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November 12, 2013

The Honorable Tom Harkin  
Chairman  
The Honorable Lamar Alexander  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Darrell E. Issa  
Chairman  
The Honorable Elijah Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
House of Representatives

*Subject: Department of Labor, Office of Federal Contract Compliance Programs: Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor (DOL), Office of Federal Contract Compliance Programs (OFCCP) entitled “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans” (RIN: 1250-AA00). We received the rule on October 28, 2013. It was published in the *Federal Register* as a final rule on September 24, 2013, with an effective date of March 24, 2014. 78 Fed. Reg. 58,614.

The final rule revises the current implementing regulations of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002, (VEVRAA). OFCCP is responsible for enforcement of VEVRAA, which prohibits employment discrimination against protected veterans by covered federal contractors and subcontractors. VEVRAA also requires each covered federal contractor and subcontractor to take affirmative action to employ and advance in employment these veterans. The final rule strengthens several provisions that are intended to aid in recruitment and hiring efforts, such as clarifying the mandatory job listing requirements, requiring data collection pertaining to protected veteran applicants and hires, and establishing hiring benchmarks to assist in measuring the effectiveness of their affirmative action efforts.

Enclosed is our assessment of OFCCP's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that OFCCP complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Debra A. Carr  
Director, Division of Policy, Planning  
and Program Development, OFCCP  
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF LABOR,  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
ENTITLED  
"AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS  
OF CONTRACTORS AND SUBCONTRACTORS REGARDING  
SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA,  
DISABLED VETERANS, RECENTLY SEPARATED VETERANS,  
ACTIVE DUTY WARTIME OR CAMPAIGN BADGE VETERANS,  
AND ARMED FORCES SERVICE MEDAL VETERANS"  
(RIN: 1250-AA00)

(i) Cost-benefit analysis

OFCCP states that veterans make up 7.25 percent of the employed population. Under the VEVRAA rule, contractors have the option of establishing their own benchmark for employing protected veterans or meeting a benchmark set by OFCCP, currently 8 percent. OFCCP explained that assuming all contractors will choose to meet the OFCCP benchmark of 8 percent, OFCCP estimated that federal contractors would need to hire an additional 205,500 protected veterans. OFCCP divided its estimate of this rule's first-year cost by its estimate of the number of protected veterans expected to be hired in the first year and, because of this rule, returns a cost of approximately \$863 to \$2,353 per new hire. Present value costs over 10 years for the final rule range from \$1.08 billion to \$3.1 billion using a 3 percent discount rate. Using a 7 percent discount rate, the present value costs range from \$899 million to \$2.57 billion. Annualizing these costs yields a cost range of \$127 million to \$363 million at the 3 percent discount rate and \$128 million to \$366 million using a 7 percent discount rate.

OFCCP states that there are tangible and intangible benefits to investing in the recruitment and hiring of disabled veterans. Among them are employer tax credits, access to a broader talent pool, an expanded pool of job applicants, access to new markets by developing a workforce that mirrors the general customer base, lower turnover based on increased employee loyalty, and lower training costs resulting from lower staff turnover. OFCCP explained that according to the U.S. Business Leadership Network, "corporate CEOs understand that it's cost effective to recruit and retain the best talent regardless of disability." Broad public policy considerations also exist related to the decreased demand for and cost of social services as more people move into jobs and pay taxes. OFCCP was unable to quantitatively assess these broad societal benefits.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

OFCCP certified that the final rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

OFCCP states that the final rule includes a federal mandate that may result in excess of \$100 million in expenditures in the private sector in any one year. Related to the unfunded mandate, OFCCP states that it identified, considered, and implemented a reasonable number of regulatory alternatives that were the least burdensome alternatives.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On April 26, 2011, OFCCP published a Notice of Proposed Rulemaking (NPRM) inviting public comments for a period of 60 days on a number of proposals that would strengthen the regulations implementing VEVRAA and detailing specific actions that contractors and subcontractors must satisfy to meet their VEVRAA obligations, including increasing data collection obligations, and requiring covered federal contractors and subcontractors to establish hiring benchmarks for protected veterans. 76 Fed. Reg. 23,358. After receiving several requests to extend the public comment period, OFCCP published a subsequent notice in the *Federal Register* on June 22, 2011, extending the public comment period an additional 14 days. 76 Fed. Reg. 36,482.

OFCCP stated that it received over 100 comments on the proposed rule representing diverse perspectives, including individuals, groups representing contractors, disability rights advocacy groups, veterans' associations, unions, and governmental entities. OFCCP stated that these comments raised a broad range of issues, including concerns with the costs and burden associated with the proposed rule, the extended recordkeeping requirements, developing benchmarks, and the new categories of data collection and analyses.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

The new information collections contained in the final rule have been submitted to the Office of Management and Budget (OMB) for review under Control Number 1250-0004; that review is ongoing and, consequently, OFCCP states that the Control Number has not yet been activated. OFCCP noted that it will publish a notice in the *Federal Register* announcing the results of OMB's review and the date the information collection requirements will take effect. OFCCP states that the information collection requirements in the final rule relate to the information required to be maintained by contractors regarding their nondiscrimination and affirmative action obligations concerning protected veterans and disclosures workers may make to their employers.

Statutory authorization for the rule

OFCCP states that the final rule is issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended by the Jobs for Veterans Act of 2002. 38 U.S.C. § 4212.

Executive Order No. 12,866 (Regulatory Planning and Review)

OFCCP states that the final rule is economically significant within the meaning of Executive Order 12,866 and was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

OFCCP states that the final rule does not have federalism implications; the final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.