

# Compliance in Hiring Veterans, Those With Disabilities Nuanced

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By [Lydell C. Bridgeford](#)

May 23— It's not enough to try to recruit veterans and workers with disabilities, federal contractors must also measure how they're doing, one panelist said at a wide-ranging conference on rules enforced by the Labor Department's Office of Federal Contract Compliance Programs. Over three days, speakers delved into revised regulations, functional affirmative action programs, and disposition codes for online applicants.

“We have seen a shift in the past year of what the OFCCP has been accepting as a meaningful and complete submission” on outreach and recruitment efforts, said Beth A. Ronnenburg, president of Berkshire Associates Inc., a Maryland-based human resources consulting firm.

The May 20 panel was part of a conference sponsored by DirectEmployers Association, a consortium of talent acquisition and OFCCP compliance professionals.

## Looking at Rule Revisions

Ronnenburg addressed, among other things, outreach and recruitment assessments under the revised regulations for Section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act.

The regulations instruct federal contractors to institute a nationwide 7 percent utilization goal for people with disabilities in each job group of their workforce and to set hiring benchmarks for protected veterans subject to either the current national percentage of veterans in the workforce or the contractors' own best available data.

The regulations also call for contractors to conduct an annual effectiveness review to see whether they're below or above the goal or benchmark.

During a compliance evaluation, contractors are enthusiastic about sharing the “great things” they're doing with outreach and recruitment for protected veterans and people with disabilities, Ronnenburg said. But federal contractors now have an obligation to evaluate whether their efforts are helping them to achieve the goal or benchmark.

The “understanding is if you submit two pages discussing all of your outreach and recruitment efforts,” then the written affirmative action program also should explain “how you evaluated all of those efforts” for their effectiveness, she added.

Others on the panel included Jennifer Seda, an attorney with Jackson Lewis P.C.'s Denver office; Patrick M. Nooren, Ph.D., executive vice president at Biddle Consulting Group in Northern California; and Linda Cavanna-Wilk, an attorney with Ford & Harrison LLP in New York.

### **Disposition Codes for Online Applicants**

A recurring theme throughout the three-day conference was that more contractors need to adopt strategies to ensure that disposition codes are correctly assigned to job applicants during the hiring and selection process. Many applicant tracking and human resources information systems allow contractors to create one or more data fields where recruiters and human resources representatives can fill in disposition codes and descriptions on job seekers.

Disposition codes indicate the stages in the hiring process an applicant has reached and the reason a candidate didn't proceed further. Employers also assign disposition codes to identify job seekers who don't meet the criteria of an Internet applicant under OFCCP regulations.

The rule prescribes that an Internet applicant must satisfy the following conditions: the person submits an expression of interest in employment through the Internet or related technologies; the contractor considers the person for a particular position; the individual's expression of interest indicates basic qualifications for the position; and the person doesn't remove himself or herself from further consideration or otherwise indicate he or she is no longer interested in the position.

### **Imprecise Codes, Data**

According to the conference speakers, imprecise or inadequate disposition codes and data on applicants, including online candidates, can lead to erroneous results in adverse impact analyses on hiring practices and applicant flow logs. Such job-applicant data are submitted to a compliance officer during an audit.

“Please review the Internet applicant rule before you submit any applicant data to the OFCCP,” said Seda during the May 20 panel discussion.

The rule is “a phenomenal and amazing tool” because it allows contractors to focus on job seekers “who truly count as applicants” for compliance purposes.

Additionally, “your disposition codes should get at the elements of the Internet applicant rule,” she said. For example, “they should help you identify who didn't meet the basic qualifications and who withdrew from the hiring process.” Remove job seekers from the job-applicant data filed with the OFCCP who don't meet the Internet applicant rule's criteria, she recommended.

“Pay attention to your disposition codes,” said Cavanna-Wilk. Contractors should review their disposition codes every other year to confirm that they align with each step of the hiring process.

She advised contractors to “have enough disposition codes so that they give you specificity,” thus avoiding a situation in which the company can't explain to a compliance officer why certain job seekers passed to the next step and others didn't.

