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**A Review of OFCCP Enforcement Statistics Related to  
Section 503 of the Rehabilitation Act and the Vietnam Era Veterans Readjustment Assistance Act**

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## **Executive Summary**

In 2011, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) proposed to revise the regulations implementing the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act (Section 503). In light of these proposed changes, the Center for Corporate Equality (CCE) conducted an evidence-based analysis of enforcement data related to charges of discrimination against protected veterans and individuals with disabilities. If the proposed regulations are implemented they would redefine affirmative action and significantly increase the emphasis on anti-discrimination policies. This study seeks to answer the question of whether there is evidence available to support the implementation of the proposed changes. That is, do the data indicate that systemic discrimination against protected military veterans and the disabled is occurring at a rate high enough to justify major changes in the regulations that govern VEVRAA and Section 503?

Three publicly available data resources were used to summarize and interpret OFCCP's enforcement of VEVRAA and Section 503 since fiscal year 2004. These three sources include two Department of Labor databases of OFCCP compliance evaluations and complaint investigations, as well as CCE's database of OFCCP compliance reviews that resulted in a conciliation agreement alleging discrimination against a protected group. The data cover almost a nine-year period and presumably include a universe of approximately 285,390 federal contractor establishments. These data sources were analyzed using descriptive statistics to summarize historical enforcement patterns from September 2004 to June of 2012. Results are organized into two different types of OFCCP enforcement; proactive compliance evaluations and reactive complaint investigations. We found several interesting findings.

With regard to Complaint Investigations:

- Of the approximately 285,390 federal contractor and subcontractor establishments:
  - OFCCP fielded 871 veteran and/or disability complaints between 2004 and June of 2012. Of these 871 complaints, 60 (6.89%) resulted in a violation, an average of 6.67 violations per year.
  - Approximately 95% of all complaints closed without a finding of discrimination involving protected veterans and/or individuals with disabilities.
  - Importantly, the vast majority of these 60 settlements were technical violations (e.g., record-keeping), rather than violations indicating systemic discrimination.
  - Based on analyses of complaint data from 2004 to June 2012, it is estimated that less than 0.021% of the 285,390 federal contractor establishments are likely to have a finding of discrimination with regard to protected veterans or individuals with disabilities.

With regard to Compliance Evaluations:

- From 2007 through 2011, OFCCP conducted 22,104 compliance reviews of federal contractor establishments. Of those, OFCCP alleged discrimination against protected veterans and individuals with disabilities in three (less than 1 tenth of a percent) instances.
- Two of the cases alleged discrimination against protected veterans, while one alleged discrimination against disabled veterans.

After considering the number of violations that result from routine compliance evaluations as well as complaint investigations, it is estimated that less than one percent of federal contractor establishments are likely to have a finding of discrimination against protected veterans or individuals with disabilities. While the data in this report do not prove, nor disprove, the existence of discrimination against protected veterans and individuals with disabilities, the above results fail to provide the evidence needed to make an evidence-based policy decision such as those proposed in the regulations. These results suggest that discrimination against protected veterans and individuals with disabilities, especially with regard to hiring, is not a frequent finding by OFCCP and may not support the major shift in policy that the proposed regulations would necessitate. It is important to note that this report is not a criticism of the agency or the quality of its work. Instead, it is an attempt to neutrally summarize the findings of OFCCP's audit and enforcement efforts.

## Introduction

The Center for Corporate Equality (CCE) is a national, non-profit research organization focused on Equal Employment Opportunity. Our mission is to help leaders from various human resource functions harness their natural synergies, understand a breadth of EEO topics, and work together to promote affirmative action and equal employment compliance in their workplaces. Toward this end, CCE conducts research and publishes reports on EEO enforcement, emerging legal topics, and methodological issues.

In response to the return of our military service members, the federal government has proposed various initiatives intended to increase veterans' employment opportunities in the civilian workforce. Relatedly, employment opportunity for individuals with disabilities is an important topic for the current administration and is also the focus of current initiatives.

As a result, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) announced two Notices of Proposed Rulemaking (NPRM) to amend and revise regulations related to individuals with disabilities and protected veterans. Specifically, on April 26, 2011, OFCCP proposed to revise the federal regulations implementing the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) and on December 9, 2011, OFCCP proposed to make similar revisions to the federal regulations implementing Section 503 of the Rehabilitation Act (Section 503). VEVRAA prohibits discrimination against, and requires affirmative action to employ, the veterans that fall into one or more of four categories.<sup>1</sup> Section 503 prohibits discrimination against, and requires affirmative action to employ, individuals with disabilities.

The current requirements of Section 503 and VEVRAA have an anti-discrimination component but primarily focus on affirmative action efforts to engage in positive outreach and recruitment to employ and advance members of these protected groups. Thus, many of the current requirements focus on effective outreach, recruitment and good faith efforts; activities which serve to increase the qualified applicant pool for contractors. If the proposed regulations are implemented a major shift would occur, redefining affirmative action, while placing significant emphasis on anti-discrimination. While the proposals would increase the current requirements to engage in affirmative action and eliminate discrimination, they would clearly increase the latter as much if not more than the former. The proposed rules would, for example, require employers to track in detail the disability and veteran status of all job applicants and employees, provide a written justification for why each disabled or veteran applicant was not hired, and annually conduct statistical analyses of both employment and hiring data. Above and beyond the proposed

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<sup>1</sup> VEVRAA covers disabled veterans, recently separated veterans, armed forces service medal veterans and other protected veterans.

regulations' requirement to develop relationships with local groups, few, if any of the new requirements, would have any direct impact on the applicant flow and subsequent hiring for either veterans or individuals with disabilities<sup>2</sup>.

A recent article in the *New York Times* succinctly addressed the issue of government policies and the utilization of the behavioral sciences<sup>3</sup>. In the article, economist Richard H. Thaler proposed two mantras when it comes to forming new policies:

- If you want to encourage some activity, make it easy
- You can't make evidence-based policy decisions without evidence

Given this major shift in policy and focus to anti-discrimination efforts, one would expect that past enforcement of Section 503 and VEVRAA shows evidence of significant, if not widespread, discrimination against protected veterans and individuals with disabilities.

