



# ***CHAPTER I***

## ***GENERAL***



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**TABLE OF CONTENTS**

**1A INTRODUCTION TO CHAPTER I.....7**

**1B GLOSSARY OF GENERAL DEFINITIONS .....7**

ACCESSIBILITY .....7

ACCOMMODATION.....7

ACT .....7

ADMINISTERING AGENCY.....7

ADMINISTRATIVE COMPLAINT.....8

ADMINISTRATIVE LAW JUDGE (ALJ).....8

ADMINISTRATIVE PROCEDURE ACT.....8

ADVERSE IMPACT .....8

AFFECTED CLASS .....8

AFFIRMATIVE ACTION .....8

AFFIRMATIVE ACTION CLAUSE .....9

AFFIRMATIVE ACTION PROGRAM (AAP).....9

AGGREGATE WORKFORCE.....9

AMERICAN INDIAN-ALASKAN NATIVE .....9

ANECDOTAL EVIDENCE .....10

ANTI-NEPOTISM POLICY .....10

APPLICANT FLOW LOG .....10

APPRENTICESHIP.....10

ASIAN-PACIFIC ISLANDER .....10

AVAILABILITY .....10

BACK PAY .....11

BARGAINING AGREEMENT.....11

BLACK.....11

BONA-FIDE OCCUPATIONAL QUALIFICATION (BFOQ).....11

BONA-FIDE SENIORITY SYSTEM .....12

BUMPING RIGHTS .....12

BUSINESS NECESSITY .....12

CIVILIAN LABOR FORCE .....12

COHORT ANALYSIS.....12

COLLATERAL ESTOPPEL .....12

COLLECTIVE BARGAINING AGREEMENT.....13

COMPARATIVE EVIDENCE.....13

COMPLAINT .....13

COMPLIANCE.....13

CONCILIATION .....13

CONCILIATION AGREEMENT (CA).....13

CONSTRUCTION CONTRACT.....14



**U.S. Department of Labor  
Employment Standards Administration  
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)  
CHAPTER I - GENERAL**

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CONSTRUCTION SITE .....	14
CONSTRUCTION WORK .....	14
CONSTRUCTIVE DISCHARGE .....	14
CONTINUING VIOLATION .....	15
CONTRACT .....	15
CONTRACT CANCELLATION .....	15
CONTRACT SUSPENSION .....	15
CONTRACTING AGENCY .....	15
CONTRACTOR .....	16
COVERED AREA .....	16
CRITERIA IDENTIFICATION/CRITERIA VERIFICATION .....	16
DEBARMENT .....	16
DEFICIENCY .....	17
DEPOSITION .....	17
DICTIONARY OF OCCUPATIONAL TITLES .....	17
DEPUTY ASSISTANT SECRETARY .....	17
DIRECT EVIDENCE OF DISCRIMINATION .....	17
DISABLED VETERAN .....	17
DISCOVERY .....	18
DISCRIMINATION .....	18
DISPARATE IMPACT .....	18
DISPARATE TREATMENT .....	18
DUN'S NUMBER .....	18
EEO-1 REPORT .....	19
EEO-2 REPORT .....	19
EEO-3 REPORT .....	19
EEO-4 REPORT .....	19
EEO-5 REPORT .....	19
EEO-6 REPORT .....	20
EMPLOYED .....	20
EMPLOYEE .....	20
EMPLOYMENT AGENCY .....	20
EMPLOYMENT OFFER .....	21
EMPLOYER IDENTIFICATION NUMBER (EIN) .....	21
ENFORCEMENT .....	21
EQUAL OPPORTUNITY CLAUSE .....	21
ESTABLISHMENT .....	21
EXECUTIVE ORDER .....	22
EXEMPT CONTRACT .....	22
EXPERT WITNESS .....	22
FACIALLY NEUTRAL SELECTION STANDARD/CRITERIA .....	22
FEDERALLY ASSISTED CONSTRUCTION CONTRACT .....	22
FEDERALLY INVOLVED CONSTRUCTION CONTRACT .....	22
FIFTEEN (15) DAY NOTICE .....	23
FIRST-TIER SUBCONTRACTOR .....	23
FOCUS JOB AREA .....	23




---

FORMAL TRAINING .....	23
FRINGE BENEFITS .....	23
FRONT PAY .....	23
GOALS .....	24
GOALS FOR CONSTRUCTION CONTRACTORS.....	24
GOOD CAUSE.....	24
GOOD-FAITH EFFORTS.....	24
GOVERNMENT .....	25
GOVERNMENT CONTRACT .....	25
HANDICAPPED INDIVIDUAL .....	25
HISPANIC .....	25
HOMETOWN PLAN AREAS .....	26
IMMEDIATE LABOR AREA.....	26
IMPACT RATIO ANALYSIS.....	26
INDIVIDUAL WITH A DISABILITY.....	26
INDIVIDUAL WITH HANDICAPS .....	26
INJUNCTIVE RELIEF .....	27
INTERNAL REVIEW PROCEDURE .....	27
INVITATION TO SELF IDENTIFY .....	27
JOB AREA .....	27
JOB AREA ACCEPTANCE RANGE (JAAR) .....	28
JOB CATEGORIES .....	28
JOB DESCRIPTION .....	28
JOB GROUP .....	28
JOB SPECIFICATION.....	28
JOURNEY WORKER .....	28
LABOR AREA.....	28
LAYOFF .....	29
LIFE ACTIVITIES (MAJOR LIFE ACTIVITIES).....	29
LINE OF PROGRESSION.....	29
LINKAGE.....	29
MAJOR LIFE ACTIVITIES .....	29
MAKE-WHOLE RELIEF.....	29
MANDATORY JOB LISTING (MJL).....	30
MATERNITY LEAVE .....	30
MINORITIES .....	30
NEW HIRE.....	30
NONCOMPLIANCE .....	30
NORMAL BUSINESS HOURS .....	30
NOTICE OF ALLEGED NONCOMPLIANCE (15-DAY NOTICE) .....	31
NOTICE OF VIOLATION (NOV) .....	31
OBJECTIVE CRITERIA/PROCEDURES .....	31
ON-THE-JOB TRAINING (OJT) .....	31
ORDER.....	31
ORGANIZATIONAL UNIT .....	32
PACIFIC ISLANDER.....	32




---

PARENTAL LEAVE.....	32
PATTERN OR PRACTICE DISCRIMINATION.....	32
PERSON.....	32
PHYSICAL & MENTAL JOB QUALIFICATION REQUIREMENTS.....	32
PLACEMENT.....	32
PRE-EMPLOYMENT MEDICAL EXAMINATION.....	33
PREDETERMINATION NOTICE.....	33
PREGNANCY-DISABILITY LEAVE.....	33
PRIMA FACIE CASE.....	33
PROBLEM AREAS.....	33
PROGRESSION LINE CHARTS.....	33
PROHIBITED FACTOR.....	34
PROMOTABLE MINORITIES AND WOMEN.....	34
PROMOTABLE OR TRANSFERABLE.....	34
PROMOTION.....	34
PROOF OF DISCRIMINATION.....	34
QUALIFIED SPECIAL DISABLED VETERAN.....	34
QUALIFIED INDIVIDUAL WITH A HANDICAP(S).....	35
REASONABLE ACCOMMODATION (SECTION 503).....	35
REASONABLE RECRUITMENT AREA.....	36
RECALL.....	36
RECRUITING SOURCE.....	36
REHIRE.....	36
RELEVANT LABOR MARKET AREA.....	36
RELIGIOUS ACCOMMODATION.....	36
REQUISITE SKILLS.....	37
RIGHT OF RESPONSE.....	37
RIGHTFUL PLACE.....	37
SECTION 503.....	37
SENIORITY.....	37
SHOW-CAUSE NOTICE.....	37
SKILL INVENTORY.....	38
SPECIAL DISABLED VETERAN.....	38
STANDARD DEVIATION.....	38
STANDARD FORM 100.....	38
STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE.....	38
STATISTICAL EVIDENCE.....	39
SUBCONTRACT.....	39
SUBCONTRACTOR.....	39
SUBJECTIVE CRITERIA/PROCEDURES.....	39
SUBSTANTIALLY LIMITS.....	39
SUPPORT DATA.....	40
SYSTEMIC DISCRIMINATION.....	40
TERMINATION OF EMPLOYMENT.....	40
TERMS AND CONDITIONS OF EMPLOYMENT.....	40
38 U.S.C. §4212.....	41




---

TOLLING .....	41
TRAINING AGENCY .....	41
TRANSFER .....	41
UNDERUTILIZATION.....	41
UNDUE HARDSHIP .....	41
UNEMPLOYED.....	42
UNIFORMLY APPLIED .....	42
UNION SHOP.....	42
VESTIBULE TRAINING.....	42
VETERAN OF THE VIETNAM ERA .....	43
VIOLATION .....	43
WHITE .....	43
WRONGFUL DISCHARGE.....	43
<b>1C GLOSSARY OF GENERAL ABBREVIATIONS .....</b>	<b>44</b>
<b>1D STANDARD FORMS LIST .....</b>	<b>48</b>
<b>APPENDIX A.....</b>	<b>49</b>
APPENDIX A-1 .....	50
<i>TEXT OF EXECUTIVE ORDER 11246, AS AMENDED</i> .....	50
APPENDIX A-2 .....	63
<i>TEXT OF SECTION 503 OF THE REHABILITATION ACT OF 1973,</i> .....	63
APPENDIX A-3 .....	67
<i>TEXT OF U.S.C. 4212 (FORMERLY 38 U.S.C. 2012),</i> .....	67



## 1A INTRODUCTION TO CHAPTER I

The words and phrases contained in this Chapter generally are used by the Office of Federal Contract Compliance Programs (OFCCP) and the field of employment discrimination law. They are defined or described for the purpose of providing a common understanding among OFCCP staff and others who use this Manual.

