

**STATEMENT OF  
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**BEFORE THE COMMITTEE ON EDUCATION AND THE WORKFORCE  
SUBCOMMITTEE ON WORKFORCE PROTECTIONS**

**FOR A HEARING TITLED: "NEW HIRING POLICIES FOR FEDERAL  
CONTRACTORS"**

**December 4, 2013**

**OFCCP's Final Rules Providing Meaningful Economic Opportunity to Veterans and  
People with Disabilities are Critical in These Challenging Economic Times**

Chairman Walberg, Ranking Member Courtney, and members of the Subcommittee:

Thank you for the opportunity to submit this testimony. The National Women's Law Center has been involved in virtually every major effort to secure and defend women's legal rights over the last 40 years, including their critical rights to equal opportunity in the workplace. We write today to draw your attention to the important work of the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP).

OFCCP administers and enforces the civil rights of all those employed by federal contractors and subcontractors, covering approximately one-fourth of the civilian workforce, and more than 200,000 businesses with contracts totaling almost \$700 billion. Its authority includes Executive Order 11246, which prohibits government contractors from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin, and also requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of employment. In addition to the Executive Order, OFCCP's jurisdiction extends to enforcement of Section 503 of the Rehabilitation Act, which requires nondiscrimination and affirmative action for qualified individuals with disabilities, and the Vietnam Era Veterans Readjustment Assistance Act (VEVRAA), which requires nondiscrimination and affirmative action for special and disabled veterans of any war, campaign, or expedition in which a campaign badge has been authorized.

Unfortunately, over the last four decades the equal opportunity programs for qualified veterans and people with disabilities required under VEVRAA and Section 503 have failed to translate into meaningful employment opportunities. The new regulations issued by OFCCP clarify the requirements of the law under those two statutes, give clear guidance, require data collection, and set out baseline benchmarks for hiring. We are pleased that OFCCP has issued these rules, as they will be crucial to promoting economic opportunity for veterans and the disabled, and are of special importance in light of the high rates of unemployment in both communities.

## **I. OFCCP Is Working Effectively to Eradicate Barriers to Employment**

The key role that OFCCP has played in improving economic security for workers and their families cannot be overstated. OFCCP is not limited to merely responding to complaints—it proactively addresses discrimination by bringing systemic investigations, conducting compliance reviews of selected contractors, and providing guidance to contractors on affirmatively promoting equal opportunity in the workplace and complying with the laws under its jurisdiction. By focusing on large, systemic problems, OFCCP has ensured that workers receive fair treatment in hiring and promotions and that the employment decisions made by contractors reflect our society's nondiscrimination norms. This mission also ensures that the many federal contractors that play by the rules do not have to compete at a disadvantage with those that discriminate.

Throughout the years, OFCCP has implemented a number of initiatives that have aided in the integration of the workforce in industries such as construction, higher education, and mining, ensuring equal opportunity for women in sectors with a long history of unfair treatment in hiring, promotions, and compensation. For example, in 1975, pursuant to a legal settlement reached with the National Women's Law Center, OFCCP targeted hiring and employment practices for women in colleges and universities around the country, improving opportunities for women in higher education.<sup>1</sup>

Today, OFCCP continues to be well-positioned to open the doors of opportunity to those groups who have experienced a history of discrimination. In the past seven months, OFCCP has collected over 4 million dollars (\$4,260,315) in back wages and interest for workers:

- Nearly 400 African-American, Hispanic, and Asian American workers will receive almost 1 million in back wages from a federal contractor who discriminated against them in hiring.
- Nearly 60 women workers who were steered into lower paying jobs will receive \$265,983 in back pay.
- OFCCP won \$2,181,593 in back wages and interest for 1,147 African American job applicants who were rejected for teller and entry-level clerical and administrative positions over the course of two decades.
- A medical equipment manufacturer that paid Hispanic workers less than their white counterparts will pay \$290,000 in back wages and interest to 78 affected production associates.
- OFCCP settled with ResCare HomeCare Spokane on allegations that the company was responsible for sex discrimination against 77 qualified men who applied for in-home care positions. The rejected applicants will receive \$92,000 in back wages and interest, and ResCare agreed to make eight job offers to the class members as well as reform its hiring practices.