OFCCP's proposed rulemakings for both VEVRAA and Section 503 do not provide past enforcement data (i.e., evidence) as part of the impetus for the changes to the regulations<sup>4</sup>. Thus, in an effort to address the question of whether there is evidence to support either an increase or shift in discrimination patterns against protected veterans or individuals with disabilities, this report summarizes several OFCCP sources of enforcement data related to protected veterans and persons with disabilities. These sources include data regarding OFCCP compliance evaluations and complaint investigations of federal contractors and subcontractors. The data cover almost a nine year period and include a universe of approximately 285,390 federal contractor establishments<sup>5</sup> (see Appendix A). Presumably, the data from these two methods would reflect a need for increased anti-discrimination requirements for contractors and are behind the shift in policy that the proposed regulations reflect.

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<sup>2</sup> Proposed changes, in addition to the detailed tracking of applicants (and employees for training opportunities), include: local job posting requirements (national posting does not fulfill requirement), statistical analysis of efforts (referral ratios, applicant ratio, job fill ratio, and hiring ratio), increased record-keeping requirements (5 years), and solicitation of status pre and post-offer for applicants and annually for employees.

<sup>3</sup> Thaler, R. H., (2012, July 8). Watching behavior before writing the rules. *The New York Times*, p. BU4. (<http://www.nytimes.com/2012/07/08/business/behavioral-science-can-help-guide-policy-economic-view.html?pagewanted=all>)

<sup>4</sup> Rather, the agency cited the unemployment rates for the members of these groups in the NPRM preambles. According to the Bureau of Labor Statistics (BLS), the 2009 unemployment rate for veterans 18 to 24 years old was 21.1% (in comparison to 16.6% for non-veterans in the same age group). It should be noted that this refers to all veterans and not just those covered under VEVRAA. Additionally, the Section 503 NPRM preamble reported BLS data that captured the 2010 unemployment rate for working age individuals with disabilities in the workforce as 14.8% compared to 9.4% for working age individuals without disabilities (note, BLS reports that only 21.8% of working age people with certain functional disabilities are included in the labor force).

<sup>5</sup> Federal contractor establishments were used, rather than total companies, because affirmative action plans (and thus audits) are establishment based.

In the current study, we seek to answer the question of whether there is evidence to support the implementation of the currently proposed changes to the regulations governing Section 503 and VEVRAA. The goal of this study is not to prove (or disprove) that discrimination is occurring, but rather to investigate whether the current, available data support the acceptance of rules that require such a major shift in policy. It is important to note that this report is in no way a criticism of the agency or the quality of its work; CCE reports and interprets the available data without making assumptions or unreasonable inferences.

## Method

### Data Overview

This report predominately utilizes three sources of information to summarize and interpret enforcement of VEVRAA and Section 503 since fiscal year 2004. Each of these sources provides a different piece of information for the enforcement of these two important regulations over the last nine years. Although there may be other data to consider, CCE exhausted the relevant (and available) data to address whether evidence exists to support the proposed regulations. The following sections summarize each of the data sources, including the method of collection and any possible ambiguity or error that may have existed within the source. Interpretation of these sources occurs in the following section. The data sources utilized were:

- OFCCP enforcement database: *Complaint Investigations* (2004-2012)
- OFCCP enforcement database: *Compliance Evaluations* (2004-2012)
- *CCE database* of OFCCP compliance reviews that resulted in a conciliation agreement alleging discrimination against a protected group (2007-2011)

To add some context to the databases, there are approximately 285,390 federal contractor and subcontractor establishments that are subject to routine compliance evaluations (i.e. audits) and possible complaints.

### Complaint Investigations

The first data source utilized was an OFCCP enforcement database for complaint investigations<sup>6</sup> made publically available by the Department of Labor (DOL). A complaint investigation occurs when a protected individual, or group of individuals, files a complaint with the OFCCP against a federal contractor establishment. This source provides useful information with regard to the question of whether

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<sup>6</sup> [http://ogesdw.dol.gov/raw\\_data\\_catalog.php](http://ogesdw.dol.gov/raw_data_catalog.php)

or not discrimination has previously occurred, as all 285,390 contractor establishments are susceptible to have complaints filed each year. The available database includes records from fiscal year 2004 through “present.” It is assumed that “present” refers to June 5, 2012 as that is the last reported “update date” on the website. However, the website does not define what “update” means, so it is unclear if the data reflect activity as of June 5, 2012 or if the cutoff date is an earlier point of time. Based on data in the compliance evaluation database discussed below, we believe the “present” data reflect September 1, 2011 to June 1, 2012. The website reports that it is updated monthly.

The database includes information regarding the basis of the complaint (e.g., gender, race, veteran status) as well as the investigative authority. OFCCP enforces Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA), thus each complaint investigation is covered by one of these three investigative authorities. As Table 1 shows, there were 1,124 complaints investigated and closed from 2004 through present. The majority of complaints were under the investigative authority of VEVRAA or Section 503 (40.21% and 35.05% respectively), with the remaining 25 percent under EO 11246 or “other”. The database did not define what “other” refers to for the investigative authority.

**Table 1. Summary of OFCCP Complaint Investigations: Investigative Authorities (2004-2012)<sup>1</sup>**

<b>Investigative Authority</b>	<b># of Complaints</b>	<b>% of Total Complaint Investigations</b>
VEVRAA	452	40.21%
503	394	35.05%
Executive Order 11246	260	23.13%
Other <sup>2</sup>	18	1.60%
<b>Total</b>	<b>1124</b>	<b>100.00%</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Not defined in OFCCP database

Those complaints that involved protected veterans and/or individuals with disabilities were the main focus of this study. To determine if the complaint involved a veteran claim or an individual with a disability claim, the investigative authorities as well as the basis for the complaint were considered. As Table 2 shows, complaints could be filed with a basis of discrimination for veteran or disability. If the complaint did not include a “yes” under at least one of the two categories of interest, it was not included as a “disability-related” or “veteran-related” complaint. Overlap exists between the basis of the complaint, and the investigative authority for the complaint, within and across the two groups (i.e., protected veterans and individuals with disabilities), so the basis columns cannot be summed to reach the total number of “related” complaints for the year. It should be noted that there is not a complete overlap

between related columns. That is, all complaints covered under Section 503 do not necessarily have a basis of disabled and all complaints involving disability were not necessarily filed under Section 503 (see Appendix B for a detailed breakdown of investigative authority and basis for veteran and/or disability-related complaints). Only complaints related to disability or veteran status are included in Tables 1 and 2.

