

FEDERAL CONTRACTOR COMPLIANCE

HEARING
BEFORE THE
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
OF THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
FIRST SESSION

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FEDERAL CONTRACTOR COMPLIANCE

THURSDAY, MAY 14, 2009

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:30 p.m., in Room 334, Cannon House Office Building, Hon. Stephanie Herseth Sandlin [Chairwoman of the Subcommittee] presiding.

Present: Representatives Herseth Sandlin, Adler, Teague, Boozman, and Moran.

OPENING STATEMENT OF CHAIRWOMAN HERSETH SANDLIN

Ms. HERSETH SANDLIN. Good afternoon ladies and gentlemen. The Committee of Veterans' Affairs Subcommittee on Economic Opportunity Hearing on Federal Contractor Compliance will come to order.

Before I begin with my opening statement I would like to state that Mr. Scott Denniston, Director of Programs for the National Veteran-Owned Business Association (NaVOBA), has asked to submit a written statement for the hearing record. If there is no objection I ask unanimous consent that his statement be entered for the record. Hearing no objection, so entered.

[The prepared statement of NaVOBA appears on p. 45.]

Ms. HERSETH SANDLIN. Providing our servicemembers and veterans with employment opportunities is indeed a way of investing in our brave men and women of the Armed Forces for the sacrifices they have made while serving our country. Providing them with opportunities and establishing equity in employment opportunities can help veterans become gainfully employed.

The U.S. Department of Labor's (DOL's) Office of Federal Contract Compliance Program (OFCCP) plays an important role in protecting veterans by ensuring that they are not discriminated against and are given equal employment opportunity.

While OFCCP provides certain veterans protection against discrimination, it also requires that contractors are actively involved in providing employment or advancement opportunities by providing outreach, recruitment, and training.

In addition, contractors must make good faith efforts to maximize their current qualified workforce, develop and update affirmative action plans, and submit an annual report to the Department of Labor.

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, also known as VEVRAA, and section 4212 of title 38, provide

legal authority to enforce veterans' equal employment opportunities.

VEVRAA provides enforcement for Federal contracts to provide equal employment opportunities for special disabled veterans and veterans of the Vietnam Era. This provision would apply to prime contractors and subcontractors who engage in personal property and non-personal services, including construction. All employment is required to be listed in the Federal Contractor Job Listing (FCJL) Program which gives priority referral to qualified disabled veterans and Vietnam Era veterans.

Currently, the OFCCP provides enforcement measures for compliance. For example, compliance reviews are conducted to ensure that employers are following their affirmative action program established as a prerequisite for reaching a contract threshold. To assist in this effort, OFCCP provides training, consultations, and technical assistance to contractors.

I have become deeply concerned over reports of Federal contractors not complying with Federal regulations. This is especially troubling considering the increased number of servicemembers returning to the civilian workforce. It is also disturbing when I hear that disabled veterans hiring practices are inadequate, coupled with the lack of effort by contractors to employ disabled veterans.

Federal contractors and subcontractors have the opportunity to work with the U.S. Department of Veterans Affairs' (VA's) Vocational Rehabilitation and Employment Program, or the Department of Labor's Veterans' Employment and Training Service (VETS), both of which are equipped to assist veterans gain employment. These resources, along with the Local Veteran's Employment Representatives (LVERs) and Disabled Veterans Outreach Program Specialists (DVOPs), should provide for contractor compliance.

I am hopeful that today we can determine to what extent these enforcement measures are beneficial, if they lack incentives for compliance, or if there is a need for stricter enforcement measures.

I look forward to exploring the options to assist employers who are making good faith effort in hiring and promoting qualified disabled veterans in the workforce.

This Subcommittee is fully committed to protecting our veterans and providing protections against employment discrimination.

Finally, today's hearing is an important one. It is the first time this Subcommittee has held a hearing on Federal Contractor Compliance; therefore, we hope that we are able to learn more about the issue while conducting oversight and gaining from the insight provided to us by our witnesses on the topic.

I now recognize our distinguished Ranking Member, Congressman John Boozman, for any opening remarks he may have.

[The prepared statement of Chairwoman Herseth Sandlin appears on p. 29.]