Speaking at a May 19 session, John C. Fox, an attorney with Fox, Wang & Morgan P.C. in Los Gatos, Calif., urged federal contractors to customize disposition codes to reflect the hiring and selection processes of the particular establishment. A “one-size-fit-all approach” with disposition codes may not work for some contractors, he said. Fox, a former OFCCP policy official under the George H.W. Bush administration, said contractors should “have as many disposition codes as you need, but as few as you can.”

The human resources compliance team should train the company's recruiters and hiring managers so that they accurately assign disposition codes to job applicants during the hiring process, he said.

### **Tell a Story to Defend Pay Decision**

Turning to compensation, Biddle's Nooren reminded attendees May 20 that employers have seen the federal government make several attempts to address compensation disparities. He cited, for example, the Equal Employment Opportunity Commission's recent proposal to revise the Employer Information Report (EEO-1) to include aggregate pay data annually by gender, race and ethnicity. Government contractors with 50 employees and contracts awarding \$50,000 or more are required to file an annual EEO-Report to the EEOC and the OFCCP.

Nooren also said employers have access to a host of techniques and strategies on conducting compensation analyses. “But at the end of the day, it's about can you tell a story behind why a certain individual is paid differently” and convincingly explain the legitimate, non-discriminatory, job-related factors creating the difference in compensation, he said. If a contractor can achieve this goal, then scrutiny over its pay practices “tends to go away,” he added.

### **FAAP Revised Directive Discussed**

What are the “advantages and disadvantages” for a federal contractor that decides to implement a functional affirmative action program (FAAP), asked Candee Chambers, vice president of compliance and partnership of DirectEmployers, during a May 18 panel discussion at the conference.

The OFCCP issued a revised directive May 9 on how it will process requests to establish affirmative action programs (AAPs) based on business function or line of business under Executive Order 11,246.

Unlike a standard establishment AAP, which is based on the geographic location of the establishment and its employees, FAAPs are organized around a business function or unit and may encompass multiple establishments.

The new directive, among other things, incorporates the affirmative action requirements of VEVRAA and Section 503. The contractor has the option to develop “Section 503 and VEVRAA FAAPs for the same functional or business units that are covered by their Executive Order 11246 FAAPs,” the OFCCP said.

Chambers noted that the revised directive states that a contractor seeking the agency’s approval for an FAAP must agree to a compliance evaluation.

“It has always been a requirement that you submit to a compliance evaluation in order to be approved for an FAAP,” said Joyce Morgan, owner of Morgan Consulting Services, LLC and a former deputy regional director at the OFCCP. “That’s an audit waiting to happen if you decide to go the FAAP route,” she said. The revised directive didn’t amend that requirement.

Morgan wasn’t sure whether there were any advantages or disadvantages for a contractor of creating and maintaining an FAAP. The contractor has to determine whether an FAAP will “work for your organization,” she said. Contractors that decide to pursue an FAAP first should conduct a mock OFCCP audit before submitting a proposal to the agency, so that “you can see what the OFCCP might find in its compliance evaluation,” Morgan added.

For some contractors, “an FAAP could be a great idea,” Chambers said, citing multi-establishment contractors with large workforces and several business units as an example. According to Chambers, a large workforce at an individual establishment can yield a standard AAP containing a huge amount of employment data. “You have the risks of the agency, for example, examining data related to 6,000 to 10,000 employees,” she said.

Under the revised directive, the contractor knows the organization will be subjected to a compliance evaluation, said Fox. If a contractor decides not to implement an FAAP, then the organization has less than a 2 percent chance of facing a compliance evaluation by the OFCCP, he said. “It’s a policy call,” he said. “What do you fear and what do you value?”

“Have an FAAP if it serves your purpose,” Fox said. The challenge with a standard establishment AAP for a large contractor is that “it’s horizontal.” Management may face some barriers in trying to implement the AAP, he said. For example, the plan may call for setting hiring goals for a particular job group within the company, but one or two departmental managers may not see the need within their unit for taking affirmative steps to achieve the plan’s goals and objectives.

By contrast, “an FAAP follows your chain of command from the top dog to the lowest-level employee.” The plan can function as a tool to hold a high level official or senior manager accountable for the goals and objectives established in the plan or program regarding a specific department or line of business, Fox said. The managing official now “feels ownership” toward meeting the goals and objectives of the plan.

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