**Table 2. Summary of OFCCP Complaint Investigations: Basis of Veteran or Disability (2004-2012)<sup>1</sup>**

<b>Fiscal Year</b>	<b>Alleged Discrimination on the Basis of Veteran Status</b>	<b>Alleged Discrimination on the Basis of Disability</b>	<b>Total Veteran- and Disability-Related Complaints<sup>2</sup></b>
2004	73	65	<b>124</b>
2005	66	50	<b>114</b>
2006	53	50	<b>93</b>
2007	54	40	<b>85</b>
2008	79	70	<b>134</b>
2009	39	48	<b>69</b>
2010	41	50	<b>80</b>
2011	62	63	<b>110</b>
2012 <sup>1</sup>	22	43	<b>62</b>
<b>Total</b>	<b>489</b>	<b>479</b>	<b>871</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Overlap exists between the basis of the complaint, and investigative authority for the complaint, within and across the two groups (i.e., protected veterans and individuals with disabilities), so the investigative authority counts (from table 1) and basis counts cannot be summed to reach the total of complaints for the year.

Tables 3 and 4 show, by fiscal year, the number of filed complaints that are considered veteran or disability-related. From 2004 to present, there were 141 veteran- and disability-related complaints that overlapped; thus, there are 871 unique complaints that involve veterans and/or individuals with disabilities over the almost nine year period (Table 5). In addition to the investigative authority and basis of alleged discrimination for the complaint, the enforcement database also reports whether the complaint resulted in a finding of a violation (Tables 3-5). It should be noted that the database does not specify whether or not the violation is a technical violation (i.e., no monetary remedies, typically just reporting requirements) or a finding of discrimination (e.g., payment of back pay, payment of benefits). However, the database does specify the categorical type of violation (e.g., hiring, termination, failure to accommodate). Table 6 provides a count of the violations found in veteran and/or disability-related complaint investigations. Tables 3-6 are discussed in further detail in the analysis section.

*Database Integrity Issues*

It should be noted that there are some data inconsistencies within the database. For example, there were 17 complaints where the basis is “disabled” yet the complaint is not labeled under Section 503 or



VEVRAA as the investigative authority. Instead, the investigative authority is listed as Executive Order 11246 or “other”. Additionally, there are 8 complaints where the basis of the complaint is veteran status, yet EO 11246 or “other” was listed as the investigative authority rather than VEVRAA or Section 503. Similarly, there are 13 complaints where Section 503 is listed as the investigative authority, yet the basis of the complaint is not related to disabled or veteran status. Additionally, some of the violations are not intuitive given the basis of the complaint. For example, in one case the basis of the complaint was veteran status yet the violation was for pregnancy leave. There are two possibilities for this inconsistency; either there is an error in the database or the violations were found during an investigation although they were not the basis of the initial complaint.

Further, there may be duplicate records in the database (i.e., same company, location, fiscal year, and basis). At a minimum, 79 records within the complete database appear to be a duplicate, yet due to abbreviated names or address, not all duplicate records are easily identifiable. That being said, CCE is unable to determine if these 79 are true duplicates or whether more than one complaint of the same nature was filed at a facility during the same fiscal year. Due to the inability to differentiate between a duplicate record and an instance in which two complaints were filed at the same location within a year, these duplicate records were included in the analyses.

### Compliance Evaluations

In addition to complaint investigations, OFCCP also conducts routine compliance evaluations based on an administratively neutral selection system of federal contractor establishments. The DOL also makes an enforcement database of compliance evaluations<sup>7</sup> publicly available that is housed separate from the complaint investigation database. As with the complaint investigation database, the compliance evaluation database covers fiscal years 2004 to present and it is assumed that “present” refers to June 2012. Unlike the complaint database, the compliance evaluation database includes a closure date, of which the latest closure date is June 1, 2012; so it is assumed that June 1, 2012 is the cutoff date for the current data<sup>8</sup>. Similar to the complaint file, the compliance evaluation file also includes company information and the types of found violations. However, the compliance evaluation file does not include information regarding the protected class for audits that close with a violation. Thus it is impossible to

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<sup>7</sup> [http://ogesdw.dol.gov/raw\\_data\\_catalog.php](http://ogesdw.dol.gov/raw_data_catalog.php)

<sup>8</sup> Another issue to note is that the public enforcement database has appeared to fluctuate depending on when the records were pulled. CCE has pulled the database previously, but when comparing a year of data to an old pull, the records do not match up exactly (note, this occurs for all years and not just the current fiscal year at the time of the data pull). For example, in 2011 CCE pulled the OFCCP database to use for another purpose. At that time, the reported number of compliance evaluations for fiscal year 2010 was 4,960; however, the most recent pull of the database reports 4,942 compliance evaluations for 2010. As with the data issues noted above, it is unknown whether this reflects an error. Without evidence to remove data reflecting these issues, CCE believes the data to be the best that are available and appropriate for analysis.

identify specific cases related to protected veterans or individuals with disabilities. To inform on this issue, CCE has performed other data collection methods to build a database that will be discussed in the next section.