- A Maryland construction firm will pay fourteen Hispanic employees \$113,000 after they alleged sexual harassment, retaliation and interference. The company also pledged to rehire the affected workers as job opportunities become available.
- OFCCP negotiated a settlement with Bertucci, a construction company that holds large contracts with the U.S. Army. Bertucci will pay \$70,000 in back wages and interest to 14 employees who were rejected for positions. The company has also agreed to extend job offers, with retroactive seniority, to at least six of the original class members.

In addition to recovering back wages, interest and benefits for affected workers, OFCCP also educates workers about their rights, inspects workplaces to make sure they are free from discrimination, secures good job opportunities for victims of discrimination, and prompts positive changes in employment policies and practices.

## **II. The Newly Issued Regulations Will Increase Economic Opportunity for Veterans and People with Disabilities**

OFCCP's mission is especially important in these challenging economic times. The most recent data on poverty and income revealed that even as the economy continues to recover, poverty rates have remained at or near record levels.<sup>2</sup> Fifteen percent of Americans, or 46.5 million people, live in poverty.<sup>3</sup> More than one in seven women, nearly 17.8 million, lived in poverty in 2012. About 44 percent of these women (nearly 7.8 million) lived in extreme poverty, defined as income at or below 50 percent of the federal poverty level. The poverty rates for people of color were especially high: 23.1 percent of black people, 21.6 percent of Hispanics, and 29.5 percent of Native Americans are in poverty.<sup>4</sup> Rates were even higher for women of color. About one in four black (25.1 percent) and Hispanic women (24.8 percent) are in poverty, as well as about one in three Native American women (34.4 percent).<sup>5</sup> The overall wage gap between fulltime working men and women remained flat at 23 cents, with the gap widening when the wages of fulltime working women of color are compared to their white male counterparts.<sup>6</sup>

Veterans and people with disabilities are disproportionately represented among the unemployed and those out of the workforce entirely. As of October 2013, the unemployment rate of people with disabilities remained almost twice that of those without disabilities (12.8 percent vs. 6.7 percent), and the labor participation rate remains extremely low, at 20.0 percent – less than one third the participation rate of those without disabilities.<sup>7</sup> Recent veterans (Gulf War-era II) had an unemployment rate of 10.1 percent, 9.6 percent for men and 11.6 percent for women in October 2013.<sup>8</sup> As these numbers demonstrate, veterans and people with disabilities are not seeing improvements as the economy advances.

In the face of these incredibly high rates of unemployment for veterans and individuals with disabilities, OFCCP updated its regulations. Section 503 and VEVRA are likely to prompt important changes in the way that contractors recruit and hire veterans and individuals with disabilities.

*Section 503.* Contractors' Section 503 requirements have been unchanged since the 1970s. OFCCP's final rule will strengthen the Section 503 regulations to help ensure equal opportunity

for those with disabilities in federal contractor workplaces, by aiding contractors in their efforts to recruit, hire, and improve job opportunities for people with disabilities. The final rule also makes changes to the nondiscrimination provisions of the regulations to bring them into compliance with the ADA Amendments Act of 2008.

VEVRAA. Veterans returning from service face significant obstacles in obtaining employment, including explaining their military experience to civilian employers<sup>9</sup> and the stigma associated with psychological injuries and mental health treatment.<sup>10</sup> Yet the framework of contractor obligations regarding VEVRAA had not been revised since the initial regulations were published in 1976<sup>11</sup> and thus do not reflect the employment situation that returning veterans now face. Among other things, the final rule prompts contractors to evaluate annually the effectiveness of their efforts to ensure that protected veterans have access to employment opportunities, including by setting measurable benchmarks for hiring veterans.

In the process of developing both of these final rules, OFCCP conducted a thorough and transparent stakeholder engagement strategy. In 2010, OFCCP began meeting with advocates, policymakers, employer groups, workers and job seekers. On December 9, 2011, OFCCP issued a notice of proposed rulemaking to inform the public about proposed changes to its regulations under Section 503 and VEVRAA. After a full and extensive comment period, OFCCP issued its final rule on September 24, 2013.

