

August 03, 2020

No COVID Extension: VETS-4212 Filing Deadline is September 30, 2020

Although the 2020 EEO-1 deadline was extended due to the pandemic, contractors and subcontractors who have a current contract covered by the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) or had a contract as of January 1, 2020, must file a VETS-4212 report by **September 30, 2020**. The filing database is now open. Contractors should file as early as possible because the database often has trouble processing the large number of filings that usually occur the last week in September. In addition, due to COVID and social distancing measures, the agency "strongly recommend(s)" that contractors file electronically to ensure timely processing of their reports.

Important points about VEVRAA and the VETS-4212 filing include:

- VEVRAA applies to a single contract of \$150,000, a master contract with purchase orders that equal \$150,000, or a modification of a contract or master purchase agreement for the purchase, sale, or use of goods or services (including construction) between any person or entity and a "department, agency, establishment, or instrumentality of the United States Government, including any wholly owned Government corporation." VEVRAA also applies to subcontracts under a contract with the government at the aforementioned amount.
- The government takes the position that "banks, financial institutions, and private sector FDIC insureds" are covered "if they have a single contract that meets the dollar threshold, including agreements to serve as funds depositors, agreements for federal share and deposit insurance, and agreements to serve as issuing and paying agencies for U.S. savings bonds and notes."
- Companies should carefully review their status to determine if they are a covered contractor. The filing

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database is made available to Federal Contracting Officers. Contracting Officers are prohibited from expending funds or entering into contracts with companies that were required to file a VETS-4212 the prior year but did not submit a report. In addition, in a compliance review the OFCCP usually requires contractors to provide VETS-4212 reports for the prior three years. Please see our previous alert (here) on July 17, 2020 regarding ways the HR and contracts/procurement departments can work together on verifying status as a prime federal contractor.

- When filing the VETS-4212 report contractors have two choices for the snapshot date. Contractors may use a date between July 1, 2020 and August 31, 2020 that represents the end of a payroll period or they may use December 31, 2019. For the remaining data, contractors should use the 12-month period immediately preceding the date of their snapshot. For example, a contractor using August 15, 2020, for the snapshot would report on all hires during the period August 16, 2019 through August 15, 2020, and report on the maximum and minimum number of employees during that time period.
- Companies that have not recently reviewed and confirmed that they have assigned the correct EEO-1/VETS-4212 codes to their jobs should consider doing so before filing the VETS-4212 report. While the OFCCP has provided more guidance on their methods of evaluating compensation during a compliance review, where there are small groups of similarly situated people, the agency uses other factors, such as job groups or EEO-1 categories to roll groups together to form a group large enough for a regression analysis. While we would urge contractors to contest any grouping of positions that are not sufficiently similarly situated, making sure the EEO-1 categories assigned to each job properly reflect current job duties may decrease the chances of an adverse finding and also makes the utilization analysis in the AAPs more meaningful.
- FAQs about the VETS-4212 report can be found www.dol.gov. A sample VETS-4212 form can be found in this link.
- If you need assistance regarding the VETS-4212 report, including determining if your company is required to file a report, what employees need to be included, or how to account for various locations, please contact one of the authors.

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