Unlike the complaint investigation database, the compliance evaluation database includes the type of closure for each audit, identified as one of the following: closure letter, conciliation agreement, consent decree, or financial remedy. A closure letter is issued when an audit closes in full compliance with no violations. If the audit did not end with a closure letter, a notice of violation (NOV) was issued that resulted in a voluntary conciliation agreement, court-ordered consent decree, or financial remedy. Each of these NOV's results in the federal contractor being required to engage in follow-up reporting activities. For those violations that involve alleged discrimination, financial remedies are included. Appendix C provides the counts for the total number of compliance evaluations closed during each fiscal year from 2004 to present, as well as the manner in which they closed (i.e., closure letter or notice of violation).

#### CCE Database: OFCCP Settlements Alleging Discrimination

In addition to reviews of the public enforcement database, CCE annually submits a Freedom of Information Act (FOIA) request to OFCCP, requesting a copy of all conciliation agreements or consent decrees that included violations that alleged discrimination against a protected group. Conciliation agreements that result in technical violations only (e.g., record-keeping, failure to post with the state) are not reviewed as a part of CCE's annual analysis. Instead, the focus is on those violations where there is a finding of discrimination and some sort of financial settlement is paid to victims for alleged discrimination in hiring, compensation, promotions, or terminations. CCE has annually requested these data since fiscal year 2007 in order to inform the public about the types of audits and OFCCP strategies that end with a conciliation agreement or consent decree.<sup>9</sup> The actual conciliation agreements and consent decrees provide detailed information about each violation and remedy, and thus the CCE database will be used to provide context to the publically available OFCCP databases discussed above.

For the current study, those conciliation agreements from 2007 through 2011 that involved systemic discrimination against protected veterans and/or individuals with disabilities were reviewed (Table 7). Conciliation agreements can be the result of an administratively neutral scheduled compliance evaluation or complaint investigation. These data provide a piece of information that was lacking from the compliance evaluation database (i.e., protected class members) and thus allows those veteran- and

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<sup>9</sup> CCE submitted an additional FOIA request on May 24, 2012 requesting all conciliation agreements and consent decrees alleging discrimination against protected veterans and individuals with disabilities from 2004 through present. To date, CCE has not received the requested information. Once this information is received, the report will be updated to reflect the additional data.

disability-related settlements to be identified. It also provides information to identify whether the complaint investigations with violations included systemic discrimination violations or only technical violations.

In reviewing the annual enforcement database and those records obtained through FOIA requests, CCE noticed that not all conciliation agreements that are listed in the public enforcement database as having a financial agreement (see Appendix C) were sent to CCE, specifically for fiscal year 2011. Specifically, there were 17 financial remedies identified in the database that were not received. After further inquiry with OFCCP, CCE received these missing conciliation agreements and noted that a label of “financial remedy” in the OFCCP database does not necessarily mean that discrimination was identified where remedies for protected class members was present. Instead, OFCCP included estimated financial remedies that a contractor anticipated using to implement the remedy for a technical violation as part of the settlement dollars that OFCCP obtains each year. Thus, in some cases, OFCCP reports settlements that do not go to victims of discrimination. For example, in one of the conciliation agreements obtained through the follow-up request, the violation states that the contractor failed to “provide access for mobility-impaired applicants and potential employees seeking employment”. The remedy was to modify the entrance to its Human Resources office to provide access for individuals with mobility disabilities; the estimated modification cost was \$385. OFCCP has coded this cost as a financial remedy even though the amount was not paid to an individual or class of victims. In another example, the contractor received a violation where the remedy included building modifications such as doorbells and restroom modifications to provide access for individuals with mobility disabilities. These changes were estimated to cost \$20,512.08. Again, this conciliation agreement did not include monetary retribution for victims of discriminations, but rather building modifications and technical violations. This classification of estimated building modification costs as a financial remedy should be considered when interpreting results from Appendix C, especially for 2011, as the number of contractors with a financial settlement is likely less than what is reported in the enforcement database. These data issues reinforce the importance of using the CCE database when interpreting enforcement statistics from the complaint investigation and compliance evaluation databases.

## **Analyses**

### **Complaint Investigations**

Tables 3 and 4 provide detailed information about the number of complaints investigated and closed each year for protected veterans and individuals with disabilities, as well as the number of violations resulting from those investigations. In reviewing the annual breakdown of veteran- and disability-related

complaints, the number of complaints filed per year remains fairly consistent. Note that, based on Table 3, veteran complaints are declining and approaching an all-time low with only 22% of complaints in 2012 related to veteran status<sup>10</sup>. This is interesting given the number of veterans returning from combat, the high-profile nature of the issue, and the fact that OFCCP is the only agency to enforce VEVRAA.

The percentage of veteran-related complaint investigations that resulted in a violation each year ranged from 1.30% to 15.63%, with an overall percentage of 7.18%. Considering all 1,124 complaints that were filed over the almost nine year period, only 3.29% were veteran-related and closed with a violation. To put this into context, approximately 97% of all complaints filed over the last eight plus years closed without a finding of discrimination in regard to discrimination against protected veterans.

**Table 3. Veterans-Related Complaint Investigations by Year (2004 - 2012)<sup>1</sup>**

<b>Fiscal Year</b>	<b># of Veteran-Related Complaint Investigations</b>	<b>Veteran Complaints Resulting in a Violation</b>	<b>% of Veteran Complaints</b>	<b>% of Total Complaints</b>	<b>Total Complaint Investigations<sup>2</sup></b>
2004	77	1	1.30% (1/77)	0.61% (1/165)	<b>165</b>
2005	71	3	4.23% (3/71)	2.27% (3/132)	<b>132</b>
2006	57	2	3.51% (2/57)	1.87% (2/107)	<b>107</b>
2007	55	2	3.64% (2/55)	1.83% (2/109)	<b>109</b>
2008	83	6	7.23% (6/83)	3.51% (6/171)	<b>171</b>
2009	39	6	15.38% (6/39)	7.06% (6/85)	<b>85</b>
2010	46	5	10.87% (5/46)	4.67% (5/107)	<b>107</b>
2011	64	10	15.63% (10/64)	6.94% (10/144)	<b>144</b>
2012 <sup>1</sup>	23	2	8.70% (2/23)	1.92% (2/104)	<b>104</b>
<b>Total</b>	<b>515</b>	<b>37</b>	<b>7.18%</b> (37/515)	<b>3.29%</b> (37/1124)	<b>1124</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Total complaints in the database include non-veteran or disability-related complaints (e.g., race, etc.). Note, there is overlap between the veteran- and disability-related complaints

The percentage of disability-related complaint investigations that resulted in violations each year ranged from zero percent to 17.31%, with an overall percentage of 7.44%. Considering all 1,124 complaints there were filed over the almost nine year period, only 3.29% were disability-related and closed with a violation. As noted in the veteran-related complaints, we see that approximately 97% of complaints closed without merit with regard to discrimination against individuals with disabilities.

