						Total Compliance Evaluations
			Conciliation Agreement		Consent Decree		Financial Remedy		
	#	%	#	%	#	%	#	%	#
2004	4938	93.63%	277	5.25%	0	0.00%	59	1.12%	<b>5274</b>
2005	1921	90.61%	146	6.89%	0	0.00%	53	2.50%	<b>2120</b>
2006	3559	88.64%	383	9.54%	0	0.00%	73	1.82%	<b>4015</b>
2007	4390	89.17%	471	9.57%	0	0.00%	62	1.26%	<b>4923</b>
2008	3701	85.57%	539	12.46%	5	0.12%	80	1.85%	<b>4325</b>
2009	3204	82.01%	618	15.82%	9	0.23%	76	1.95%	<b>3907</b>
2010	4019	81.32%	839	16.98%	3	0.06%	81	1.64%	<b>4942</b>
2011	2898	72.32%	999	24.93%	9	0.22%	101	2.52%	<b>4007</b>
2012 <sup>2</sup>	1497	65.80%	697	30.64%	1	0.04%	80	3.52%	<b>2275</b>
<b>Total</b>	<b>30127</b>	<b>84.18%</b>	<b>4969</b>	<b>13.88%</b>	<b>27</b>	<b>0.08%</b>	<b>665</b>	<b>1.86%</b>	<b>35788</b>

<sup>1</sup>Data is from the Enforcement Database for Compliance Evaluations; this does not include complaint investigations

<sup>2</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>3</sup>Closure letters are issued when an audit closes in full compliance (i.e., no violations)