

---

EQUAL EMPLOYMENT  
ADVISORY COUNCIL

SUITE 400  
1501 M STREET, NW  
WASHINGTON, DC 20005

TEL 202/629-5650  
FAX 202/629-5651

July 5, 2011

**VIA REGULAR U.S. MAIL AND ELECTRONIC MAIL**

Debra A. Carr  
Director, Division of Policy, Planning  
and Program Development  
Office of Federal Contract Compliance Programs  
U.S. Department of Labor  
200 Constitution Avenue, NW, Room C-3325  
Washington, DC 20210

Re: Notice of Proposed Rulemaking — Affirmative Action and Nondiscrimination  
Obligations of Contractors and Subcontractors Regarding Protected Veterans  
(RIN 1250-AA00)

Dear Ms. Carr:

The Equal Employment Advisory Council, the U.S. Chamber of Commerce, the National Association of Manufacturers, The Associated General Contractors of America, the Center for Corporate Equality, and the HR Policy Association collectively represent the interests of nearly all U.S. businesses subject to — and the human resources executives responsible for managing compliance with — the affirmative action and recordkeeping regulations of the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (“OFCCP”). For the reasons set forth below, we submit for your immediate consideration this joint letter urging OFCCP to withdraw the above-referenced Notice of Proposed Rulemaking (“NPRM”).

While we fully support OFCCP’s stated overall goal of increasing employment opportunities for covered veterans, we do not and cannot support a significant new regulatory scheme that places far greater emphasis on ineffective paperwork requirements than it does on practical programs to employ U.S. veterans. We urge OFCCP to engage businesses, organizations, and other experts to develop a proposal that would meaningfully improve the quantity and quality of job opportunities for our nation’s veterans, without imposing the burdensome administrative, recordkeeping, and paperwork requirements contained within OFCCP’s proposal as written on the very employers expected to provide those job opportunities.

Based on our review of the proposed regulations and the comments we have received from our respective members, it is clear that the proposal does not comply with President Obama’s Executive Order 13563, which requires regulations to use the “least burdensome tools for achieving regulatory ends.” It is equally clear that the proposal will impose significant additional costs and burdens on U.S.

employers at a critical time in the nation's economic recovery and will not significantly increase employment opportunities for qualified protected veterans.

The Proposal Does Not Comply With Executive Order 13563, Nor Will It Significantly Increase Employment Opportunities for Veterans

Executive Order 13563 requires federal agencies to “use the best, most innovative, and least burdensome tools for achieving regulatory ends” and to “tailor [their] regulations to impose the least burden on society.” We believe the agency's proposal fails to meet these requirements, largely because it places disproportionate emphasis on ineffective, costly, and overly prescriptive paperwork requirements rather than on meaningful and practical programs that connect veteran job-seekers with federal contractors.

For example, the proposal would require federal contractors to build files on every known veteran applicant and employee, and include in those files documentation on each opportunity for which the veteran was considered and statements explaining why the veteran was not selected. It also would require contractors to negotiate, draft, and administer more than 750,000 individual written “linkage agreements” each year, rather than using that time to engage in meaningful efforts to recruit, hire, develop, and retain veterans. Further, the proposal would, for the first time, mandate federal contractors to use inadequate data sources to develop legally enforceable benchmarks for hiring covered veterans, even though the federal government explicitly acknowledges that it does not have the data necessary to develop such benchmarks.

OFCCP Has Not Made a Reasoned Determination That the Proposal's Benefits Justify Its Costs, Nor Has the Agency Accurately Estimated Its Economic Impact

The Executive Order also requires federal agencies to “propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs,” and “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” We respectfully submit, however, that OFCCP has not made such a determination, and that the cost-benefit analysis presented in the NPRM contains significant errors and omissions which must be corrected before such a determination can be made.

For example, the agency's Paperwork Reduction Act and Regulatory Flexibility Act analyses incorrectly assume that the proposal would impact only 108,288 federal contractor establishments, when in fact the Labor Department's own data from its Veterans' Employment and Training Service (VETS) confirm that there are (or were in 2010) at least 285,390 such establishments.<sup>1</sup> This single miscalculation results in an understatement of the proposal's economic impact by more than sixty percent, and correcting for this error alone yields a total economic impact of \$159,818,400.<sup>2</sup> On the benefit side of the analysis, under OFCCP's existing regulations, these same establishments hired between 133,333 and 280,000 protected veterans during the twelve-month period ending in

---

<sup>1</sup> Veterans' Employment and Training Service Annual Federal Contractor Reporting Comparison Table, January 31, 2011.

<sup>2</sup> Correcting for other mistakes in OFCCP's burden estimates yields an economic impact significantly higher than this figure.

Debra A. Carr  
July 5, 2011  
Page 3

July/August 2010, but the NPRM offers no estimates of how many *more* protected veterans these establishments would hire under OFCCP's proposed regulations. With an economic impact conservatively estimated to be no less than \$225,000,000 per year, we frankly cannot see how the anticipated benefits of the agency's proposal justify its extraordinarily high costs.

OFCCP Should Immediately Withdraw the NPRM and Engage Federal Contractors in Crafting a More Reasonable Regulatory Proposal

To be sure, OFCCP's stated overall goal of increasing employment opportunities for covered veterans is one we fully support. We do not and cannot, however, support a significant new regulatory program that places far greater emphasis on ineffective paperwork requirements than it does on practical programs to employ U.S. veterans. We therefore urge OFCCP to immediately withdraw the NPRM, and to begin working with us and those we represent on crafting an alternative proposal that is consistent with the President's commitment to economic and job growth and which would meaningfully improve the employment situation for our nation's veterans.

Sincerely,



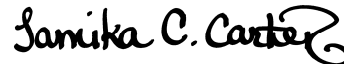
Jeffrey A. Norris  
President  
Equal Employment Advisory Council



Randel K. Johnson  
Senior Vice President, Labor, Immigration  
& Employee Benefits  
U.S. Chamber of Commerce



Joe Trauger  
Vice President, Human Resources Policy  
National Association of Manufacturers



Tamika C. Carter, PHR  
Director, Construction HR  
Associated General Contractors of America



David Cohen  
Senior Vice President  
Center for Corporate Equality



Michael D. Peterson  
Director, Labor & Employment Policy  
HR Policy Association

cc: Hon. Hilda L. Solis, U.S. Department of Labor  
Seth D. Harris, U.S. Department of Labor  
Jacob J. Lew, Office of Management and Budget  
Cass R. Sunstein, Office of Management and Budget