## 1B GLOSSARY OF GENERAL DEFINITIONS

### *Accessibility*

The extent to which a contractor's facility is readily approachable and usable by individuals with disabilities, particularly such areas as the personnel office, worksite, and public areas.

### *Accommodation*

See "Reasonable Accommodation," "Undue Hardship," and "Religious Accommodation."

### *Act*

As used in this Manual, provisions enforced by OFCCP of:

- (a) The Vietnam Era Veterans' Readjustment Assistance Act of 1974 (P.L. 93-580, 88 Stat. 1593, 38 U.S.C. 4212), as amended (previously referred to as "Section 402" or, until 1991 amendments, "38 U.S.C. 2012"); or
- (b) The Rehabilitation Act of 1973 (P.L. 93-112, 87 Stat. 393, 29 U.S.C. 793), as amended.

### *Administering Agency*



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Any department, agency, or establishment in the executive branch of the Government, including any wholly owned Government corporation, that administers a program involving federally assisted construction contracts. (See 41 CFR 60-1.3)

### ***Administrative Complaint***

The document that begins an administrative enforcement proceeding under Executive Order 11246, Section 503, or 38 U.S.C. 4212.

### ***Administrative Law Judge (ALJ)***

The presiding official at administrative enforcement proceedings under 41 CFR Part 60-30. Also see 41 CFR 60-1.26(c), 60-250.29 (b), and 60-741.29(b).

### ***Administrative Procedure Act***

A law enacted by Congress in 1946. It establishes basic requirements to which an administrative process must conform. It includes standards for rulemaking, for certain formal adjudication, and for court reviews of certain administrative actions.

### ***Adverse Impact***

A substantially different rate of selection in hiring, promotion, transfer, training, or other employment-related decisions for any race, sex, or ethnic group. A finding of adverse impact by itself, does not establish a violation device in question based on job related-ness or business necessity. (See definition of disparate impact.) (See also Chapter 7 of this manual.)

### ***Affected Class***

A group of persons, identifiable by name or characteristics, who are the victims of a pattern or practice of discrimination.

### ***Affirmative Action***





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Actions, policies, and procedures to which a contractor commits itself that are designed to achieve equal employment opportunity. The affirmative action obligation entails:

- (a) Thorough, systematic efforts to prevent discrimination from occurring or to detect it and eliminate it as promptly as possible; and
- (b) Recruitment and outreach measures. See Manual Section 2A02(b).

### ***Affirmative Action Clause***

The clauses set forth in 41 CFR 60-250.4 and 41 CFR 60-741.4 that must be included in Federal contracts and subcontracts. These two clauses outline the affirmative action requirements for special disabled veterans, Vietnam-era veterans (41 CFR 60-250.4), and individuals with handicaps (41 CFR 60-741.4). The clauses are a part of covered contracts regardless of whether they are physically incorporated into the contract or whether the contract is written. (See also definition of "Equal Opportunity Clause.")

### ***Affirmative Action Program (AAP)***

A written program, meeting the requirements of 41 CFR Part 60-2, 60-250.5, or 60-741.5, in which a contractor annually details the steps it will take and has already taken to ensure equal employment opportunity.

### ***Aggregate Workforce***

A construction contractor's total workforce in each trade on all construction work including federally funded or assisted projects and all non-Federal projects within a designated geographical area established under 41 CFR 60-4.6. (See definition of "Covered Area.")

### ***American Indian-Alaskan Native***

A person with origins in any of the original peoples of North America who maintains cultural identification through tribal affiliation or has community recognition as an American Indian or Alaskan Native.



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***Anecdotal Evidence***

Oral or written narrative evidence. A short account of some happening, usually personal. (For example, interview or written statements given to an investigator that record personal experiences of employees can be anecdotal evidence of discrimination.)

***Anti-nepotism Policy***

A policy or practice that limits the simultaneous employment of two or more members of the same family.

***Applicant Flow Log***

A chronological compilation of applicants for employment or promotion, showing the persons categorized by race, sex, and ethnic group, who applied for each job title (or group of job titles requiring similar qualifications) during a specific period.

***Apprenticeship***

A system of indenture or other agreement, written or implied, to train a person in a recognized trade or craft in accordance with specified standards.

***Asian-Pacific Islander***

A person with origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Republic, and Samoa; and, on the Indian Subcontinent includes India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan.

***Availability***

The availability of minorities or women for a job group means the percentage that minorities or women are among persons in the relevant labor area and/or internal feeder pools having the requisite qualifications to perform the positions included in the job group. The term is broad enough to include any factor that is in fact relevant to determining the availability of individuals for the jobs in the job group.



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Availability figures are used in determining whether to find underutilization, and where a goal is established, in determining the level of the goal.

In determining availability for a job group, a contractor must consider at least each of the factors specified in 41 CFR 2.11 (b). However, a contractor need not actually use each of these factors in reaching its availability estimate. Only the factors that are relevant to the particular job group should be used. For example, availability for jobs in a job group filled by promotion from within, or requiring specialized skills, would not be based on general area population, workforce, or unemployment factors. In addition to the factors specified in 41 CFR 2.11(b), a contractor may consider any other relevant factor in determining availability. (See Manual Section 2G05.)

### ***Back Pay***

Compensation for past wage and benefit losses caused by a contractor's discriminatory employment practices or procedures. Lost wages include overtime, incentive pay, raises, and bonuses. Economic loss includes compensatory damages. (See also "Fringe Benefits.")

### ***Bargaining Agreement***

Also referred to as collective bargaining agreement and sometimes known as labor-management agreement or union contract. These terms refer to an agreement between an employer and a union establishing wages, hours, and other terms and conditions of employment for employees in the bargaining unit represented by the union.

### ***Black***

An individual, not of Hispanic origin, with origins in any of the Black racial groups of Africa.

### ***Bona-Fide Occupational Qualification (BFOQ)***

A defense allowing an employer to limit a particular job to members of one sex, religion, or national origin group. The courts have held that the statutory BFOQ provision in Title VII is a very narrow exception to the general prohibition against discrimination on the basis of those characteristics. In enforcing the Executive order, OFCCP follows Title VII principles regarding the BFOQ exception. An employer claiming that sex is a BFOQ for a job must show that all or substantially all members of the excluded sex are incapable of performing the duties of the job and that failure to allow the exclusion



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would undermine the "essence"; i.e., the central purpose or mission, of the employer's business. Race cannot ever be a BFOQ for any job.

### ***Bona-Fide Seniority System***

A seniority system that was not created and is not maintained for the purpose of discriminating on the basis of a prohibited factor.

### ***Bumping Rights***

Rights of an employee to displace another employee due to a layoff or other employment action as defined in a collective bargaining agreement or other binding agreement.

### ***Business Necessity***

A defense available when the employer has a criterion for selection that is facially neutral but which excludes members of one sex, race, national origin, or religious group at a substantially higher rate than members of other groups (thus creating adverse impact). The employer must prove that its requirement having the adverse impact is job related and consistent with business necessity. (See Manual Section 7E08.)

### ***Civilian Labor Force***

The aggregate of the persons classified as employed and as unemployed in accordance with the criteria established by the Bureau of the Census and the U.S. Department of Commerce. (See "Employed" and "Unemployed.")

### ***Cohort Analysis***

A comparison of the treatment of similarly situated individuals or groups.

### ***Collateral Estoppel***



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A bar to relitigating an issue that has already been litigated between the same parties or certain closely related persons (sometimes known as privies). Under collateral estoppel, when an issue has been contested and finally resolved in litigation involving the parties, that resolution of the issue is binding on future litigation involving the two parties (or their privies).

### ***Collective Bargaining Agreement***

See "Bargaining Agreement."

### ***Comparative Evidence***

Nonstatistical evidence that compares the contractor's treatment of individuals of one group; e.g., race, with its treatment of similarly situated individuals of other groups. Also see "Statistical Evidence" and "Anecdotal Evidence."

### ***Complaint***

A written charge filed with OFCCP by an employee, former employee, applicant for employment, or by a third party alleging specific violations of the Executive order, Section 503, or 38 U.S.C. §4212.

### ***Compliance***

Meeting the requirements and obligations imposed by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, 38 U.S.C. §4212, and their implementing regulations.

### ***Conciliation***

Discussions between OFCCP and a contractor to resolve findings of noncompliance.

### ***Conciliation Agreement (CA)***

A binding written agreement between a contractor and OFCCP that details specific contractor commitments to resolve the alleged violations set forth in the agreement.



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### ***Construction Contract***

Any contract for the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings or highways, or other changes or improvements to real property, including facilities providing utility services.

### ***Construction Site***

The general physical location of any building, highway, or real property undergoing construction, rehabilitation, alteration, conversion, extension, demolition, repair, or any other change or improvement, and any temporary location or facility at which a contractor or other participating party meets a demand or performs a function relating to the contract or subcontract. (See "Site of Construction," 41 CFR 60-1.3.)

### ***Construction Work***

The construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings or highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction. See 41 CFR 60-1.3.

### ***Constructive Discharge***

An employee's involuntary resignation resulting from the employer making working conditions for the employee so intolerable that a reasonable person would have felt compelled to resign. OFCCP will assert that an employee was constructively discharged in violation of the Executive order, Section 503, or 38 U.S.C. §4212 where it finds that:

- (a) A reasonable person in the employee's position would have found the working conditions intolerable;
- (b) The employer's conduct which constituted the violation against the employee created the intolerable working conditions; and
- (c) The employee's involuntary resignation resulted from the intolerable working conditions.



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### ***Continuing Violation***

The continuing violation theory has been analyzed as encompassing three separate sub-theories, each applicable to distinct fact situations:

- (a) A series of individual related discriminatory acts, at least one of which must have occurred within 2 years prior to the notice of a compliance review, or 180 days before the filing of a complaint of employment discrimination;
- (b) Systemic discrimination where the employer has maintained a policy or practice which discriminates against a class of individuals; and
- (c) Present effects of past discrimination--where an individual or a class is suffering the residual effects of discriminatory conduct which occurred prior to the limitation period but was not the subject of a timely charge. (In recent years, OFCCP has not applied the present effects of past discrimination theory.)

### ***Contract***

Any "Government Contract" or, for the Executive order, any "Federally Assisted Construction Contract."

### ***Contract Cancellation***

The termination of a Federal contract before its expiration date. Contract cancellation is one of the sanctions authorized, in appropriate cases, for violations of the Executive Order, Section 503, or 38 U.S.C. §4212. Compare "Debarment" and/or "Contract Suspension."

### ***Contract Suspension***

The temporary interruption of a Federal contract by order of the appropriate authorities. Contract suspension is one of the sanctions authorized, in appropriate cases, for violation of the Executive order, Section 503 or 38 U.S.C. §4212. Compare "Contract Cancellation" and/or "Debarment."

### ***Contracting Agency***



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For purposes of the Executive order, Section 503, and 38 U.S.C. §4212, a contracting agency is any department, agency, establishment, or instrumentality of the United States (under the Executive order, limited to the executive branch of the Government), including any wholly owned Government corporation, which enters into contracts. (See 41 CFR 60-1.3, 60-250.2, and 60-741. 2.)

### ***Contractor***

A contractor as described below, is:

- (a) Prime contractor. Any person holding, and for enforcement purposes any person who has held, a contract subject to the Executive order, Section 503, or 38 U.S.C. §4212.
- (b) Subcontractor. Any person holding, and for enforcement purposes any person who has held, a subcontract subject to the Executive order, Section 503, or 38 U.S.C. §4212. (See definition of "Subcontract.")
- (c) First-tier subcontractor. A subcontractor holding a subcontract with a prime contractor.

### ***Covered Area***

The geographical area, Economic Area (EA), or Standard Metropolitan Statistical Area (SMSA), designated in the Federal Register by the Secretary of Labor where a Federal or federally assisted construction project is being performed. (See 45 FR 65976, 65984, and Appendix B-80, October 3, 1980.)

### ***Criteria Identification/Criteria Verification***

The process of obtaining the contractor's stated criteria for a selection decision(s) (usually through interviewing selecting officials and examining any relevant contractor documents), and then determining whether the stated criteria explain the actual selection decisions (usually through reviewing applications/files of persons selected and not selected).

### ***Debarment***

An order declaring a contractor ineligible for the award of future contracts. Debarment is one of the sanctions that may be imposed upon a contractor who is found to be in violation of the Executive order, Section 503, or 38 U.S.C. §4212.





### ***Deficiency***

Failure to fulfill a requirement of the Executive order, Section 503, or 38 U.S.C. §4212, including implementing rules, regulations, and orders. See "Violation." (The terms deficiency and violation often are used interchangeably.)

### ***Deposition***

A type of pretrial discovery. (See "Discovery.") An oral deposition is the examination, under oath, by the lawyer for one party of a person (such as a potential witness for the other party) who is believed to have knowledge of facts or circumstances relevant to the matter in litigation. A transcript of the examination is made and can be used at trial for some purposes.

### ***Dictionary of Occupational Titles***

A publication of the Employment and Training Administration, U.S. Department of Labor, that classifies more than 12,000 occupations based on their duties and commonly required qualifications.

### ***Deputy Assistant Secretary***

The Deputy Assistant Secretary of the Office of Federal Contract Compliance Programs of the United States Department of Labor.

### ***Direct Evidence of Discrimination***

A method of proof in which evidence on its face establishes a discriminatory reason for an employment decision, without inference or presumption. Direct evidence is evidence that on its face shows an intent to discriminate. It may be based upon testimony or any reliable documentation such as a copy of a help wanted ad that specifies "males only."

### ***Disabled Veteran***

See "Special Disabled Veteran."



### ***Discovery***

In trial practice, the pretrial devices that can be used by a party to obtain facts and information about the case from the other party in order to assist the party's preparation for trial. Tools of discovery include: depositions upon oral and written questions, written interrogatories, requests for production of documents or things, requests for physical and mental examinations, and requests for admission. (See "Deposition.")

### ***Discrimination***

See "Disparate Impact," "Disparate Treatment," and Chapter 7.

### ***Disparate Impact***

A theory or category of employment discrimination. Disparate impact discrimination may be found when a contractor's use of a facially neutral selection standard; e.g., a test, an interview, a degree requirement, disqualifies members of a particular race or gender group at a significantly higher rate than others and is not justified by business necessity or job relatedness. An intent to discriminate is not necessary to this type of employment discrimination. The disparate impact theory may be used to analyze both objective and subjective selection standards. Same concept as adverse impact. (See definition of "Adverse Impact.")

### ***Disparate Treatment***

A theory or category of employment discrimination. Disparate treatment discrimination may be found when a contractor treats an individual or group differently because of its race, color, religion, sex, national origin, handicap, or veteran status. An intent to discriminate is a necessary element in this type of employment discrimination, and may be shown by direct evidence or inferentially by statistical, anecdotal, and/or comparative evidence.

### ***Dun's Number***

An identification number assigned to a business by Dun & Bradstreet (D&B).



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***EEO-1 Report***

The Equal Employment Opportunity Employer Information Report (EEO-1). An annual report filed with the Joint Reporting Committee (composed of OFCCP and EEOC) by certain employers subject to the Executive order or to Title VII of the Civil Rights Act of 1964, as amended. This report details the sex and race/ethnic composition of an employer's work force by job category. (Also termed Standard Form 100.)

***EEO-2 Report***

The Equal Employment Opportunity Apprenticeship Information Report. A chronological list of names of all persons who have applied to an apprenticeship program. The information needed to fill out the report must be kept by the apprenticeship sponsor; however, EEOC no longer requires the filing of EEO-2 reports.

***EEO-3 Report***

The Equal Employment Opportunity Labor Union Report (EEO-3). A report filed biennially in even-numbered years by labor unions. This report is filed with the EEOC Survey Branch and contains information on the sex and race/ethnic composition of union membership and referrals for employment.

***EEO-4 Report***

The Equal Employment Information Report (EEO-4). A report filed by State and local governments with the State and Local Reporting Committee (composed of EEOC, Health and Human Services [HHS], Department of Energy [DOE], Housing and Urban Development [HUD], Department of Transportation [DOT], Office of Personnel Management [OPM], and OFCCP). This report sets forth the sex and race/ethnic composition of the work force by job category and annual salary. Frequency of reporting for political jurisdictions varies with their number of full-time employees, as follows: 100 or more, annually; 50 to 99, every other year; 25 to 49, every 4 years; 15 to 24, every 6 years.

