

Demystifying OFCCP Compliance for Federal Contractors

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EXECUTIVE SUMMARY

This whitepaper provides an easy-to-understand overview of the regulations, administered by the Office of Federal Contract Compliance Programs, or OFCCP, that are designed to ensure that employers who receive Federal contracts do not discriminate in hiring and employment practices, and take affirmative action to hire, retain, and promote veterans, minorities, women, and people with disabilities. This paper discusses the implications of the law by outlining the actions Federal contractors must perform for proactive outreach, job listing, and record keeping, and goes on to propose a comprehensive and cost-effective solution from America's Job Exchange, a leader in diversity hiring and compliance services. The paper outlines the key attributes that Federal contractors should look for in a third-party solution, and shows how contractors can benefit from the solution offered by America's Job Exchange, not only to fulfill their obligations for compliance, but also to boost their overall diversity hiring programs, including the hiring of veterans and candidates with disabilities.





HISTORY OF THE LAWS GOVERNING OFCCP COMPLIANCE

America was built on the principles of equality and opportunity for everyone in their pursuit of freedom, prosperity, and happiness. Throughout history, America has embraced people from all over the world regardless of their race, color, religion, or national origin, and has strived to create a land where anyone can pursue their dreams on equal footing. However, the enforcement of our country's principles has required long battles, sacrifices, and legislation.

Legislation has been particularly effective in ensuring that equality in employment is established and maintained. In 1965, President Lyndon B. Johnson signed the landmark legislation named Executive Order 11246, requiring Equal Employment Opportunity. The legislation prohibits employers who receive Federal contracts over \$10,000 in any given year from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. In addition, the Executive Order also required Federal contractors to take affirmative action to make certain that applicants are employed and treated fairly, without regard to their race, color, religion, sex, or national origin during their employment. In fact, the Executive Order required larger employers (Federal contractors with 50 or more employees, with contracts of \$50,000 or more) to develop a written affirmative action plan to increase the participation of minorities and women in the workplace. The impact of Executive Order 11246 has been significant in realizing the dreams of our founding fathers

in creating a land of equals and, in fact, originated the term 'Equal Opportunity Employment'.

The next significant piece of legislation to shape equal opportunity in the workplace was Section 503 of the Rehabilitation Act of 1973. This legislation was signed by President Richard Nixon, and was considered to be one of the driving forces in protecting the equal opportunity employment rights of individuals with disabilities. The legislation prohibited discrimination, and required affirmative action by employers with Federal contracts or subcontracts of \$10,000 or more in a given year to hire, retain, and promote qualified individuals with disabilities.

Then in 1974, Congress passed the Vietnam Era Veterans Readjustment Assistance Act, or VEVRAA, requiring Federal contractors to take affirmative action for the recruitment of Vietnam era veterans. The legislation required Federal contractors to "list immediately with the appropriate local employment service office" all of its employment opportunities, with the exception of executive positions, positions filled internally, and temporary positions lasting less than 3 days. This law was later modified to allow posting at the U.S. Department of Labor sponsored America's Job Bank website to satisfy job listing requirements. In 2002, VEVRAA was amended and Congress passed the Jobs for Veterans Act (JVA), which included additional categories of veterans covered under the law, and also modified some of the criteria for those impacted by the new law. Employers with a contract date prior to December 1, 2003 were required to comply with the requirements of VEVRAA, and those with a contract date after December 1, 2003 were required to meet the obligations under the JVA.¹

ENFORCEMENT OF THE LAWS: THE OFCCP AND ITS PROCESS

The Office of Federal Contract Compliance Programs (OFCCP) was created to enforce equal employment opportunity laws enacted by the U.S. Government. This office oversees recruiting practice guidelines for Federal contractors and subcontractors, and ensures that the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal Government is upheld. In short, it is the division of the U.S. Department of Labor that watches over Federal contractors and subcontractors to make sure they are abiding by affirmative action and equal employment opportunity (EEO) laws. It is the OFCCP's charter to oversee and enforce the three main EEO laws and their amendments. Through audits and investigations, the OFCCP uncovers deficiencies and takes required corrective actions, including penalties for companies who have failed to incorporate fair hiring practices into their recruiting strategy. In order to avoid scrutiny and fulfill their obligations to the Government, it is extremely important that companies know their obligations regarding OFCCP laws, and develop the capabilities and resources to meet their responsibilities.

