



June 20, 2017

VIA FED EX

The Honorable R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
Room S-2521
200 Constitution Avenue, NW
Washington, DC 20210

Re: Recommendation on Filing Date for VETS-4212 Report

Dear Secretary Acosta:

This is a request by The Institute for Workforce Equality that the Department of Labor consider moving the filing period of the VETS-4212 Report to correspond with the new filing period for the EEO-1 Report, now scheduled to be no later than March 31, 2018. This change will permit federal contractors and subcontractors to align the timing of their VETS-4212 and EEO-1 reporting, and therefore allow for greater efficiency and less burden on those contractors.

The Institute for Workplace Equality (“The Institute”), formerly known as The OFCCP Institute,¹ is a national non-profit employer association based in Washington, DC. The Institute’s mission includes the education of federal contractors about their affirmative action, diversity and equal employment opportunity responsibilities. Members of The Institute are senior corporate leaders in EEO compliance, compensation, legal and staffing functions representing many of the nation’s largest and most sophisticated federal contractors.

Currently, Section 61-300.11 provides that federal contractors and subcontractors must file a VETS-4212 Report with the Department of Labor between August 1 and September 30 each year.² In early 2016 when the EEOC proposed revising the EEO-1 Report to include pay and hours worked reporting, its proposed regulations initially planned to have the EEO-1 Report continue to be filed no later than September 30th. As a result those revisions would not have affected the filing of the VETS-4212 Report.

However, on July 14, 2016, when the EEOC issued its subsequent Notice on the revised EEO-1 Report, it moved the EEO-1 Report filing date from September 30, 2016 to March 30,

¹ The OFCCP Institute is not affiliated with the U.S. Department of Labor’s Office of Federal Contract Compliance Programs. The OFCCP Institute changed its name to reflect a broader mission. *See* press release at <http://www.prnewswire.com/news-releases/the-institute-for-workplace-equality-is-new-name-for-the-ofccp-institute-300454901.html>.

² 41 C. F. R. §61.300.11(b) (2014). VETS-4212 Reports must be filed between August 1 and September 30 of each year following the calendar year in which a contractor or subcontractor held a contract or subcontract.

2018.³ By moving the filing date from September to March, the EEOC also moved the “workforce snapshot”⁴ period.⁵

In the Notice, the agency recognized⁶ that moving the filing date and the “workforce snapshot” date would impact the filing of the VETS-4212 Report by federal contractors and subcontractors. However, the EEOC argues that with EEOC’s permission federal contractors and subcontractors can use December 31 as the “workforce snapshot” as stated in footnote 49⁷ below:

By changing the EEO-1 “workforce snapshot” to the last quarter of each calendar year, EEO-1 contractor filers that also file annual employee reports under the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 U.S.C. 4212(d), will be in a position to align their VEVRAA data collections with the new EEO-1. Under regulations implementing VEVRAA, certain federal contractors must report annually on form VETS-4212 the number of employees and new hires protected under VEVRAA. 41 CFR 61-300.10(d)(1). Form VETS-4212 collects information for veterans protected by VEVRAA using the EEO-1’s 10 job categories. For each reporting year, the federal contractor must report covered employees for the 12-month period preceding a date it selects between July 1st and August 31st that falls at the end of a payroll period. Significantly, the regulations allow contractors to select December 31st as the basis for reporting the number of employees and as the ending date of the twelve-month covered period, if the federal contractor has “previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1, Standard Form 100 (EEO-1 Report).” 41 CFR 61-300.10(d)(2). The implementation notice for the revised EEO-1 will serve as “previous written approval” from the EEOC pursuant to this Department of Labor VEVRAA rule.

Since the EEOC in its Notice provides blanket coverage for all federal contractors and subcontractors required to file the new EEO-1 Report⁸—*i.e.*, those with 100 or more employees—to “select December 31st as the basis for reporting the number of employees and as the ending date of the twelve month covered period”, the Department of Labor should provide clarification as to whether that the permission would allow those covered employers to file the required VETS-4212 Report no later than March 31, 2018, rather than between August 1 and September 30 as provided by regulation.⁹

For all of the above reasons, The Institute respectfully submits that the Department of Labor should clarify the filing period requirement for VETS-4212 Report. We would be pleased to provide additional information on these matters.

³ 81 Fed. Reg. 45479 (July 14, 2016).

⁴ 81 Fed. Reg. 45484-45485.

⁵ 41 C.F.R. §61.300.10 (d)(1).

⁶ 81 Fed. Reg. 45484-45485.

⁷ 81 Fed. Reg. 45485, fn. 49.

⁸ 81 Fed. Reg. 45484.

⁹ 41 C.F.R. §61.300.11(b).

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Respectfully,

The Institute for Workplace Equality



David B. Cohen



David S. Fortney



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Co-Chairs of The Institute for Workplace Equality

cc: Sam Shellenberger (VIA Email)
Deputy Assistant Secretary for Operations, VETS

Tom Dowd (VIA Email)
Acting OFCCP Director