***EEO-5 Report***

The Equal Employment Opportunity Elementary-Secondary Staff Information Report (EEO-5). A report filed with the School Reporting Committee (composed of EEOC, the Department of Education/ Office of



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Civil Rights, and the National Center for Education Statistics). This report details the sex and race/ethnic composition by job category of elementary and secondary school staffs. Frequency of reporting for school districts varies with their number of pupils, as follows: 1800 or more, every other year; 900-1799, every 4 years; 450-899, every 6 years; 250-449, every 8 years.

### ***EEO-6 Report***

The Equal Employment Opportunity Higher Education Staff Information Report (EEO-6). A report filed biennially in odd-numbered years with the Higher Education Reporting Committee (composed of OFCCP, Department of Education/Office of Civil Rights, and EEOC) by colleges and universities. It details by job category and salary the sex and race/ethnic composition of their faculty and staffs.

### ***Employed***

Under criteria established by the Bureau of the Census and the U.S. Department of Commerce, all civilians 16 years old and over who were either:

- (a) "at work," meaning those who did any work at all during the reference week as paid employees or in their business or profession, or on their farm, or who worked 15 hours or more as unpaid workers on a family farm or in a family business; or
- (b) "with a job but not at work," meaning those who did not work during the reference week but had jobs or businesses from which they were temporarily absent due to illness, bad weather, industrial dispute, vacation, or other personal reasons.

Generally excluded from the category of employed are persons whose only activity consisted of unpaid work around the house or volunteer work for religious, charitable, and similar organizations, or persons on layoff.

### ***Employee***

A person employed by a Federal contractor, subcontractor, or federally assisted construction contractor or subcontractor.

### ***Employment Agency***



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Any entity regularly undertaking with or without compensation to procure permanent employees for an employer or to procure for individuals opportunities to permanently work for an employer. Also includes an agent of such a person or entity.

### ***Employment Offer***

An employer's offer of employment to an individual, usually for a specific job.

### ***Employer Identification Number (EIN)***

A nine-digit number assigned to a company by the Internal Revenue Service for tax and other identification purposes.

### ***Enforcement***

Administrative or judicial action to compel compliance with Executive Order 11246, Section 503, or 38 U.S.C. §4212 and their implementing regulations.

### ***Equal Opportunity Clause***

The subparagraphs contained in 41 CFR 60-1.4(a) or (b) required by Sections 202 and 301 of Executive Order 11246, as amended, to be part of contracts covered by the Executive order. Pursuant to 41 CFR 60-1.4(e) and 60-4.9, the clause is a part of covered contracts regardless of whether it is physically incorporated into the contract or whether the contract between the agency and the contractor is written. (See also definition of "Affirmative Action Clause.")

### ***Establishment***

A facility or unit which produces goods or services, such as a factory, office, store, or mine. In most instances, the unit is a physically separate facility at a single location. In appropriate circumstances, OFCCP may consider as an establishment several facilities located at two or more sites when the facilities are in the same labor market or recruiting area. The determination as to whether it is appropriate to group facilities as a single establishment will be made by OFCCP on a case-by-case basis.



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***Executive Order***

For purposes of this manual, Parts II, III, and IV of Executive Order 11246, September 24, 1965 (30 FR 12319), as amended. The short form references of "Order" or "E.O. 11246" sometimes are used.

***Exempt Contract***

Any Government contract or subcontract which is excluded from coverage under some or all provisions of 41 CFR Chapter 60 according to the standards set forth in 41 CFR 60-1.5. (See also 60-250.3 and 60-741.3 which use the term "waiver" instead of exempt.)

***Expert Witness***

A person such as a doctor or statistician selected by the court or a party on account of his/her knowledge or skill to examine, estimate, and ascertain things and make a report (testimony) of his/her findings and opinions.

***Facially Neutral Selection Standard/Criteria***

A criterion/process is facially neutral if it does not make any reference to a prohibited factor and is equally applicable to everyone regardless of race, gender, or ethnicity; i.e., is not discriminatory on its face. (See also "Uniformly Applied.")

***Federally Assisted Construction Contract***

Any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work. See 41 CFR 60-1.3.

***Federally Involved Construction Contract***



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Any Federal construction contract or subcontract, federally assisted construction contract or subcontract, or any other construction contract or subcontract that is necessary, in whole or in part, to the performance of a Federal supply and service contract or subcontract.

### ***Fifteen (15) Day Notice***

See "Notice of Alleged Noncompliance."

### ***First-tier Subcontractor***

A subcontractor holding a subcontract with a prime contractor.

### ***Focus Job Area***

A unit of an establishment's work force (such as a seniority unit, department, line of progression, or job title, as appropriate) identified at desk audit as a potential problem area for further investigation onsite. Example: A unit where minorities or women are concentrated, under represented, or restricted from working because of their race or sex.

### ***Formal Training***

A structured program to develop an individual's job-related skills and abilities. Typically classroom training as well as on-the-job training fall into this category.

### ***Fringe Benefits***

Compensation for employment other than wages or salary, including, for example, annual and sick leave, medical insurance, life insurance, retirement benefits, profit sharing, bonus plans, etc.

### ***Front Pay***

Compensation for estimated future economic loss; generally calculated based on the difference between the discrimination victim's current pay (or for a rejected applicant, the pay he/she should have received) and the pay associated with his/her rightful place. Front pay runs from the time of the settlement; e.g., Conciliation Agreement, hearing, or administrative or court order to a certain time in the future set by the



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settlement, hearing, or administrative or court order (usually when the victim attains his/her rightful place) set by the settlement, hearing, or administrative or court order. (See also "Rightful Place.")

### ***Goals***

Goals under the Executive order are of two kinds: percentage placement goals and goals by organizational unit. (See Manual Sections 2G07 and 2G12.)

### ***Goals for Construction Contractors***

In the construction industry, benchmark employment levels for minorities and women expressed as a percentage of the hours worked by the contractor's aggregate work force by trade in a geographic area.

- (a) Goals for women: See 43 FR 14899; 14900; Appendix A, April 7, 1978; and 45 FR 85750, 85751, December 30, 1980.
- (b) Goals for minorities: See 45 FR 65979; 65984; and Appendix B-80, October 3, 1980.

### ***Good Cause***

- (a) A legally acceptable defense (usually put forward by a contractor against whom OFCCP has alleged a violation of its regulations) for not having taken an action that would otherwise be required.
- (b) Justification provided by a complainant, and found acceptable by OFCCP, as the basis for accepting an otherwise untimely complaint filing. (See 41 CFR 60-1.21, 250.26, and 741.26.)

### ***Good-Faith Efforts***

This term refers to a contractor's efforts to make all aspects of its affirmative action plan work. Designing and implementing an effective affirmative action plan requires sustained attention. The contractor must analyze its employment and recruitment practices as they affect equal opportunity, identify problem areas, design and implement measures to address the problems, and monitor the effectiveness of its program, making adjustments as circumstances warrant. In evaluating the contractor's good faith efforts, the Compliance Officer (CO) must make a careful assessment of the quality and thoroughness of the





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contractor's work to implement its program and assure equal opportunity. The basic components of good faith efforts are:

- (a) Outreach and recruitment measures to broaden candidate pools from which selection decisions are made to include minorities and women, and
- (b) Systematic efforts to assure that selections thereafter are made without regard to race, sex, or other prohibited factors.

### ***Government***

Except where otherwise indicated, Government means the Government of the United States of America.

### ***Government Contract***

Any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services, or for the use of real or personal property, including lease arrangements. The term "services," as used here includes, but is not limited to, the following: utility, construction, transportation, research, insurance, and fund depository, regardless of whether the Government is the purchaser or seller. The term "Government Contract" does not include:

- (a) Agreements in which the parties stand in the relationship of employer and employee, and
- (b) Federally assisted construction contracts. (See 41 CFR 60-1.3, 250.2, and 741.2.)

### ***Handicapped Individual***

A term used in the Rehabilitation Act of 1973 but replaced by "Individual with Handicaps" in 1986 amendments to that Act. (See "Individual with Handicaps.")

### ***Hispanic***

A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin regardless of race. This does not include persons of Portuguese descent or persons from Central or South America who are not of Spanish origin or culture.



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### ***Hometown Plan Areas***

Geographical areas designated by the Secretary of Labor where there was a "Hometown Plan." A Hometown Plan was a cooperative effort initiated at the local level among construction contractors, construction unions, and the minority community to increase the representation of minorities in the construction trades. Once approved by OFCCP, such plans were published and enforced as bid conditions for the area. (See 43 FR 19473, Appendix B, May 5, 1978.)

### ***Immediate Labor Area***

The geographic area from which employees reasonably may commute to the contractor's establishment. It may include one or more contiguous cities, counties, Metropolitan Statistical Area (MSAs) or parts thereof.