To ensure that Federal contractors are in compliance with the EEO laws, the OFCCP conducts periodic compliance evaluations. These audits have been growing in scope and frequency the last few years. During an audit, the OFCCP examines whether a Federal contractor is maintaining hiring and employment practices that are nondiscriminatory, and determines whether the

contractor is taking affirmative action to ensure that applicants and employees have an equal employment opportunity. The OFCCP conducts desk audits, also known as offsite audits, to review a company's affirmative action plan and supporting documents. The OFCCP might then conduct an onsite visit to investigate problems identified during the desk audit as well as to perform a review of a company's facilities and personnel files. They may also interview past and present employees to assess a company's compliance efforts.

OBLIGATIONS OF FEDERAL CONTRACTORS

To satisfy compliance requirements, Federal contractors need to comply with the following laws shown in bold.

- Executive Order 11246 (**EO 11246**), as amended, requires affirmative action for equal employment opportunity on the basis of race, color, religion, sex, or national origin
- Section 503 of the Rehabilitation Act of 1973 (**Section 503**) requires affirmative action to employ and advance in employment qualified individuals with disabilities
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, in conjunction with the Jobs for Veterans Act (**VEVRAA/JVA**) requires affirmative action to employ and advance veterans, disabled veterans, Armed Forces service medal veterans, recently separated veterans, and other protected veterans who served during a war, campaign, or qualified expedition

Exhibit 1: A Comparison of VEVRAA and JVA Provisions

| | VEVRAA | JVA |
|-----------------------------------|--|--|
| Federal Contract Amount | \$25,000 | \$100,000 |
| Contract Date | Prior to December 1, 2003 | After December 1, 2003 |
| Covered Veteran Categories | <ul style="list-style-type: none"> • Vietnam Era Veterans • Special Disabled Veterans • Other Protected Veterans • Recently Separated Veterans | <ul style="list-style-type: none"> • Disabled Veterans • Armed Forces Medal Winners • Other Protected Veterans • Recently Separated Veterans |
| Separation Timeframe | Within 1 year of Separation | Within 3 years of Separation |
| Job Listing Requirements | Local Employment Service or AJB | Local Employment Service Delivery System |

HOW FEDERAL CONTRACTORS CAN MEET THESE OBLIGATIONS

Although there are no specific required activities for affirmative action in recruiting for the fulfillment of **EO 11246**, Federal contractors should make proactive efforts to reach job seekers from demographic groups that are traditionally considered to be under-represented in the workforce. Companies can attend or organize career fairs, and participate in community activities as well as other promotional programs. An efficient way to reach such job seekers is to post open job listings to online job boards that attract a large number of job seekers from such demographics. It is very important to make sure that word about employment opportunities reaches minorities, women, and other specific communities who are under-represented in the workforce based on the population in the communities where business is conducted.

Similarly, while there are no specific guidelines for affirmative action activities to meet **Section 503**, it is important that Federal contractors have outreach programs to reach qualified individuals with disabilities to fill open positions. As with EO 11246, community outreach and career fair participation can be used, as well as online job boards that specialize in attracting job seekers with disabilities or large job sites that have a large number of disabled job seekers visiting their website.

