

Affirmative Action FAQs

What types of affirmative action obligations are covered by written Affirmative Action Plans?

Contractors that have at least 50 employees and also meet the contract value thresholds under Executive Order 11246, The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and/or Section 503 of the Rehabilitation Act of 1973, (Section 503) are required to develop and maintain written AAPs. The components of a written AAP address both nondiscrimination and affirmative action obligations. Written AAP components include the following:

Executive Order 11246: Comparing the utilization of women and minorities to their availability; setting placement goals if women or minorities are underutilized; assessing recruitment and outreach efforts; and developing and executing action-oriented programs to address identified problems.

VEVRAA: Assessing personnel processes and standards; using effective recruitment and outreach efforts designed to recruit protected veterans; assessing recruitment and outreach efforts; developing and executing action-oriented programs to address identified problems; and establishing a hiring benchmark.

Section 503: Assessing personnel processes and standards; using effective recruitment and outreach efforts designed to recruit qualified individuals with disabilities; assessing recruitment and outreach efforts; developing and executing action-oriented programs to address identified problems; and using the Office of Federal Contract Compliance Programs (OFCCP) utilization goal as a benchmark to measure representation of individuals with disabilities in its job groups and/or workforce. Although not required, OFCCP regulations expressly permit contractors to develop and implement training and employment programs for employees with disabilities.

May a contractor set quotas as a way to meet its affirmative action obligations?

No, OFCCP regulations do not permit quotas, preferences, or set asides. They are strictly forbidden. Placement goals (under Executive Order 11246), utilization goals (under Section 503), and hiring benchmarks (under VEVRAA) are not to be interpreted as a ceiling or floor for the employment of particular groups of persons but, rather, should serve as a benchmark against which the contractor measures the representation of persons within its workforce. Placement goals, utilization goals, and hiring benchmarks are not rigid or inflexible quotas to be met but, rather, standards of measurement of how a contractor is fulfilling its affirmative action obligations. When a contractor fails to meet a utilization goal or hiring benchmark, the contractor assesses its employment practices and takes appropriate measures to address identified problem areas and remedy potential discrimination. Such remedies may include assessing and revising policies and practices that hinder employment opportunities, broadening recruitment and outreach to increase the diversity of applicant pools, and/or instituting training and/or apprenticeship programs to increase promotion opportunities and applications from underrepresented groups.

What if a contractor does not meet its affirmative action obligations?

The OFCCP compliance evaluation, investigation, and conciliation processes are designed to identify and correct violations. Under OFCCP's resolution procedures, the agency will seek to conciliate, correct, and remedy any noncompliance with Executive Order 11246, Section 503, VEVRAA, and their implementing regulations. As a part of the conciliation process, OFCCP generally proposes a conciliation agreement that requires specific steps to be taken by the contractor to ensure the violations are corrected and remedied, as appropriate.

Are the affirmative action obligations OFCCP enforces similar to the affirmative action steps taken by some educational institutions to increase the racial diversity of their student bodies?

No. OFCCP enforces nondiscrimination and affirmative action obligations to ensure equal opportunity in the federal contractor workforce, while some post-secondary educational institutions have implemented a wholly distinct concept of affirmative action that permitted the use of race to be weighed as one factor among many in admissions processes. Further, the Supreme Court's decision in *Students for Fair Admissions* applies only to higher education admissions programs and does not address the employment context. There continue to be lawful and appropriate ways to foster equitable and inclusive work environments and recruit qualified workers of all backgrounds. OFCCP's affirmative action requirements enable employers to reduce the risk of discrimination in their workforces and recruit and retain diverse talent.

Why are veterans asked to self-identify?

Under The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), contractors must offer each applicant the opportunity to self-identify as a protected veteran at both the pre-offer and post-offer phases of the hiring process. Federal contractors use this information to help measure the effectiveness of their veteran-hiring initiatives. Although it is voluntary to disclose your veteran status, there are mutual benefits for applicants, employees, and federal contractors in self-identifying.

Does VEVRAA protect all veterans?

Under Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), the term "protected veterans" includes four categories of veterans: disabled veterans, recently separated veterans, active-duty wartime or campaign badge veterans, and Armed Forces service medal veterans.

How does the federal government define "disability"?

For purposes of nondiscrimination laws (e.g. the Americans with Disabilities Act, Section 503 of the Rehabilitation Act of 1973 and Section 188 of the Workforce Investment Act), a person with a disability is generally defined as someone who (1) has a physical or mental impairment that substantially limits one or more "major life activities," (2) has a record of such an impairment, or (3) is regarded as having such an impairment.

Why are individuals with a disability asked to self-identify?

The Section 503 regulations permit contractors to invite applicants to self-identify as an individual with a disability at the same time that the contractor collects demographic data regarding race, gender, and ethnicity from applicants, as required by Executive Order 11246. There is also a requirement that contractors regularly invite all of their employees to voluntarily self-identify as an individual with a disability. Contractors are required to invite their employees to self-identify every five years. In addition, at least once during the years between these invitations, contractors must remind their employees that they may voluntarily update their disability status at any time.

Through the invitation and reminder to employees to self-identify, contractors can capture data on employees who become disabled while employed, as well as those with existing disabilities who may feel more comfortable self-identifying once they have been employed for some time. It also allows contractors to monitor and improve their practices regarding placement, retention, and promotion. The regulations also emphasize that contractors may not compel or coerce individuals to self-identify and that contractors must keep all self-identification information confidential.