### ***Impact Ratio Analysis***

The Impact Ratio Analysis (IRA) is a comparison of the selection rates of different groups from an identified candidate pool. If the selection rate for one group is less than 80% of that for another, IRA is considered adverse.

### ***Individual with a Disability***

See "Individual with Handicaps."

### ***Individual with Handicaps***

Any person who:

- (a) Has a physical or mental impairment which substantially limits one or more of such person's major life activities;
- (b) Has a record of such an impairment; or
- (c) Is regarded as having such an impairment.



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This definition does not include an individual currently engaging in the illegal use of drugs, when the contractor acts on the basis of such use. This definition does not include an individual who is an alcoholic whose current abuse of alcohol prevents such individual from performing the duties of the job in question, or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or safety of others.

The term "Individual with Handicaps" is used interchangeably with "Individual with a Disability" and "Handicapped Individual."

### ***Injunctive Relief***

A court order requiring a person to perform, or to refrain from performing, a designated act. For example, in an enforcement action OFCCP might seek the injunctive relief of requiring that the contractor cease asking discriminatory questions on its job application.

### ***Internal Review Procedure***

An internal procedure of contractors capable of resolving discrimination complaints. By regulation OFCCP allows contractors 60 days to attempt to resolve internally a complaint of employment discrimination made by an employee who is an individual with handicaps, a special disabled veteran, or a veteran of the Vietnam era.

### ***Invitation to Self Identify***

An invitation by the contractor, extended to employees and applicants for employment, to identify themselves as individuals with handicaps or special disabled or Vietnam-era veterans for purposes of Section 503 or 38 U.S.C. §4212 in order to permit the contractor to make reasonable accommodation and take affirmative action on their behalf. All information obtained in response to such an invitation shall be kept confidential in accordance with 41 CFR 60-741.5(c) (1) or 60-250.5(d).

### ***Job Area***

Any subunit of a workforce sector, such as department, job group, job title, etc.



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### ***Job Area Acceptance Range (JAAR)***

The JAAR is an analytical tool used to analyze the distribution of employees in a workforce by comparing the actual percentage of minorities/women in a job area to their percentage in the relevant larger segment of the contractor's workforce.

### ***Job Categories***

The nine designated categories of the EEO-1 report: officials and managers, professionals, technicians, sales workers, office and clerical, craft workers (skilled), operatives (semi-skilled), laborers (unskilled), and service workers.

### ***Job Description***

A written statement detailing the duties of a particular job title.

### ***Job Group***

One or a group of jobs having similar content, wage rates, and opportunities. (See 41 CFR 60-2.11(b).)

### ***Job Specification***

The minimum qualification(s) the contractor identifies as necessary to perform a job.

### ***Journey Worker***

One who has completed an apprenticeship or otherwise possesses the full skills and licenses of workers in his/her trade.

### ***Labor Area***

Geographic area used in calculating availability. The area may vary from local to nationwide. (See Chapter 2.) Compare with "Immediate Labor Area."



### ***Layoff***

The process by which workers are removed from the active payroll to the inactive payroll during a reduction-in-force (RIF).

### ***Life Activities (Major Life Activities)***

For purposes of Section 503, this term means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

### ***Line of Progression***

A series of related jobs in a promotional sequence generally starting with less difficult, lower-paying jobs and progressing to more difficult, higher-paying jobs. Often, the lower jobs provide required training for movement to the higher-level jobs.

### ***Linkage***

Linkage is the connection between contractors and appropriate recruitment and/or training sources. When an underutilization of minorities or women in a job group is found and there are recruitment/training resources available that are able to refer qualified applicants to the contractor for consideration, the CO will attempt in a Letter of Commitment or Conciliation Agreement to execute a linkage agreement with the contractor. (See Chapter 3, Section 3J.)

### ***Major Life Activities***

See "Life Activities."

### ***Make-Whole Relief***

Remedies for discrimination that restore the victim of discrimination to his or her rightful place; i.e., the position, both economically and in terms of employment status that he/ she would have occupied had the



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discrimination never taken place. Common elements of make-whole relief include an award of the position the individual was wrongfully denied, back pay with interest, and retroactive seniority.

### ***Mandatory Job Listing (MJL)***

The provision of the affirmative action clause at 41 CFR 250.4 that requires covered employers to list suitable job openings with the local office of the State Employment Service.

### ***Maternity Leave***

Childbirth-related absence from work by a woman that does not directly depend on her medical condition. The term includes leave for nondisability-related care and nurturing following the birth of a child. Distinguish from "pregnancy disability leave," but see Manual Section 3G01(h)(2).

### ***Minorities***

Men and women of those minority groups for whom EEO-1 reporting is required; i.e., Black, Hispanic, Asian or Pacific Islander, American Indian, or Alaskan Native. As used in this Manual, the term may mean these groups in the aggregate or an individual group. See EEO-1 for further explanation.

### ***New Hire***

A worker added to an establishment's payroll for the first time. Compare with "Rehire."

### ***Noncompliance***

A contractor's failure to adhere to the conditions set out in the contract's equal opportunity and/or affirmative action clauses and/or the regulations implementing those clauses (41 CFR Chapter 60) and/or failure to correct violations.

### ***Normal Business Hours***

For purposes of access to a contractor's premises, the hours during which employees to be interviewed are at work, regardless of the time of day or night. Also used to indicate the regular business hours during



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which Section 503 and 38 U.S.C. §4212 AAPs are available for inspection by employees and applicants for employment.

***Notice of Alleged Noncompliance (15-Day Notice)***

A letter from OFCCP to a contractor informing it that the agency believes the contractor has violated the terms of a Conciliation Agreement and that enforcement proceedings may be initiated unless the contractor demonstrates within 15 working days from its receipt of the letter that it has not violated its commitments under the Agreement.

***Notice of Violation (NOV)***

A letter from OFCCP notifying the contractor that the agency has found violations of the Executive order, Section 503, and/or 38 U.S.C. §4212 during a compliance review, and the remedies that are required to resolve those violations.

***Objective Criteria/Procedures***

A criterion is objective if it is fixed and measurable. The central characteristic of an objective criterion is that it can be independently verified; i.e., different people measuring objective criteria will reach the same results. Compare with "Subjective Criteria/Procedures."

***On-the-Job Training (OJT)***

An employer sanctioned training program, usually at the employer's worksite, conducted either under close supervision or with assistance, and designed to teach and qualify an individual to perform a job or element(s) of a job.

***Order***

Generally, a shorthand term meaning Executive Order 11246, as amended. The term also is used in phrases dealing with decisions in litigation matters such as Final Decision and Order or Court Order.



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### ***Organizational Unit***

A department, division, branch, section, or other organizational entity of a contractor that operates as a single unit under a common head.

### ***Pacific Islander***

See "Asian/Pacific Islander."

### ***Parental Leave***

Absence from work by a parent to care for a child.

### ***Pattern or Practice Discrimination***

Employer actions constituting a pattern of conduct resulting in discriminatory treatment toward the members of a class. Pattern or practice discrimination generally is demonstrated in large measure through statistical evidence, and can be proven under either the disparate treatment or disparate impact model.

### ***Person***

As defined in OFCCP's regulations, "person" means any natural person; corporation; partnership; unincorporated association; State or local government; and any agency, instrumentality, or subdivision of such a government. (See 41 CFR 60-1.3.)

### ***Physical & Mental Job Qualification Requirements***

Physical and mental standards that an employer requires a person performing or applying for a job to meet.

### ***Placement***





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In this Manual, placement is often used in the context of the selection or assignment of individuals in a particular job.

### ***Pre-employment Medical Examination***

An evaluation of the health status of an applicant for employment.

### ***Predetermination Notice***

A letter in which OFCCP notifies the contractor of its preliminary finding that the contractor has engaged in a pattern or practice of discrimination. The Notice states the basis for the preliminary findings and offers the contractor the opportunity to respond.

### ***Pregnancy-Disability Leave***

Pregnancy and childbirth-related absence from work by a woman affected by pregnancy, childbirth, or related medical conditions. It includes leave prior to childbirth when medically indicated and leave to recover from pregnancy, childbirth, or related medical conditions following the birth of a child.

### ***Prima Facie Case***

A legal term that refers to a case sufficient on its face to prevail in the absence of contradictory evidence.

### ***Problem Areas***

Aspects of the contractor's employment decisions, policies, or practices that appear to raise questions regarding the contractor's compliance with the Executive Order, Section 503, or 38 U.S.C. §4212.

### ***Progression Line Charts***

Written listings of a contractor's line of progression. (See "Line of Progression.")