For nearly fifty years, the federal government has operated with the longstanding principle that companies that have the privilege of profiting from doing business with the federal government should not be permitted to discriminate in employment. For good reason – the taxpayer dollars used to buy goods and services from companies simply should not support discrimination. For too long veterans and people with disabilities have experienced widespread workplace discrimination, and the tools to combat this discrimination, even discrimination by those contracting with the federal government, were inadequate. Strengthening the nondiscrimination rules for veterans and people with disabilities will yield results for workers and employers alike. These new rules will set the stage for employers to tap into a diverse pool of talent that will only leave them and the broader economy stronger.

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<sup>1</sup> *WEAL v. Weinberger*, Civ. No. 74-1720 (D.D.C., filed Nov. 26, 1974), subsequently *WEAL v. Califano*.

<sup>2</sup> Joan Entmacher, et. al. *Insecure & Unequal: Poverty and Income Among Women and Families 2000-2012* 6, Nat'l Women's Law Ctr (Sept. 2013), available at [http://www.nwlc.org/sites/default/files/pdfs/final\\_2013\\_nwlc\\_povertyreport.pdf](http://www.nwlc.org/sites/default/files/pdfs/final_2013_nwlc_povertyreport.pdf) [hereinafter *Insecure & Unequal*].

<sup>3</sup> U.S. Census Bureau, News Release: Income, Poverty and Health Insurance Coverage in the United States: 2012 (Sept. 17, 2013) [http://www.census.gov/newsroom/releases/archives/income\\_wealth/cb13-165.html](http://www.census.gov/newsroom/releases/archives/income_wealth/cb13-165.html).

<sup>4</sup> U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2012 – Report and Detailed Tables (Sept. 2013), <http://www.census.gov/hhes/www/poverty/data/incpovhlth/2012/index.html> (last visited Dec. 2, 2013); Current Population Survey Table Creator, <http://www.census.gov/cps/data/cpstablecreator.html> (last visited Dec. 2, 2013).

<sup>5</sup> *Insecure and Unequal* at 3.

<sup>6</sup> Nat'l Women's Law Ctr., *The Wage Gap is Stagnant in the Last Decade* (Sept. 2013) available at [http://www.nwlc.org/sites/default/files/pdfs/wage\\_gap\\_is\\_stagnant\\_2013.pdf](http://www.nwlc.org/sites/default/files/pdfs/wage_gap_is_stagnant_2013.pdf).

<sup>7</sup> U.S. Dep't of Labor, Office of Disability Employment Policy, <http://www.dol.gov/odep> (last visited Nov. 27, 2013).

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<sup>8</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, Economic News Release, Table A-5. Employment status of the civilian population 18 years and over by veteran status, period of service, and sex, not seasonally adjusted, *available at* <http://www.bls.gov/news.release/empsit.t05.htm> (last visited Nov. 27, 2013).

<sup>9</sup> Vanessa Williamson & Erin Mulhall, Iraq and Afghanistan Veterans of America, *Careers After Combat: Employment and Education Challenges for Iraq and Afghanistan Veterans 2* (Jan. 2009), *available at* [http://iava.org/files/iava\\_careers\\_after\\_combat\\_2009.pdf](http://iava.org/files/iava_careers_after_combat_2009.pdf) (noting one recent survey found that 61% of employers did not believe they had “a complete understanding of the qualifications ex-service members offer” and more than 75% of veterans entering the workforce reported “an inability to effectively translate their military skills to civilian terms”).

<sup>10</sup> *See id.* (noting nearly one-third of veterans who tested positive for mental health problems worried about the effect it will have on their career).

<sup>11</sup> Office for Fed'l Contract Compliance Programs, Vietnam Era Veterans' Readjustment Assistance Act (Section 4212) Notice of Proposed Rulemaking (NPRM), *available at* [http://www.dol.gov/ofccp/regs/compliance/faqs/VEVRAA\\_NPRM\\_faq.htm](http://www.dol.gov/ofccp/regs/compliance/faqs/VEVRAA_NPRM_faq.htm) (last visited Nov. 6, 2013).