<sup>10</sup> It is important to keep in mind that 2012 only represents approximately nine months of data (i.e., September 1, 2011 to June 1, 2012) and thus the totals may look different once the fiscal year ends.

**Table 4. Disability-Related Complaint Investigations by Year (2004 - 2012)<sup>1</sup>**

Fiscal Year	# of Disability-Related Complaint Investigations	Disability Complaints Resulting in a Violation	% of Disability Complaints	% of Total Complaint	Total Complaint Investigations <sup>2</sup>
2004	66	0	0.00% (0/66)	0.00% (0/165)	<b>165</b>
2005	53	1	1.89% (1/53)	0.76% (1/132)	<b>132</b>
2006	53	2	3.77% (2/53)	1.87% (2/107)	<b>107</b>
2007	41	1	2.44% (1/41)	0.92% (1/109)	<b>109</b>
2008	73	7	9.59% (7/73)	4.09% (7/171)	<b>171</b>
2009	48	4	8.33% (4/48)	4.71% (4/85)	<b>85</b>
2010	52	9	17.31% (9/52)	8.41% (9/107)	<b>107</b>
2011	65	6	9.23% (6/65)	4.17% (6/144)	<b>144</b>
2012 <sup>1</sup>	46	7	15.22% (7/46)	6.73% (7/104)	<b>104</b>
<b>Total</b>	<b>497</b>	<b>37</b>	<b>7.44% (37/497)</b>	<b>3.29% (37/1124)</b>	<b>1124</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Total complaints in the database include non-veteran- or disability-related complaints (e.g., race, gender, etc.). Note, there is overlap between the veteran- and disability-related complaints for each year

As discussed in the methods section, there is an overlap between 141 of the veteran and disability-related complaints, thus there are 871 complaints total that are veteran and/or disability-related (Table 5). Of these 871 complaints, 60 resulted in a violation, with an average of 6.67 violations per year. As noted in the following section, the vast majority of these complaints involve technical violations rather than an allegation of discrimination. Based upon these data, from 2004 to present, only 6.89% of disability and veteran-related complaints that were investigated and closed were found to have merit. Further, these findings represent only 5.34% of all complaints filed from 2004 to present. Thus, approximately 95% of all complaints closed without a finding of discrimination involving protected veterans and/or individuals with disabilities. Notably in 2012, 8 of 62 veteran and disability-related complaints (12.9%) have settled with a notice of violation.

Table 6 summarizes the type of violations found as a result of veteran and disability-related complaints. For both groups, the most common violation was “other”, which was not defined by the OFCCP enforcement database. After that, terminations, accommodations, and hiring were the most common violations. As noted in Table 6, 14 of the complaints that result in a violation were both veteran- and disability-related, thus the veteran and disability columns do not necessarily sum to the total number of violations found for the unique complaints filed. Additionally, one complaint may result in more than one type of violation. For example, in one of the disability-related complaints, there was a violation for

**Table 5. Overview of Veteran- and Disability-Related Complaint Investigations and Violations (2004 - 2012)<sup>1</sup>**

Type of Complaint	Complaints			Violations				
	# of Complaints	Avg. # Complaints Per Year	Median # Complaints Per Year	# of Complaints Resulting in a Violation	Avg. # Violations Per Year	Median # Violations Per Year	% Resulting in a Violation	% Resulting in a Violation
Veterans and/or Disability Complaint Investigations <sup>2</sup>	871	96.77	93	60	6.67	7	6.89% (60/871)	<b>5.34%</b> (60/1124)
Non-Veteran or Disability Related Complaints (i.e., race, gender) <sup>3</sup>	253	28.11	27	31	3.44	3	12.25% (31/253)	<b>2.76%</b> (31/1124)
<b>Total Complaints</b>	<b>1124</b>	<b>124.89</b>	<b>109</b>	<b>91</b>	<b>10.11</b>	<b>9</b>	<b>8.10%</b> (91/1124)	<b>8.10%</b> (91/1124)

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>There are 141 complaints that overlap for veteran- and disability-related, so there are 871 total complaints that are veteran, disabled or both

<sup>3</sup>Non-Veteran or Disability complaints represent the remaining filed complaints under other bases of discrimination (e.g. race) or investigative authority (e.g., EO 11246)

termination, layoff, harassment, job benefits, retaliation, accommodation, and “other”. Interestingly, Table 6 shows that over almost nine years, there were only 10 veteran and/or disability –related complaints that resulted in a hiring violation, with six hiring violations per related complaint. Further, when looking at unique veteran-only related complaints (i.e., those with no overlap with disability status), there are only 4 violations for hiring since 2004. This is surprising given the current administration’s focus on discrimination in hiring against veterans.

**Table 6. Type of Found Violations as a Result of Complaint Investigations for Veteran- and Disability-Related Complaints (2004-2012)<sup>1</sup>**

	Protected Veterans	Individuals with Disabilities	Total <sup>2</sup>
<b>Terminations</b>	6	11	13
<b>Accommodations</b>	6	9	11
<b>Hiring</b>	6	6	10
<b>Promotions</b>	4	3	7
<b>Job Benefits</b>	--	4	4
<b>Wages</b>	3	2	4
<b>Retaliation</b>	1	2	3
<b>Layoffs</b>	--	2	2
<b>Demotions</b>	2	--	2
<b>Harassment</b>	1	2	2
<b>Recall</b>	1	--	1
<b>Seniority</b>	1	--	1
<b>Pregnancy Leave</b>	1	--	1
<b>Religious Observance</b>	1	1	1
<b>Other<sup>3</sup></b>	14	11	21

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>There is overlap between 14 veteran and disability-related complaints that result in a violation, thus the veteran and disability columns may not add to the total number of violations for these two groups. Additionally, a complaint can close with more than one violation, so the individual columns cannot be totaled to the total number of complaints with violation(s).