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### ***Prohibited Factor***

A factor prohibited by law from being used in making employment decisions. Under Executive Order 11246, as amended, the prohibited factors are race, color, religion, sex, and national origin. Under Section 503, the prohibited factor is handicap; under 38 U.S.C. §4212, it is status as a special disabled or Vietnam-era veteran.

### ***Promotable Minorities and Women***

Minorities and women who are qualified and eligible for promotion based upon valid selection criteria.

### ***Promotable or Transferable***

In the context of developing data for availability, those employees who are currently employed in a job group or groups that serve or could serve as a source from which selections are or could be made for other job groups.

### ***Promotion***

Any personnel action resulting in movement to a position affording higher pay and/or greater rank, and/or requiring greater skill or responsibility, or the opportunity to attain such.

### ***Proof of Discrimination***

"Proofs" of discrimination are the factual formulations which show that discrimination under a particular theory exists. These formulations describe the kinds of facts needed to show a nexus between a particular adverse action or result and a particular prohibited factor. Proof requires evidence. (See "Anecdotal Evidence," "Comparative Evidence," and "Statistical Evidence.")

### ***Qualified Special Disabled Veteran***

A special disabled veteran (see below) who is capable of performing a particular job with or without a reasonable accommodation to his or her disability.



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***Qualified Individual with a Handicap(s)***

An individual with a handicap(s) (see above) who is capable of performing a particular job, with or without reasonable accommodation to his or her handicap.

***Reasonable Accommodation (Section 503)***

- (a) Any modification or adjustment to a job application process that enables a qualified individual with handicaps to be considered for the position such qualified individual desires, and which will not impose an undue hardship on the contractor's business (See, "Undue Hardship" below); or
- (b) Any modification or adjustment to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with handicaps to perform the essential functions of the position, and which will not impose an undue hardship on the operation of the contractor's business; or
- (c) Any modification that enables a contractor's employee with handicaps to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without handicaps, and which will not impose an undue hardship on the operation of the contractor's business.

Reasonable accommodation may include but is not limited to:

- (a) Making existing facilities used by employees readily accessible to and usable by individuals with handicaps;
- (b) Job restructuring--part-time or modified work schedules;
- (c) Reassignment to a vacant position;
- (d) Acquisition or modifications of equipment or devices;
- (e) Appropriate adjustment or modifications of examinations, training materials, or policies;
- (f) The provision of qualified readers or interpreters; and
- (g) Other similar accommodations for individuals with handicaps.

To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified individual with a handicap in need of the accommoda-



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tion. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. Compare with "Religious Accommodation."

***Reasonable Recruitment Area***

The area from which the contractor usually seeks or reasonably could seek workers for a particular job group. (See Section 2G04(c).)

***Recall***

The process or action by which workers are returned to active employment from layoff.

***Recruiting Source***

Any person, organization, or agency used to refer or provide workers for employment.

***Rehire***

To re-engage a formerly employed worker after a complete break in employment status. Compare with "Recall."

***Relevant Labor Market Area***

Geographic area used in determining availability. (Refer to Chapter 2 of this Manual.)

***Religious Accommodation***

Requirement of a contractor to accommodate sincere religious observances and practices of an employee or prospective employee unless the contractor can demonstrate that it is unable to do so without undue hardship on the conduct of its business. (See 41 CFR 60-50.3.) Anything requiring more than a de minimis cost has been held by the Supreme Court to constitute "undue hardship" in this context.



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***Requisite Skills***

Those basic skills needed to perform a job satisfactorily.

***Right of Response***

The contractor's right to produce a legitimate, nondiscriminatory reason for its actions once OFCCP has made a prima facie showing of discrimination.

***Rightful Place***

The job, seniority level (if applicable), salary level, etc., that a discriminatee would now hold had there been no discrimination.

***Section 503***

Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793), as amended.

***Seniority***

Length of employment as defined by the employer or applicable collective bargaining agreement. (Seniority may be both competitive and noncompetitive, and may be defined in terms of company seniority, facility seniority, departmental seniority, etc.) Employees may have different seniority for different purposes; e.g., job bidding rights governed by department seniority and leave accrual governed by company seniority.

***Show-Cause Notice***

A letter from OFCCP to the contractor ordering it to show cause why enforcement proceedings should not be instituted. A Show-Cause Notice follows OFCCP's issuance of a notice of violation and failure of conciliation. The Show-Cause Notice provides that the contractor must come into compliance within 30 days or OFCCP will recommend the institution of enforcement proceedings.



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### ***Skill Inventory***

A list of persons, categorized by their skills, kept by a contractor to encourage maximum use of the skills of applicants or employees.

### ***Special Disabled Veteran***

A veteran who:

- (a) Is entitled to compensation (or who, but for the receipt of military retirement pay, would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability that is:
  - (1) Rated at 30 percent or more, or
  - (2) Rated at 10 or 20 percent in the case of a veteran who has been determined under Section 1506 of the Veterans' Rehabilitation and Education Act Amendments of 1980 to have a serious employment handicap; or
- (b) Was discharged or released from active duty because of a service-connected disability. (See 38 U.S.C. §4211.)

### ***Standard Deviation***

A statistical measure used to describe the probability that differences between similarly situated groups (such as in selection rates, wages, etc.) occurred by chance.

### ***Standard Form 100***

See "EEO-1 Report."

### ***Standard Industrial Classification (SIC) Code***

A numerical coding system developed under the sponsorship of the Office of Management and Budget that classifies establishments by principal activity or service.



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### ***Statistical Evidence***

Evidence that explains or analyzes the meaning of numerical differences in selection rates, wages, or other employment decisions between members of one group and others who were similarly situated. Statistical evidence also may be used to show which factors did or did not affect selection decisions, wages, or other employment decisions. Also see "Anecdotal Evidence" and "Comparative Evidence."

### ***Subcontract***

Any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and employee):

- (a) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements,  
  
which in whole or in part, is necessary to the performance of any one or more Government contracts; or
- (b) Under which any portion of the contractor's obligation under one or more Government contracts is performed, undertaken, or assumed. (See 41 CFR 60-1.3.)

### ***Subcontractor***

Any person holding a subcontract, or for enforcement purposes any person who has held a subcontract, subject to the Executive order, Section 503, or 38 U.S.C. 4212. (See definition of "Subcontract.")

### ***Subjective Criteria/Procedures***

Employment qualifications, selection standards, or processes that require judgment in their application, such that different persons applying such criteria/procedures would not necessarily reach the same conclusion. A criterion is subjective if it is not fixed or measurable. Compare "Objective Criteria/Processes."

### ***Substantially Limits***



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In the application of Section 503, this means to affect significantly an individual's ability to perform a major life activity, or to restrict significantly an individual as to the condition, manner, or duration under which such individual can perform a particular major life activity. The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

- (a) The nature and severity of the impairment;
- (b) The duration or expected duration of the impairment; and
- (c) The permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment.

### ***Support Data***

Statistical data, documentation, and other materials regarding employment practices, generally used in the development, support, and/or justification of an affirmative action program.

### ***Systemic Discrimination***

Employment policies or practices that serve to differentiate or to perpetuate a differentiation in terms or conditions of employment of applicants or employees because of their status as members of a particular group. Such policies or practices may or may not be facially neutral, and intent to discriminate may or may not be involved. Systemic discrimination, sometimes called class discrimination or a pattern or practice of discrimination, concerns a recurring practice or continuing policy rather than an isolated act of discrimination.

### ***Termination of Employment***

Separation of an employee from the active and inactive payroll.

### ***Terms and Conditions of Employment***

This phrase includes all aspects of the employment relationships between an employee and his or her employer including, but not limited to, compensation, fringe benefits, leave policies, job placement, physical environment, work-related rules, work assignments, training and education, opportunities to





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serve on committees and decision-making bodies, opportunities for promotion, and maintenance of a nondiscriminatory working environment.

***38 U.S.C. §4212***

The affirmative action and nondiscrimination provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended. In this Manual, sometimes shortened to "Section 4212." Prior to 1991, when it was redesignated, the law was referred to as "38 U.S.C. §2012."

***Tolling***

The suspension of the running of a statute of limitations for equitable reasons. Because the Title VII 180-day limit on filing a charge with EEOC has been held to be a statute of limitations, there have been numerous court cases discussing tolling of that limit. By comparison, the regulations for OFCCP's three programs provide for the filing of a complaint within 180 days of the alleged violation unless the time for filing is extended by the Deputy Assistant Secretary for good cause shown. There is no similar good-cause language in Title VII. The good-cause authority allows the Director to waive the 180-day limit without raising questions of tolling.

***Training Agency***

Any person, organization, or agency whose purpose is to train workers.

***Transfer***

Movement (usually lateral) from one position or function to another.

***Underutilization***

Having materially fewer minorities or women in a particular job group than reasonably would be expected based upon their availability. (See Section 2G06.)

