

September 17, 2025

Submitted via Federal eRulemaking Portal: www.regulations.gov

Catherine L. Eschbach
Director
U.S. Department of Labor
Office of Federal Contract Compliance Programs
200 Constitution Avenue NW
Washington, DC 20210

Re: Center for Workplace Compliance Comments on the Office of Federal Contract Compliance Programs' Notice of Proposed Rulemaking, *Modifications to the Regulations Implementing the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as Amended* (RIN 1250-AA19)

Dear Director Eschbach:

The Center for Workplace Compliance ("CWC") respectfully submits these comments in response to the Office of Federal Contract Compliance Programs' ("OFCCP") Notice of Proposed Rulemaking ("NPRM") pertaining to the affirmative action and nondiscrimination requirements arising under Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended ("VEVRAA"), notice of which was published in the *Federal Register* on July 1, 2025.¹

CWC appreciates the opportunity to offer these comments. Please note that these comments do not address the policy choices underlying any Executive Order (E.O.), such as the rescission of E.O. 11246 and the implementation of E.O. 14173. Instead, they address issues raised in the proposed rulemaking in light of the legal environment in which we operate today.

Statement of Interest

CWC² is the nation's leading nonprofit association of employers dedicated exclusively to helping its member companies develop practical and effective programs for ensuring compliance with fair employment and other workplace requirements. Formed in 1976, CWC's membership includes U.S. employers from nearly every major industry sector and geographic region, all of whom are firmly committed to the principles and practice of equal employment opportunity.

Nearly all CWC members are subject to the nondiscrimination and affirmative action requirements of VEVRAA, Section 503 of the Rehabilitation Act, and their implementing

¹ 90 Fed. Reg. 28,485 (July 1, 2025).

² Formerly the Equal Employment Advisory Council (EEAC).

regulations. As major federal contractors and subcontractors, CWC's members have a significant stake and interest in ensuring that OFCCP's regulations and paperwork requirements, including those triggered by the agency's VEVRAA regulations, efficiently and effectively accomplish their underlying policy objectives.

OFCCP's Proposed Changes Are Reasonable in Light of the Rescission of E.O. 11246

OFCCP proposes making a series of technical changes to the agency's VEVRAA regulations by removing references to the now-rescinded E.O. 11246 and its implementing regulations. These changes seem reasonable and will provide clarity to federal contractors.

OFCCP's Rules of Practice for Administrative Proceedings Warrant Further Review

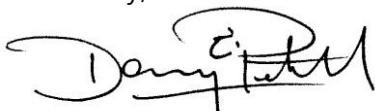
The agency is also proposing to modify the administrative enforcement procedures at 41 C.F.R. Part 60-30 to remove the E.O. 11246 components and transfer any procedures needed to enforce VEVRAA to OFCCP's regulations at 41 C.F.R. Part 60-300. In light of the rescission of E.O. 11246, these changes also seem reasonable, at least in the short term.

We respectfully submit, however, that recent administrative caselaw developments cast significant doubt on whether the procedures in question can survive Constitutional scrutiny.³ We recommend that the Department of Labor initiate a separate rulemaking to cure any possible Constitutional defects within its broader administrative enforcement regime.

Conclusion

CWC sincerely appreciates the opportunity to offer these comments regarding OFCCP's proposed VEVRAA regulations. Please do not hesitate to contact us if we can provide further assistance or perspective as you consider these important issues.

Sincerely,



Danny E. Petrella
Senior Vice President, Compliance, and Assistant General Counsel

³ See, e.g., *SEC v. Jarkesy*, 603 U.S. 109 (2024) (the 7th Amendment precludes the Securities and Exchange Commission from levying civil penalties against a defendant without a jury trial); *ABM Industry Groups, LLC v. U.S. Department of Labor*, 756 F. Supp.3d 468 (S.D. Tex. 2024) (finding that plaintiff would likely succeed on its argument that two layers of "good-cause removal" restrictions protecting Department of Labor Administrative Law Judges violates Article II of the Constitution); and *Sun Valley Orchards, LLC v. U.S. Department of Labor*, 148 F.4th 121 (3d. Cir. 2025) (Article III of the Constitution precludes the Department of Labor from seeking civil penalties and back wages through administrative proceedings).