There are, however, specific guidelines set by the OFCCP for the fulfillment of **VEVRAA/JVA**. These guidelines

require employers to list all of their employment opportunities with the appropriate employment delivery system. This is defined as a service delivery system at which labor exchange services, including employment, training, and placement services, are offered in accordance with the Wagner-Peyser Act of 1933. This means that unless a job opening is for an executive position, a duration of 3 days or less, or is filled internally, employers must send all of their job openings to the comprehensive and affiliated career one stop offices closest to where the job is located for listing or to the state job bank (website). In addition, such job listings should be sent to the veteran's representatives in those offices. The OFCCP also requires employers to maintain records detailing their VEVRAA/JVA compliance efforts in anticipation of an audit. In addition, Federal contractors must be able to show additional actionable measures taken to promote their job opportunities to veterans, minorities, women, and the disabled.²

The OFCCP allows third-party recruiting services providers to assist Federal contractors with developing and implementing a formalized job distribution process to satisfy all posting requirements, providing reporting as well as reaching the desired job seeker demographics. Appropriate evaluation in the selection of a reliable third-party provider is therefore of utmost importance to any Federal contractor for successful compliance efforts. America's Job Exchange (AJE) provides these services to Fortune 5000 companies as well as to companies in the SMB market, and has been found by clients to be one of the best in the industry for consideration.



THE AJE SOLUTION

AJE’s foundation is built on the legacy created by the U.S. Department of Labor’s America’s Job Bank, established in 1995. After the Department Of Labor ceased funding in June 2007, the website was re-launched as America’s Job Exchange in July of 2007 by NaviSite, a leading technology services provider, in order to build on the success of America’s Job Bank.

The professionals at AJE began building a robust and flexible solution to help businesses with Government contracts recruit and hire from a uniquely diverse pool of job seekers, as well as fulfill their OFCCP mandatory job listing requirements. Through hard work, creativity, and innovation, AJE has become a premier source for businesses around the Nation, ranging from Fortune 5000 companies to small businesses.

To help employers meet OFCCP mandatory job listing requirements, AJE has established relationships with the appropriate state agencies in all fifty states, to which job postings are distributed. The AJE distribution network includes state job banks (websites) and local one

stop career centers, including the appropriate veteran representatives, as prescribed by OFCCP regulations. In an effort to help employers exceed the OFCCP’s expectations, AJE has also developed relationships with partner websites that cater to the diversity, veteran, and disabled communities to which contractor postings are distributed. In addition, AJE has created its own diversity, disability, and Veterans Career Exchanges in partnership with leading niche websites catering to these groups. Contractor job postings are listed within these niche Career Exchanges, as well as within the main AJE search engine.

An important element in meeting OFCCP requirements is proper record keeping and the reporting of outreach activities and hiring patterns. To help with this issue, AJE offers the most comprehensive OFCCP Distribution Report in the industry. The report includes date posted, job ID number, job title, state the job was sent to, distribution method (email, data feed), and a receipt confirmation. In addition, the report includes confirmation that listings were distributed to our partner niche websites. Clients have access to these reports