<sup>3</sup>Not defined in OFCCP database

### Compliance Evaluations

As noted in the methods section, Appendix C summarizes the enforcement database for the compliance evaluations opened and closed from 2004 to present. The compliance evaluation database does not provide information regarding protected classes (e.g., veterans, individuals with disabilities, females, etc.), thus veteran- and disability-related compliance evaluations cannot be specifically identified through the database, as is possible with the complaint investigation database. As Appendix C shows, 84.18% of compliance evaluations ended with a closure letter between 2004 and present. The remaining

15.82% of compliance evaluations resulted in a notice of violation, which OFCCP coded in the database as a conciliation agreement (13.88%), consent decree (0.08%), or financial remedy (1.86%).

Importantly, there are a declining percentage of compliance evaluations closing with a letter of compliance in later years as compared with earlier in the time period. Thus, the number of conciliation agreements has increased, with the most drastic increases occurring in 2011 and 2012. The number of audits that close with financial agreements also appears to have increased over time which is likely the result of the current administration's practice of citing a building modification cost as a financial remedy in the database (as discussed in the data methods section above) versus a finding of discrimination.

#### CCE Database: OFCCP Settlements Alleging Discrimination

As noted previously in the data methods section, CCE annually requests the conciliation agreements and consent decrees from OFCCP that allege systemic discrimination against a protected group. As Table 7 shows, from 2007 to 2011 there were four instances in which a protected veteran or individual with a disability received financial remedies as a result of alleged discrimination. There were no conciliation agreements or consent decrees in 2007 or 2009 that resulted in monetary relief for protected veterans or individuals with disabilities. The four conciliation agreements in Table 7 represent 1.12% of the total systemic settlements from 2007 to 2011. Table 7 outlines the type of violation, protected class, and type of review for each case to provide context for the settlements.

The conciliation agreement from 2008 collected monetary relief for protected veterans. The company received a violation for a failure to "hire any protected veteran applicants ... although there were qualified candidates" for the job title in question. Back pay and interest were paid to affected class members. As Table 7 reflects, there were no findings of systemic discrimination in 2009. However, it should be noted there was a conciliation agreement included in the FOIA request for 2009 that CCE deemed inappropriate to include in our annual report. In reviewing the violation, it appears that the company failed to "provide directions for entrance into its facility to individuals with known physical limitations and modifications to its restrooms". Thus, the "remedy" is the estimated costs of those building and restrooms modifications. Remedies were not paid to individuals with disabilities, thus this conciliation was not included in Table 7.



**Table 7. Findings of Discrimination by OFCCP as a Result of all Audits (Compliance Evaluations and Complaint Investigations)<sup>1</sup> (2007-2011)**

Fiscal Year	Type of Violation	Protected Class	# of Audits with Findings of Discrimination	Type of Review
2007	--	--	0	--
2008	Hiring	Veteran	1	Compliance Evaluation
2009	--	--	0	--
2010	Hiring	Veteran	1	Compliance Evaluation
2011	Hiring	Disabled Veterans	2	Compliance Evaluation
	Termination & Retaliation	Individual with a Disability		Complaint Investigation

<sup>1</sup>Findings were obtained through a FOIA request by CCE for all OFCCP cases that settled and alleged systemic discrimination against a protected group

The conciliation agreement in 2010 was for a failure to employ protected veterans. Included in the description of the failure to hire violation is the company’s failure to “immediately list” (i.e., post) with the state employment office. Typically this posting violation is listed as a technical violation, separate from any disparate treatment or impact violations. The violation further explains that data from the state employment office was used to conduct the hiring adverse impact analyses. This is atypical as analyses should include those job seekers who apply to a position and are considered applicants per the Internet Applicant Regulation. Instead, this violation considered the constructed pool of applicants to be the 79 protected veterans enrolled with the state office, even though they never applied to a position at the organization. The conciliation agreement asserted that the failure to post with state prevented qualified veterans from applying to open positions with the organization and thus should be considered in the pool. This selection rate of 0% for veterans was compared to the actual applicant pool of “non-veterans” selection rate in order to determine whether there was impact. The organization was thus required to pay back pay and interest to veterans who registered with the state, but never actually applied to the organization. As noted above, this violation and remedy are atypical.

As Table 7 shows, there were two conciliation agreements in 2011 with violations for alleged systemic discrimination. The first conciliation agreement was for a failure to hire disabled veterans. Specifically, the company did not uniformly apply its selection procedures and criteria for employment of disabled veterans. Note that this company also received a technical violation for obtaining disability status

from applicants prior to making an offer<sup>11</sup>, yet this information was used in order to perform the selection rate analysis of veteran applicants.

The second conciliation agreement in 2011 was the result of a filed complaint (not randomly scheduled compliance evaluation). It may not be appropriate to interpret this violation in conjunction with the other three conciliation agreements; however the complaint did result in remedies paid to the complainant for what the OFCCP considers to be retaliation and termination violations (as reported in Table 6 above). The violation states that the company failed to reemploy the complainant after long-term disability when it failed to interview or select for a posted position “in retaliation for engaging in protected activity”. Because the violation is unclear and has several redacted sections, it is difficult to interpret. However, this complaint is recorded in the OFCCP enforcement database as having a violation for termination and retaliation. It is also unclear exactly what remedies the complainant received. The remedy states that \$24,640 of the \$99,000 that the company was required to pay, is for reimbursement for medical insurance premiums and expenses. The remedy does not specify to how the remaining \$74,360 was applied (e.g., back pay, interest, benefits, etc.).