***Undue Hardship***



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In general, with respect to the provision of a reasonable accommodation, significant difficulty, or expense incurred by a contractor. Whether an accommodation is reasonable requires a case-by-case determination. For Section 503, see Chapter 6, Appendix A, IV. For Executive Order 11246, see Manual Section 3H02.

### ***Unemployed***

Under the criteria established by the Bureau of the Census of the U.S. Department of Commerce, civilians 16 years old and over who:

- (a) Were neither "at work" nor "with a job" during the reference week (see "Employed");
- (b) Were looking for work during the last 4 weeks; and
- (c) Were available to accept a job.

Also included as unemployed are persons who did not work at all during the reference week and were waiting to be called back to a job from which they had been laid off.

### ***Uniformly Applied***

Applying employment criteria/processes in the same manner to members of a particular race, color, religion, sex, or national origin group and others.

### ***Union Shop***

A factory, business, etc., operating under a contract between the employer and a labor union, that requires that all employees within the bargaining unit pay uniform periodic dues to the union, beginning within a specific period after hire.

### ***Vestibule Training***

Informal orientation provided by the contractor for the benefit of new employees.



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***Veteran of the Vietnam Era***

A person who:

- (a) Served on active duty for more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or
- (b) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

***Violation***

Failure to fulfill a requirement of the Executive order, Section 503, or 38 U.S.C. 4212 or their implementing rules, regulations, and orders. (See "Deficiency.") (The terms violation and deficiency are often used interchangeably.)

***White***

An individual, not of Hispanic origin, with origins in any of the original peoples of Europe, North Africa, or the Middle East.

***Wrongful Discharge***

Generally, unlawful employment termination. The phrase "wrongful discharge" is frequently used to refer to exceptions created by the courts in some states to the employment-at-will doctrine (see above). Courts in such states differ in the circumstances in which they will allow wrongful discharge suits challenging a termination. State law on this issue is not of direct concern to OFCCP. The Executive order, Section 503, 38 U.S.C. §4212, and implementing regulations prohibit termination based on a prohibited factor.



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## 1C GLOSSARY OF GENERAL ABBREVIATIONS

AA	Affirmative Action
AAP	Affirmative Action Program
ADA	Americans with Disabilities Act
ALJ	Administrative Law Judge
ADD	Assistant District Director
AO	Area Office, OFCCP
AOD	Area Office Director, OFCCP; Now DD (District Director)
APA	Administrative Procedure Act
ARA	Assistant Regional Administrator, OFCCP; Now RD (Regional Director)
BFOQ	Bona Fide Occupational Qualification
CA	Conciliation Agreement
CAS	Complaint Administration System
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CO	Compliance Officer
COA	Compliance Officer Assistant
CRIS	Compliance Review Information System
D&B	Dun & Bradstreet
DAS	Deputy Assistant Secretary (ESA)



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DBE	Disadvantaged Business Enterprise
DD	District Director
DO	District Office
DOJ	Department of Justice
DOL	Department of Labor
DORO	Division of Regional Operations
EEDS	Equal Employment Data System
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
EIN	Employer Identification Number
EO	Executive Order
EOA	Equal Opportunity Assistant; Now, Compliance Officer Assistant
EOS	Equal Opportunity Specialist; Now, Compliance Officer
ESA	Employment Standards Administration
ETA	Employment and Training Administration
FCCM	Federal Contract Compliance Manual
FO	Field Office, OFCCP; Now, Area Office
FOD	Field Office Director, OFCCP; Now, Assistant District Director (ADD)
FOIA	Freedom of Information Act
FR	Federal Register



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INS	Immigration and Naturalization Service
IRA	Impact Ratio Analysis
IRCA	Immigration Reform and Control Act of 1986
JAAR	Job Area Acceptance Range
LOC	Letter of Commitment
LOP	Line of Progression
MBE	Minority Business Enterprise
MJL	Mandatory Job Listing
MSA	Metropolitan Statistical Area
MSS	Management Support Staff
NO	National Office, OFCCP
NOV	Notice of Violation
NSOL	National Office, Solicitor of Labor
NRI	Notification of Results of Investigation
OFCCP	Office of Federal Contract Compliance Programs
RSOL	Regional Solicitor of Labor
SAAF	Standard Affirmative Action Format
SCN	Show-Cause Notice
SCRR	Standard Compliance Review Report (Supply and Service)
SCCRF	Standard Construction Compliance Report Form
SEC. 503	Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. §793), as amended



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SES	State Employment Service
SIC	Standard Industrial Classification
SMSA	Standard Metropolitan Statistical Area
SOL	Solicitor of Labor
TERO	Tribal Employment Rights Office
TRIS	Time Reporting Information System
Title VI	Title VI of the Civil Rights Act of 1964, as amended
Title VII	Title VII of the Civil Rights Act of 1964, as amended
USES	United States Employment Service
U.S.C.	United States Code
V/H	Veterans/Handicapped
VES	Veterans Employment Service
VETS	Veterans' Employment and Training Service (DOL)
WBE	Women's Business Enterprise
WEAL	Women's Equity Action League



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**1D            STANDARD FORMS LIST**

<u>NUMBER</u>	<u>TITLE/EXPLANATION</u>
CC-4	Complaint Form
CC-41	Hometown Plan Administrative Committee Quarterly Report
CC-56	Time Sheet
CC-58	Complaint Report Sheet
CC-58a	Financial Payments Sheet
CC-73	Quality Audit Form for Supply and Service Review
CC-74	Quality Audit Form for Construction Review
CC-75	Quality Audit Form for Complaint Investigation
CC-100	Compliance Review Report Sheet forwarded to the Regional Office to initiate the CRIS computer tracking system at the time the contractor is sent the "scheduling letter"
CC-100a	Compliance Review Report Sheet generated by the CRIS and returned to the District/Area office after submission of the CC-100
CC-101	Regional Office Report Sheet used for the CRIS
CC-104	Report of Remedies Agreed to for Identifiable Persons
CC-257	Monthly Employment Utilization Report; document used by construction companies to report monthly hours worked by trade
SF-50	Notice of Personnel Action Form
SF-71	Request for Leave Form
SF-171	Federal Employment Application





**APPENDICES**

**APPENDIX A**



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**APPENDIX A-1**

**TEXT OF EXECUTIVE ORDER 11246, AS AMENDED**

**Equal Employment Opportunity  
Executive Order 11246, As Amended  
By Executive Order 11375**

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U.S. Department of Labor  
Employment Standards Administration  
Office of Federal Contract Compliance Programs

OFCCP-4

**Executive Order 11246 --  
Equal Employment Opportunity**

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p. 339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:



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**Part I -- Nondiscrimination in Government  
Employment**

[Part I superseded by EO 11478 of Aug. 8, 1969,  
34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

**Part II -- Nondiscrimination in Employment  
by Government Contractors and  
Subcontractors**

**Subpart A -- Duties of the Secretary of Labor**

**SEC. 201.** The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5,  
1978, 43 FR 46501, 3 CFR, 1978 Comp., p.  
230]

**Subpart B -- Contractors' Agreements**

**SEC. 202.** Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

“During the performance of this contract, the contractor agrees as follows:

“(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action

shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

“(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

“(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

“(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

“(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain



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compliance with such rules, regulations, and orders.

“(6) In the event of the contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.



“(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *provided, however.*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

[Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 203.** (1) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any

preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided*, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and



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conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

absence of such an exemption, all facilities shall be covered by the provisions of this Order.

[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR. 1966-1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR. 1978 Comp., p. 230]

**SEC. 204.** The Secretary of Labor may, when he/she deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: *Provided*, That such an exemption will not interfere with or impede the effectuation of the purposes of this Order: *And provided further*, That in the



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**Subpart C -- Powers and Duties of the  
Secretary of Labor and the Contracting  
Agencies**

**SEC. 205.** The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 206.** (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 207.** The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities

to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 208.** (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearing in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

**Subpart D -- Sanctions and Penalties**

**SEC. 209.** (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:



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(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulation, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.