OPENING STATEMENT OF HON. JOHN BOOZMAN

Mr. BOOZMAN. Thank you very much, Madam Chair.

The current recession is affecting veterans just like the rest of the American labor force. According to the Bureau of Labor Statistics (BLS), the unemployment rate among adult men was 9.4 percent, and adult women was 7.1 percent. Interestingly, the Bureau

of Labor Statistics does collect data on veterans in its monthly report, but does not publish the data.

One would think that given the current War on Terror and the recognition that veterans are an important sector of society, veterans would be included in any national level unemployment report.

The following table from the Veterans' Employment and Training Service illustrates today's employment challenges to veterans, and as you will see things are not good.

Everything is working, our slide is up there. I am impressed.

Using 2008 national data for comparison it appears that veterans in general continue to have lower unemployment rates than their non-veteran counterparts. However, that same data shows that younger veterans still experience significantly higher unemployment rates than older veterans and non-veterans. But veterans are supposed to have some advantages in seeking employment in the private sector, especially by companies that are Federal contractors.

Title 38, section 4212, requires Federal contractors to take affirmative action to hire veterans and task State employment services in the Department of Labor with its roles in promoting hiring by Federal contractors. I believe each of those bear some responsibility in achieving the goals of section 4212.

While there are many reasons for higher unemployment among younger veterans, lack of attention to veterans in general by the Federal Government should not be among those reasons.

For example, in addition to not be identified in BLS data, section 4212(c) of title 38 requires the Department of Labor to report annually on veteran hiring by Federal contractors. Included in that report the law requires the following data.

The number of complaints filed against Federal contractors, the actions taken by the Department on those complaints, the results of the Department's actions on those complaints, the number of contractors listing job openings, the nature and types of positions, the number of veterans given priority referral by the local employment services.

If one looks at this section on Federal Contractor Compliance on pages 20 and 21 in the most recent DOL report, there is no data on actions taken to investigate complaints regarding contractor's affirmative action to hire veterans. I hope the office of Federal Contractor Compliance can explain to us this lack of focus for us today.

Section 4212 also includes several requirements for information to be supplied annually by Federal contractors which are included in the VETS-100 Report, which should form the basis for the Department's annual report to Congress.

I have a feeling that the only time anyone looks at the VETS-100 Report is when DOL receives a Congressional inquiry.

Finally, the question of enforcement raises an issue of common sense. We hear suggestions of failure to have an affirmative action plan or submit the VETS-100 Report should be grounds for debarring a company from doing business with the Federal Government. While I fully support affirmative hiring under section 4212, it is not really—we really don't think that the Federal Government is going to debar a contractor like Lockheed or IBM, Pfizer or Boeing.

The only alternative is to fine such companies, and there is no provision in the current law.

I also believe we should take a close look at whether placing the investigation responsibility with OFCCP is the right thing to do, and whether that responsibility should more promptly reside in VETS.

Madam Chair, the situation surrounding section 4212 is less than optimal, and I hope that we can all work together to fix it. And I yield back my time.

[The prepared statement of Congressman Boozman appears on p. 30.]

Ms. HERSETH SANDLIN. Thank you, Mr. Boozman.

We do have a vote pending. There are about 11 minutes remaining, so we will invite the first panel up and recognize our first witness, and then we will have to take a short recess to vote.

I would like to welcome the first panel with us at the Subcommittee today. Joining us is: Mr. Thomas Whitaker, President of the National Association of State Workforce Agencies (NASWA) and Deputy Chairman/Chief Counsel of the North Carolina Employment Security Commission, accompanied by Mr. Chad Sowash; Ms. Christina Roof, National Legislative Deputy Director for AMVETS; Mr. Joe Sharpe, Director of the National Economic Commission for the American Legion; and Mr. Rick Weidman, Executive Director for Policy and Government Affairs for the Vietnam Veterans of America (VVA). He is on his way I am told.

We only have 10 minutes now, Mr. Whitaker, is your presentation longer than 5 minutes? If so, I will recognize Ms. Roof and you will be next when we come back. If you can keep it to 5 minutes, you are recognized.

Thank you, Mr. Whitaker.