#### OFCCP and CCE Databases

To provide an accurate picture of all available enforcement activity and findings of discrimination, data from the DOL enforcement databases for complaint investigations and compliance evaluations, as well as the data by CCE on systemic discrimination settlements, have been combined in Tables 8 and 9. Table 8 summarizes the total compliance evaluations completed from 2007 to 2011. Analysis is limited to these four years as the CCE database does not provide data for 2004-2006 or 2012. As noted in Table 8, from 2007 to 2011 only three compliance evaluations closed with an alleged finding of discrimination against veterans. These three findings constitute 0.014% of all compliance evaluations. Additionally, only one compliance evaluation closed with an alleged finding of discrimination for individuals with disability, which constitutes 0.005% of all compliance evaluations. Overall, out of 22,104 compliance evaluations conducted from 2007-2011, only three closed with an alleged finding of discrimination for protected veterans or individuals with disability<sup>12</sup>. These three findings represent 0.014% of all compliance evaluations conducted from 2007 through 2011.

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<sup>11</sup> Both ADA and Section 503 preclude employers from inquiring into disability status prior to an offer of employment.

<sup>12</sup> The conciliation agreement in 2011 was for disabled veterans, thus there is overlap for the findings in 2011 giving only 3 total from 2007 to 2011.

**Table 8. Estimated Percentage of Federal Contractor Establishments with findings of Discrimination involving Protected Veterans and/or Individuals with Disabilities based on Compliance Evaluations (2007-2011)<sup>1</sup>**

Fiscal Year	Total Evaluations Completed <sup>2</sup>	Veterans		Individuals with a Disability		Total <sup>3</sup>	
		#	%	#	%	#	%
2007	4,923	0	0.000%	0	0.000%	0	0.000%
2008	4,325	1	0.023%	0	0.000%	1	0.023%
2009	3,907	0	0.000%	0	0.000%	0	0.000%
2010	4,942	1	0.020%	0	0.000%	1	0.020%
2011	4,007	1	0.025%	1	0.025%	1	0.025%
<b>Total</b>	<b>22,104</b>	<b>3</b>	<b>0.014%</b>	<b>1</b>	<b>0.005%</b>	<b>3</b>	<b>0.014%</b>

<sup>1</sup>Results based on the CCE Database, so time period only include 2007-2011

<sup>2</sup>Based on Enforcement Database: Compliance Evaluations. Numbers are reported in Appendix C.

<sup>3</sup>Based on numbers reported in table 7. Does not include the 2011 conciliation agreement that was the result of a complaint investigation. This is included in the number of findings reported for complaint investigations in 2011.

Table 9 provides an overview of the number of complaint investigations related to veterans or individuals with a disability that result in a violation. Additionally, it estimates the percentage of federal contractor establishments that you would expect to result in findings of discrimination based on the total number of contractor establishments in the country. Because every location is subject to having at least one complaint filed each year, the percentage of findings based on actual complaints was compared to the total number of contractor establishments. The estimated number of federal contractor establishments<sup>13</sup>, 285,390, was obtained from the Veterans Employment and Training Services (VETS) and is based on the number of establishments for which contractors completed VETS100A reports in 2010 (see Appendix A). This helps to estimate the percentage of federal contractor establishments that are likely to have a violation if investigated. Based on findings of violations from veteran-related complaints from 2004 to present, approximately 0.013% of federal contractor establishments are likely to have a finding of discrimination. The findings for disability-related complaints are also likely to be found in 0.013% of federal contractor establishments. Considering the unique veteran and disability-related complaints that resulted in a violation (60), only 1 in every 4,756 (0.021%) federal contractor establishments are likely to have a finding of discrimination for protected veterans and/or individuals with a disability.

<sup>13</sup> For a variety of reasons (e.g. incorrect filing, no filing) the number of estimated federal contractor establishments is likely a gross underestimation. For estimation purposes, the total number of reports submitted for the 2010 VETS100A was used as the estimated number of contractor establishments, rather than those establishments that filed a VETS100A

**Table 9. Estimated Percentage of Federal Contractor Establishments with Violations Involving Protected Veterans and/or Individuals with Disabilities based on Complaint Investigations (2004-2012)**

Fiscal Year	Estimated Number of Federal Contractor Establishments <sup>1</sup>	Veterans Complaints Resulting in a Violation <sup>2</sup>		Disability Complaints Resulting in a Violation <sup>2</sup>		Total	
		#	%	#	%	#	%
2004	285,390	1	0.000%	0	0.000%	1	0.000%
2005	285,390	3	0.001%	1	0.000%	4	0.001%
2006	285,390	2	0.001%	2	0.001%	2	0.001%
2007	285,390	2	0.001%	1	0.000%	3	0.001%
2008	285,390	6	0.002%	7	0.002%	11	0.004%
2009	285,390	6	0.002%	4	0.001%	7	0.002%
2010	285,390	5	0.002%	9	0.003%	12	0.004%
2011	285,390	10	0.004%	6	0.002%	12	0.004%
2012	285,390	2	0.001%	7	0.002%	8	0.003%
<b>Total</b>	<b>285,390</b>	<b>37</b>	<b>0.013%</b>	<b>37</b>	<b>0.013%</b>	<b>60</b>	<b>0.021%</b>

<sup>1</sup>Number of federal contractor establishments is based on 2010 VETS100A output. This is likely an underestimation of the number of federal contract establishments

<sup>2</sup>Based on numbers reported in table 7. Does not include the 2011 conciliation agreement that was the result of a complaint investigation. This is included in the number of findings reported for complaint investigations in 2011.

Based on the findings in Tables 8 and 9, it is estimated that fewer than one percent of federal contractor establishments are likely to have a finding of discrimination for protected veterans or individuals with disabilities in either a routine compliance evaluation or complaint investigation.

It should be noted that the findings of systemic discrimination from the CCE report only provides information from 2007-2011 for Table 8, whereas the enforcement databases provide information from 2004 to present (Table 9). However, based on the low frequency of findings in the CCE database for protected veterans or individuals with disabilities from 2007 to 2011 we suspect there are few, if any, that are missing. Even taking into consideration these limitations, CCE feels that the estimates provided in Tables 8 and 9 give appropriate context to the enforcement over the last nine years.