(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 210.** Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the

action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR 1978 Comp. p. 230]

**SEC. 211.** If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp. p. 230]

**SEC. 212** When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

#### **Subpart E -- Certificates of Merit**

**SEC. 213.** The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers of labor



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unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

**SEC. 214.** Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

**SEC. 215.** The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

### **Part III -- Nondiscrimination Provisions in Federally Assisted Construction Contracts**



**SEC. 301.** Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor

debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

**SEC. 302.** (a) "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

**SEC. 303.** (a) The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take



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any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred, (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant, and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]



**SEC. 304.** Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: *Provided*, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

**Part IV -- Miscellaneous**

**SEC. 401.** The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp. p. 230]

**SEC. 402.** The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

**SEC. 403.** (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964) are hereby superseded and the President's Committee on Equal

Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p. 264]

**SEC. 404.** The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

**SEC. 405.** This Order shall become effective thirty days after the date of this Order.



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**APPENDIX A-2**

**TEXT OF SECTION 503 OF THE REHABILITATION ACT OF 1973,  
As Amended (through 2/93)  
(Revised March 12, 1993)**

Employment Under Federal Contracts

**Section 503.**

- (a) Any contract in excess of \$10,000 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities as defined in section 7(8) [29 U.S.C. §706(8)]. The provisions of this section shall apply to any subcontract in excess of \$10,000 entered into by a prime contractor for the procurement of personal property and nonpersonal services (including construction) for the United States. The President shall implement the provisions of this section by promulgating regulations within 90 days after the date of enactment of this section [enacted September 26, 1973].
- (b) If any individual with a disability believes any contractor has failed or refused to comply with the provisions of a contract with the United States, relating to employment of individuals with disabilities, such individual may file a complaint with the Department of Labor. The Department shall promptly investigate such complaint and shall take such action thereon as the facts and circumstances warrant, consistent with the terms of such contract and the laws and regulations applicable thereto.
- (c) (1) The requirements of this section may be waived, in whole or in part, by the President with respect to a particular contract or subcontract, in accordance with guidelines set forth in regulations which the President shall prescribe, when the President determines that special circumstances in the national interest so require and states in writing the reasons for such determination. (87 Stat. 393, 29 U.S.C. §793, as amended November 6, 1978, P.L. 95-602, 92 Stat. 2987; October 21, 1986, P.L. 99-506, 100 Stat. 1810 and 1844; P.L. 100-630, 101 Stat. 3312, November 7, 1988.)
- (2)(A) The Secretary of Labor may waive the requirements by regulations promulgated under subsection (a) with respect to any of a prime contractor's or subcontractor's facilities that are found to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to



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the performance of the contract or subcontract, if the Secretary of Labor also finds that such a waiver will not interfere with or impede the effectuation of this Act.

- (B) Such waivers shall be considered only upon the request of the contractor or subcontractor. The Secretary of Labor shall promulgate regulations that set forth the standards used for granting such a waiver.
- (d) The standards used to determine whether this section has been violated in a complaint alleging nonaffirmative action employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections 501 through 504, and 510, of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201-12204 and 12210), as such sections relate to employment.
- (e) The Secretary shall develop procedures to ensure that administrative complaints filed under this section and under the Americans with Disabilities Act of 1990 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this section and the Americans with Disabilities Act of 1990.

#### Pertinent Definitions

**Section 7** For purposes of this chapter: \* \* \* \* \*

- (8) (B) Subject to subparagraphs (C), (D), (E), and (F) the term ‘individual with a disability’ means, for purposes of sections 2, 14, and 15, and titles IV and V of this chapter, any person who
- (i) Has a physical or mental impairment which substantially limits one or more of such person’s major life activities,
  - (ii) Has a record of such an impairment, or
  - (iii) Is regarded as having such an impairment.
- (C) (i) For purposes of title V, the term ‘individual with a disability’ does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.
- (ii) Nothing in clause (i) shall be construed to exclude as an individual with a disability an individual who --





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- (i) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
  - (II) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or
  - (III) Is erroneously regarded as engaging in such use, but is not engaged in such use;

except that it shall not be a violation of this Act for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (i) or (II) is no longer engaging in the illegal use of drugs.

**[ (C)(iii) and (iv) not related ]**

- (v) For purposes of sections 503 and 504 as such sections relate to employment, the term ‘individual with a disability’ does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.
- (D) For the purpose of sections 793 and 794 of this title, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection is unable to perform the duties of the job.
- (E) For the purpose of Sections 501, 503, and 504--
  - (i) For purposes of the application of subparagraph (B) to such sections, the term ‘impairment’ does not include homosexuality or bisexuality.
  - (ii) Therefore, the term ‘individual with a disability’ does not include an individual on the basis of homosexuality or bisexuality.
- (F) For the purposes of sections 501, 503, and 504, the term ‘individual with a disability’ does not include an individual on the basis of--
  - (i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;



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(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

\* \* \* \* \*

(22) (A) The term 'drug' means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) The term 'illegal use of drugs' means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 USC §801 et. seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.



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**APPENDIX A-3**

**TEXT OF U.S.C. 4212 (FORMERLY 38 U.S.C. 2012),  
AS AMENDED AND 4211 (DEFINITIONS)  
(REVISED 4-22- )**

**Title 38, United States Code (As of October 31, 1992)**

**CHAPTER 42--EMPLOYMENT AND TRAINING OF VETERANS**

Sec.

Definitions.

Veterans' employment emphasis under Federal contracts.

Eligibility requirements for veterans under Federal employment and training programs.

Employment within the Federal Government.

[Table of Contents amended by P.L. 102-83, 5(a)]

**§ 4211. Definitions**

As used in this chapter--

- (1) The term "special disabled veteran" means--
  - (A) 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 (i) rated at 30 percent or more, or (II) rated at 10 or 20 percent in the case of a veteran who has been determined under section 1506 of this title to have a serious employment handicap; or
  - (B) a person who was discharged or released from active duty because of a service connected disability.

[Amended P.L. 98-223, § 206; P.L. 102-83, 5(a).]

- (2) ~~(A) Subject to subparagraph (B) of this paragraph, the term~~ *The term* "veteran of the Vietnam era" means an eligible veteran any part of whose active military, naval, or air service was during the Vietnam era.



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~~(B) No veteran may be considered to be a veteran of the Vietnam era under this paragraph after December 31, 1994 except for purposes of Section 4214 of this title.~~

- (3) The term “disabled veteran” means (A) 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, or (B) a person who was discharged or released from active duty because of a service-connected disability.
- (4) The term ‘eligible veteran’ means a person who--
- (A) Served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge;
  - (B) Was discharged or released from active duty because of a service-connected disability; or
  - (C) As a member of a reserve component under an order to active duty pursuant to section 672(a), (d), or (g), 673, or 673b of title 10, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from such duty with other than a dishonorable discharge.
- (5) The term “department or agency” means any agency of the Federal government or the District of Columbia, including any Executive agency as defined in section 105 of title 5 and the United States Postal Service and the Postal Rate Commission, and the term “department, agency, or instrumentality in the executive branch” includes the United States Postal Service and the Postal Rate Commission.

**[Added P.L. 920-450, 503(a); amended P.L. 93-508, 402(1), (2); P.L. 96-466, 801(j); P.L. 101-237, 407(a); P.L. 102-16, § 1; P.L. 102-127, (5).]**

**§ 4212. Veterans’ employment emphasis under Federal contracts.**

- (a) Any contract in the amount of \$10,000 or more entered into by any department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States, shall contain a provision requiring the party contracting with the United States shall take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. The provisions of this section shall apply to any subcontract entered into by a prime contractor in carrying out any contract for the procurement of personal property and non-personal services (including construction) for the United States. In addition to requiring affirmative action to employ such veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the President shall implement the provisions of this section by promulgating regulations which shall require that (1) each such contractor undertake



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in such contract to list immediately with the appropriate local employment service all of its suitable employment openings, and (2) each such local office shall give such veterans priority in referral to such employment openings.

**[Added P.L. 92-540, § 503(a); amended P.L. 93-508, § 402(1), (2); P.L. 96-4656, § 801(j); P.L. 201-83, 5(a).]**

- (b) If any special disabled veteran or veteran of the Vietnam era believes any contractor of the United States has fail to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

**[Added P.L. 92-540, § 503(a); amended P.L. 93-508, § 402(3); P.L. 94-502, § 607(2); P.L. 95-520, § 6(a); P.L. 96-466, § 509.]**

- (c) The Secretary shall include as part of the annual report required by section 4107(c) of this title the number of complaints filed pursuant to subsection (b) of this section, the actions taken thereon and the resolutions thereof. Such report shall also include the number of contractors listing suitable employment openings, the nature, types, and number of positions listed and the number of veterans receiving priority pursuant to subsection (a)(2) of this section.

**[Added P.L. 94-502, § 605.]**

- (d)
- (1) Each contractor to whom subsection (a) of this section applies shall, in accordance with regulations which the Secretary shall prescribe, report at least annually to the Secretary on--
    - (A) The number of employees in the work force of such contractor, by job category and hiring location, who are veterans of the Vietnam era or special disabled veterans; and
    - (B) The total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are veterans of the Vietnam era or special disabled veterans.
  - (2) The Secretary shall ensure that the administration of the reporting requirement under paragraph (1) of this subsection is coordinated with respect to any requirement for the contractor to make any other report to the Secretary.

**[Added P.L. 97-306, § 310(a).]**



**U.S. Department of Labor  
Employment Standards Administration  
Office of Federal Contract Compliance Programs**

**Federal Contract Compliance Manual (FCCM)  
CHAPTER I - GENERAL**

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