STATEMENT OF THOMAS S. WHITAKER, PRESIDENT, NATIONAL ASSOCIATION OF STATE WORKFORCE AGENCIES, AND DEPUTY CHAIRMAN/CHIEF COUNSEL, NORTH CAROLINA EMPLOYMENT SECURITY COMMISSION, RALEIGH, NC; ACCOMPANIED BY SERGEANT FIRST CLASS CHAD SOWASH, USAR, VICE PRESIDENT OF BUSINESS DEVELOPMENT, DIRECTEMPLOYERS ASSOCIATION, INC., INDIANAPOLIS, IN; CHRISTINA M. ROOF, NATIONAL DEPUTY LEGISLATIVE DIRECTOR, AMERICAN VETERANS (AMVETS); JOSEPH C. SHARPE, JR., DIRECTOR, NATIONAL ECONOMIC COMMISSION, AMERICAN LEGION; AND RICHARD F. WEIDMAN, EXECUTIVE DIRECTOR FOR POLICY AND GOVERNMENT AFFAIRS, VIETNAM VETERANS OF AMERICA

STATEMENT OF THOMAS S. WHITAKER

Mr. WHITAKER. Good afternoon, Chairwoman Herseth Sandlin and Representative Boozman.

On behalf of the National Association of State Workforce Agencies I want to thank you for the opportunity to speak to you today on Federal contractors hiring practices and the performance of the U.S. Department of Labor, OFCCP, and monitoring Federal contractor job listing compliance.

NASWA's members are the State leaders of the publicly funded workforce system vital to meeting the employment needs of veterans through the Disabled Veterans Outreach Program known as DVOP and the Local Veteran's Employment Representatives, or LVER programs.

In 2007, NASWA offered its members a new and free online labor exchange service called Job Central National Labor Exchange. We refer to that as the NLX. The NLX is a sophisticated job search engine, which is the result of a partnership between NASWA and the DirectEmployers Association, DEA, a trade association of over 485 Fortune 500 companies.

State job banks across the United States can now transmit job orders to each other, plus receive thousands of job orders via electronic download from DEA members. Job orders are updated daily, avoiding duplication and thus ensuring job opportunities are open for veterans in a very timely manner. FCJL compliance is provided through VETS Central, a sister site of the National Labor Exchange.

OFCCP regional staff have recently been providing inconsistent guidance to States and employers about VET Central's validity as a compliance mechanism.

The situation was quickly addressed when national OFCCP, at the urging of NASWA, responded offering guidance to their field staff.

We are hopeful that the OFCCP's response will meet the needs of our members, the employers, and ultimately provide veterans with additional job opportunities.

Based on our experience with VET Central and OFCCP, as well as available feedback received from the State workforce agencies, we would like to offer the following recommendations.

Number one, Federal contractor list. NASWA's first recommendation is for OFCCP to develop and maintain an official list of Federal contractors who fall within Federal contractor job listing requirements. This list should be shared with State workforce agencies who, per regulation, have a legal responsibility to refer only eligible veterans to Federal job listing contractors.

As an example, in the last 9 months, my department in North Carolina has made almost 500 veteran job development contacts to companies considered to be Federal contractors, but without an official list my agency cannot ever be sure whether they are speaking with FCJL contractors or not.

Number two, increase staff. Our second recommendation is for additional OFCCP staff. In North Carolina, my agency was told that it would take up to 6 months for OFCCP to arrange a meeting with my agency and employers. It is common in many States to have no contact between State workforce personnel and OFCCP staff. That is unacceptable.

Number three, training. Our third recommendation is for a comprehensive training of OFCCP's field staff to ensure laws and regulations are administered properly and uniformly.

Number four, clarify and communicate roles of all involved. Our final recommendation is for the U.S. Department of Labor to clarify and communicate the appropriate roles and responsibilities of all involved Federal agencies and State entities. NASWA would be

pleased to assist in this effort by initiating a meeting between our members and the relevant U.S. Department of Labor agencies and possibly employers.

Thank you again for the opportunity to comment, and we stand ready to work on these issues.

[The prepared statement of Mr. Whitaker appears on p. 31.]

Ms. HERSETH SANDLIN. Thank you, