

OFCCP Releases FAQ Guidance on VEVRAA Focused Reviews

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The first round of VEVRAA focused reviews is on the horizon. Last year, OFCCP released its [scheduling list](#) identifying the federal contractors who were selected for focused reviews of their compliance with the Vietnam Era Veterans Readjustment Assistance Act. The start of the focused reviews was delayed, however, because OFCCP did not have Office of Management and Budget approval for its Scheduling Letters that commence the reviews.

In April 2020, OFCCP obtained the required OMB approval, which gives the green light for the agency to move forward. In anticipation of the agency's issuance of the Scheduling Letters to the selected contractors, OFCCP [released new FAQ guidance](#) on May 5, 2020 that provides contractors with insight into the new focused review process. Some of the highlights are summarized below:

- **Limited Scope of Review:** OFCCP confirmed that VEVRAA focused reviews will focus on the contractor's compliance with VEVRAA, and not on other obligations under Executive Order 11246 or Section 503 of the Rehabilitation Act. Although the VEVRAA Scheduling Letter requires the contractor to submit its Executive Order 11246 affirmative action plan (AAP), OFCCP will not conduct a full compliance review of that AAP or analyze whether there is evidence of discrimination based on race, sex, or ethnicity. Instead, OFCCP will use the Executive Order 11246 AAP to help understand the contractor's organizational structure and how the contractor's VEVRAA efforts fit within its broader affirmative action program. That being said, the FAQs do reserve the right for OFCCP to "take appropriate actions, beginning with technical assistance" if elements of the Executive Order 11246 are "missing or insufficient on their face." Accordingly, contractors should ensure that *all* of their AAPs are in order, even if the contractor has been selected for a limited scope VEVRAA focused review.
- **On-Site Investigations:** The FAQs disclose that every VEVRAA focused review will include an on-site investigation in which OFCCP investigators will interview managers responsible for VEVRAA compliance, employees affected by VEVRAA policies, and evaluate the handling of accommodation requests. In addition, OFCCP reserves the right for its first round of interviews to take place at both the contractor's corporate headquarters and its establishment locations. This contrasts with OFCCP's guidance for Section 503 focused reviews, in which

the first round of interviews is limited to the contractor's headquarters. Notably, the FAQ notes that OFCCP may revisit its policy of conducting an on-site investigation in every VEVRAA focused review in future years.

- **Focus on Policy Assessment and Data Analysis:** Although the FAQs explain that OFCCP will assess the contractor's compliance with "all elements" of the VEVRAA regulations, two aspects are explicitly noted as focuses for the review: "whether the contractor conducted the required assessments of its employment policies and tracked appropriate data concerning protected veterans." These data analysis and policy assessment obligations are often overlooked aspects of OFCCP compliance. Contractors should be sure to engage in these exercises and document their occurrence to ensure they are in a position to produce evidence of compliance to OFCCP.
- **Exemption from Other Reviews:** Finally, the FAQs clarify that while a VEVRAA focused review is pending, the contractor establishment is exempt from being scheduled for other compliance evaluations. In addition, awardees of the 2018 HIRE Vets Medallion, for exceptional efforts in compliance, are also exempted from VEVRAA focused reviews.

OFCCP will likely issue VEVRAA Scheduling Letters to contractors and subcontractors on its scheduling list in the very near future. Contractors should take efforts now to pre-audit their compliance and identify and address any potential concerns before receiving a Scheduling Letter.

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