### Conclusion

This report leveraged multiple data sources to assess current levels of OFCCP enforcement related to protected veterans and persons with disabilities. A limitation of this research is the missing information from 2004 to 2006 for the CCE database. However, CCE has recently submitted a FOIA request to OFCCP seeking to obtain all settlements with findings of discrimination against protected veterans and/or

individuals with disabilities from 2004 to present. A follow-up report will be produced once the data are received.

Given the available data, there does not appear to be an inference of support for the proposed regulations. While the data in this report do not prove, nor disprove, the existence of discrimination against protected veterans and individuals with disabilities, the above results fail to provide the evidence needed to make an evidence-based policy decision like those proposed in the regulations. These results suggest that discrimination against protected veterans and individuals with disabilities, especially with regard to hiring, is not a frequent finding by OFCCP and may not support the major shift in policy that the proposed regulations would necessitate.

**Appendix A.  
Annual Federal Contractor Reporting Comparison Table (January 31, 2011)**

<b>Category</b>	<b>2010 VETS-100A</b>	<b>2010 VETS-100</b>	<b>2009 VETS-100A</b>	<b>2009 VETS -100</b>	<b>2008 VETS -100</b>
Total Federal Contractors	13,536	8,880	13,011	11,919	22,159
Single Establishments	9,664	6,461	10,618	9,717	18,943
Multiple Establishment Organizations	5,665	3,543	7,340	4,861	8,690
Multiple Establishment Hiring Organizations	208,435	85,998	144,896	76,631	46,903
Multiple State Consolidated Reports	61,626	17,099	26,684	13,964	10,177
Total Reports Submitted	<b>285,390</b>	113,101	190,190	105,251	84,713
Regular Vietnam Era Veterans		217,600	n/a	199,055	341,000
Regular Special Disabled Veterans		49,368	n/a	45,800	62,020
Recently Hired Vietnam Era Veterans		15,968	n/a	14,285	32,007
Recently Hired Special Disabled Veterans		8,131	n/a	7,436	15,466
Regular Other Protected Veterans	784,593		669,265	n/a	n/a
Regular Disabled Veterans	155,386		154,002	n/a	n/a
Regular Armed Forces Service Medal	161,759		142,677	n/a	n/a
Regular Recently Separated	124,523		118,263	n/a	n/a
Recently Hired Other Protected Veterans	133,333		116,769	n/a	n/a
Recently Hired Disabled Veterans	54,601		50,053	n/a	n/a
Recently Hired Armed Forces Service Medal	58,056		51,332	n/a	n/a
Recently Hired Recently Separated Veterans	52,118		49,194	n/a	n/a

**Appendix B.**  
**Summary of Complaints that Include Protected Veterans**  
**or Individuals with a Disability (2004-2012)<sup>1</sup>**

Fiscal Year	Disability-Related Complaints		Veteran-Related Complaints		Total Veteran- and Disability-Related Complaints <sup>2</sup>
	Section 503 Authority	Disabled Basis	VEVRAA Authority	Veteran Basis	
2004	52	65	70	73	<b>124</b>
2005	43	50	69	66	<b>114</b>
2006	44	50	46	53	<b>93</b>
2007	31	40	50	54	<b>85</b>
2008	58	70	75	79	<b>134</b>
2009	38	48	29	39	<b>69</b>
2010	34	50	43	41	<b>80</b>
2011	53	63	51	62	<b>110</b>
2012 <sup>1</sup>	41	43	19	22	<b>62</b>
<b>Total</b>	<b>394</b>	<b>479</b>	<b>452</b>	<b>489</b>	<b>871</b>

<sup>1</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>2</sup>Overlap exists between the basis of the complaint, and investigative authority for the complaint, within and across the two groups (i.e., protected veterans and individuals with disabilities), so the basis and investigative authority columns cannot be summed to reach the total of complaints for the year. It should be noted that there is not complete overlap between related columns (i.e., all complaints covered under Section 503 do not necessarily have a basis of disabled and vice versa), so all related columns are represented.

**Appendix C.**  
**Summary of All OFCCP Enforcement Outcomes as a Result**  
**of Compliance Evaluations<sup>1</sup> (2004-2012)<sup>2</sup>**

Fiscal Year	Closure Letter <sup>3</sup>		Notice of Violation						Total Compliance Evaluations
			Conciliation Agreement		Consent Decree		Financial Remedy		
	#	%	#	%	#	%	#	%	#
2004	4938	93.63%	277	5.25%	0	0.00%	59	1.12%	<b>5274</b>
2005	1921	90.61%	146	6.89%	0	0.00%	53	2.50%	<b>2120</b>
2006	3559	88.64%	383	9.54%	0	0.00%	73	1.82%	<b>4015</b>
2007	4390	89.17%	471	9.57%	0	0.00%	62	1.26%	<b>4923</b>
2008	3701	85.57%	539	12.46%	5	0.12%	80	1.85%	<b>4325</b>
2009	3204	82.01%	618	15.82%	9	0.23%	76	1.95%	<b>3907</b>
2010	4019	81.32%	839	16.98%	3	0.06%	81	1.64%	<b>4942</b>
2011	2898	72.32%	999	24.93%	9	0.22%	101	2.52%	<b>4007</b>
2012 <sup>2</sup>	1497	65.80%	697	30.64%	1	0.04%	80	3.52%	<b>2275</b>
<b>Total</b>	<b>30127</b>	<b>84.18%</b>	<b>4969</b>	<b>13.88%</b>	<b>27</b>	<b>0.08%</b>	<b>665</b>	<b>1.86%</b>	<b>35788</b>

<sup>1</sup>Data is from the Enforcement Database for Compliance Evaluations; this does not include complaint investigations

<sup>2</sup>2012 does not represent a full fiscal year. It is estimated to represent 9 months of enforcement.

<sup>3</sup>Closure letters are issued when an audit closes in full compliance (i.e., no violations)