Exhibit 2: Summary of OFCCP Regulations and Compliance Solution

| Regulation Name | Executive Order 11246 | Section 503/ Rehabilitation Act of 1973 | VEVRAA/JVA |
|-----------------------|---|--|--|
| Description | Prohibits Federal contractors and sub contractors with contracts exceeding \$10,000 from discriminating in employment decisions based on race, color, religion, sex, and national origin | Requires Federal contractors and sub contractors with contracts exceeding \$10,000 to make outreach efforts to hire and promote qualified individuals with disabilities | VEVRAA originally required Federal contractors and sub contractors to take affirmative action to hire and promote Vietnam era and other covered veterans. JVA amended the categories of vets covered and eliminated Vietnam Era Vets as a covered group |
| Requirements | No Posting requirements. Contractors must take affirmative action to ensure protected groups are hired, retained, and promoted. Employers are encouraged to make outreach efforts to attract qualified candidates in the protected groups and are held accountable for those efforts | No Posting requirements. Contractors must take affirmative action to ensure protected groups are hired, retained, and promoted. Employers are encouraged to make outreach efforts to attract qualified candidates in the protected groups and are held accountable for those efforts | Contractors must post open positions with the state job bank (website) or the “appropriate local employment delivery system” - one stop offices, unemployment offices, etc. except for executive positions, positions filled internally, and positions lasting 3 days or less |
| AJE’s Solution | AJE’s diverse group of job seekers will help any employer with efforts to reach out to the protected groups under EO 11246. In addition, AJE enhances outreach efforts by distributing postings to partner websites that are leaders within the diversity community. This combination provides the best value in the market for employers looking to reach these targeted job seeker groups | AJE’s diverse job seeker base provides an opportunity for employers to reach out to job seekers with disabilities. To enhance outreach efforts on behalf of our clients, AJE has partnered with leading niche websites that cater to the disabled community, to which we distribute our client’s career opportunities. AJE provides a far-reaching and comprehensive platform to help employers reach out to individuals with disabilities | AJE distributes postings to either the state job bank (website) or the local One Stop Offices (including the appropriate veterans’ representatives within the local offices) and sometimes both, serving all 50 states. AJE has also partnered with leading websites and organizations that cater to the veteran community, to which we distribute client’s job postings. AJE’s comprehensive distribution network enables employers to reach and exceed mandatory job listing requirements. In addition, AJE provides detailed documentation to verify outreach efforts |

24/7 through AJE's automated self-service reporting tool. Clients can filter reports by date, location, and business unit to meet a particular need at any given time.

The AJE solution is considered an unparalleled, turnkey service that helps employers not only meet and exceed their OFCCP requirements, but also helps them meet the principle of workplace equality for all of our citizens, as envisioned by the Founding Fathers of our Nation.

OVERCOMING MISPERCEPTIONS IN THE VENDOR SELECTION PROCESS

It is imperative that Federal contractors who are looking for third-party providers to help with their OFCCP mandatory job listing requirements carefully research the service providers whom they are considering partnering with. The choice of a third-party provider should be based on what provides the best value and what is in the best interest of a Federal contractor's business. It is also important to look for third-party providers who show a track record and history of reputable and verifiable excellence.

Companies should be aware of potentially misleading marketing strategies by certain providers that exaggerate the importance of certain programs or services as it relates to OFCCP compliance. Some providers may also use carefully crafted campaigns and propaganda to give the impression that they are somehow endorsed or favored by the OFCCP. However, the OFCCP does not endorse or promote any specific third-party provider. Alternatively, one may hear claims that a vendor offers a National Labor Exchange that replaced America's Job Bank in order to create the impression that this site is affiliated, endorsed, or maintained by the Federal Government. However, the U.S. Government does not sponsor, promote, or recommend any such career website that replaced AJB to provide such services. This type of marketing only clouds the real issue of OFCCP requirements and does not address the requirement to list openings with the appropriate state agencies. Similarly, marketing pitches that focus on endorsements from private non-governmental organizations are not relevant.

Federal contractors should recognize that there is no third-party resource that can guarantee compliance with all of the OFCCP regulations. In the end, the OFCCP is looking for a commitment to a comprehensive program for affirmative action. One particular area where the OFCCP seems to be placing emphasis is outreach efforts to local community organizations that cater to protected groups covered by the OFCCP. In light of the OFCCP's expectations, our suggestion to all contractors is to market your business and career opportunities to local organizations that cater to veterans, disabled, and minorities within the communities in which you do business, regardless of what third-party vendor is used to distribute job postings. As with all activities, proper record keeping and reporting of these activities is essential to help demonstrate that every effort is being made to recruit qualified candidates from these protected groups.

These additional efforts can yield many benefits for businesses. For example, this can create brand recognition and loyalty within the local community. It can also bring people with diverse backgrounds, skills, and points of view to your company, enriching the business with new ideas and perspectives. Utilizing a job board like America's Job Exchange can help a company to reach these communities, recruit from qualified candidate pools, and take advantage of a time-saving solution for the mandatory job distribution requirements, enabling companies to reach out to local community organizations and go beyond the minimum requirements.



