

FREQUENTLY ASKED QUESTIONS

Vietnam Era Veterans' Readjustment Assistance Act (Section 4212) Notice of Proposed Rulemaking (NPRM)

The Office of Federal Contract Compliance Programs (OFCCP) issued a Notice of Proposed Rulemaking (NPRM) to inform the public about proposed changes to the affirmative action requirements of 41 CFR parts 60-250 and 60-300. These regulations implement Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended, 38 U.S.C. § 4212 (Section 4212). The NPRM also invited the public to comment on the proposed changes.

The Section 4212 NPRM was published on April 26, 2011 in the Federal Register (76 FR 23358). After a two-week extension of the original end date of June 27, the comment period ended on July 11, 2011 (76 FR 36482). Important information about the NPRM is highlighted below.

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GENERAL INFORMATION

1. **What is a Notice of Proposed Rulemaking (NPRM)?**

An NPRM is the government's way of providing the public formal notice that it is proposing a new regulation or modifying an existing regulation.

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2. **Can I review comments submitted by others?**

Yes. Anyone can review the comments we receive on the NPRM by going to www.regulations.gov. The comments are also available for public inspection during normal business hours at OFCCP's Washington, D.C. office at 200 Constitution Avenue, N.W., Washington, D.C. 20210, Room C-3325. Readers, print magnifiers and other appropriate aids are available to people needing assistance.

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NPRM HIGHLIGHTS

1. **Why does OFCCP want to revise its Section 4212 (often referred to as "VEVRAA") regulations?**

The framework articulating contractors' Section 4212 responsibilities has not changed since the implementing regulations were first published in 1976. Yet today, increasing numbers of veterans are returning from duty in Iraq, Afghanistan and elsewhere around the world only to face substantial obstacles in finding employment. Strengthening our Section 4212 regulations is an important step towards addressing this problem and increasing employment opportunities for protected veterans.

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2. **How did the NPRM propose to amend Part 60-250?**

The NPRM proposed rescinding Part 60-250 as obsolete because it only applies to Government contracts and subcontracts of \$25,000 or more entered into before December 1, 2003 and not since modified. Alternatively, in the event that the public comments indicated that contracts subject to Part 60-250 still exist, the NPRM proposed revising the substantive provisions of Part 60-250 to mirror the requirements in Part 60-300.

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3. **How did the NPRM propose to amend Part 60-300?**

The NPRM proposed a variety of changes to the regulations in Part 60-300. For example, the NPRM proposed strengthening the affirmative action provisions by detailing mandatory actions by contractors

in the areas of recruitment, employee training, recordkeeping, and the dissemination of their affirmative action policies. In addition, the NPRM proposes:

- clarifying when electronic posting of employee rights and contractor obligations is permissible and when it is required;
- updating how compliance evaluations are conducted;
- clarifying mandatory job listing requirements;
- requiring contractors establish hiring benchmarks to measure the effectiveness of its affirmative action efforts; and
- improving contractor data collection related to protected veteran referrals, applicants and hires.

We discuss some of these proposed revisions in detail in the questions below.

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4. **Did OFCCP recommend additional data collection responsibilities in its NPRM?**

The NPRM recommended that contractors collect and maintain several measurements and comparisons related to protected veterans, including the:

- number of protected veterans referred to them by state employment services,
- number of protected veterans that applied for positions with the contractor, and
- number of protected veterans hired by the contractor.

This data gives contractors and OFCCP important information that does not currently exist. This data is important because it will help contractors evaluate and tailor their recruitment and outreach efforts, and establish the hiring benchmarks proposed in the NPRM.

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5. **Can OFCCP tell me more about the proposed requirement to establish hiring benchmarks?**

The NPRM proposed requiring, for the first time, that contractors establish annual hiring benchmarks. These benchmarks are expressed as the percentage of total hires who are protected veterans that a

contractor will seek to hire the following year. By using benchmarks, contractors have a quantifiable measure for gauging their success in recruiting and employing protected veterans.

As proposed in the NPRM, when establishing benchmarks contractors consider:

- the percentage of veterans in the civilian labor force in the State where the contractor is located, and
- the number of veterans who participated in the State’s employment service delivery system.

OFCCP will make State veteran participation information available on its website.

Contractors may also consider other factors, including the nature of the job openings and/or its location, which might tend to affect the availability of qualified protected veterans.

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6. Did the NPRM propose any changes to the contractor’s obligation to invite applicants to self – identify as a protected veteran?

Yes. The NPRM proposed requiring the contractor to invite applicants to self-identify at both the pre-offer and post-offer stages of the hiring process. As proposed, prior to an offer of employment, the contractor is required to invite all applicants for employment to self-identify as a “protected veteran.” After the contractor makes an offer of employment, there is a requirement to invite the applicant to self-identify as member of one or more specific classifications of protected veterans covered under Part 60-300. These proposed changes allow the contractor to collect enhanced data regarding protected veterans. This, in turn, allows the contractor and OFCCP to identify and monitor the contractor’s employment practices with respect to protected veterans.

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7. What changes did the NPRM propose to the current mandatory job listing requirement?

The NPRM proposed clarifying OFCCP’s existing mandatory job listing requirement by requiring contractors to provide job vacancy information to the appropriate employment service in the way that the employment service needs it in order to include the job in their database. Contractors, or privately run job services or exchanges acting on behalf of contractors, must also comply with this requirement in order to satisfy their job listing obligations.

The NPRM also proposed requiring contractors to inform state employment services of their status as a Federal contractor, request priority referrals of protected veterans for job openings at each location in the state, and provide the contact information for the hiring official at each location in the state. Similarly, if contractors use any outside job search companies to assist with hiring, the NPRM proposed requiring them to provide the state employment service with contact information for these companies.

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8. Did the NPRM suggest changes to the recruitment of protected veterans?

Current regulations merely suggest a number of outreach and recruitment efforts that contractors can undertake to increase employment opportunities for protected veterans. In contrast, the NPRM suggested requiring contractors to engage in a minimum of three specified types of outreach and recruitment efforts. The suggested regulations also include a list of optional outreach and recruitment measures. Finally, the NPRM suggested requiring contractors to annually review their outreach and recruitment efforts and evaluate their effectiveness.

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