CLOSING REMARKS

As our Nation's demographics continue to change dramatically, Congress will, as it has always done, amend and enact laws to support an exceedingly diverse population. In the last few decades, diversity has risen to the forefront of recruiting initiatives to demand the utmost attention from companies both large and small, and it will continue to resonate and remain prolific in all industries. With this in mind, it is important that companies stay on top of diversity recruiting and outreach in order to penetrate this crucial market. Utilizing a third-party service that can answer all of your questions on OFCCP compliance, audits, and best practices in diversity recruiting is key to not only staying in accordance with the law, but also maintaining an edge in this changing workplace.

America's Job Exchange will remain committed to being a leader in OFCCP compliance issues and regulations, and to educate our clients on best practices. AJE strives to play a leading role in helping clients understand the job seeker climate and its vast potential in order to keep organizations staffed with a richly diverse and highly talented workforce.

RESOURCES

¹ For information on the regulations governed by the OFCCP, please visit: <http://www.dol.gov/ofccp/index.htm>

² For information regarding the obligations of Federal Contractors, including job listing requirements, please visit: <http://www.dol.gov/ofccp/regs/compliance/faqs/jvafaqs.htm>

ABOUT AMERICA'S JOB EXCHANGE

America's Job Exchange (AJE), a pioneer in job search and online recruiting, specializes in diversity-focused and middle-income jobs. Thousands of employers, large and small, use the OFCCP compliance solution from AJE, along with job postings, resume database searches, and media solutions to reach a large pool of diverse job seekers.

- **Comprehensive Solution:** Federal Contractors' job postings are distributed to the AJE Partner Network of niche websites and state employment delivery systems. Postings are also displayed on the main AJE website and AJE's specialized Career and State Exchanges.
- **Online Reporting:** Customers create and save tailored reports online, narrowed down by dates or location, to maintain records of their distribution with AJE.
- **Partner Network:** Jobs are distributed to a wide network of niche career websites that reach job seekers including minorities, veterans, women, and candidates with disabilities.
- **Preferred Solution:** AJE is recommended by our customers, as well as by leading recruitment advertising agencies and job boards, including Arbita, First Advantage, JWT and TMP Worldwide.
- **Continued Legacy:** AJE is the successor to America's Job Bank and continues to provide online recruiting and OFCCP compliance services following its closure.

AJE is a wholly owned subsidiary of NaviSite (NASDAQ: NAVI). For more information, please visit: www.americasjobexchange.com/employer.

ABOUT THE AUTHORS

Rathin Sinha is the Founder and President of America's Job Exchange. He is responsible for overall development and growth of America's Job Exchange, which he founded to help companies reach and hire diversity candidates.

Previously, Rathin served as the SVP and Chief Marketing Officer of NaviSite, the parent company of America's Job Exchange. Prior to NaviSite, Rathin headed the e-commerce division at Monster.com, where he led development and aggressive growth of the SMB targeted self-service sales channel, making it the largest in the online recruiting industry. Earlier, Rathin served as the Vice President of Strategic Marketing and Business Strategy at Standard Register, Senior Director of eCommerce at Kinko's (Now FedEx), and Senior Associate with the strategy consulting firm Mitchell Madison Group.

Rathin earned an MBA from the UCLA Anderson School of Management, Master of Science and Master of Engineering degrees from the University of California at Berkeley, and a Bachelor of Technology (honors) from the Indian Institute of Technology.

Alan Klapman is the Director of Customer Development. Alan believes in a consultative approach. His primary goal is to help AJE's customers maximize the value available from AJE's services. Alan has 15 years of sales experience. He came to America's Job Exchange after more than 4 years with Monster.com. In addition to the online recruitment industry, Alan has experience in the telecommunications and insurance industries.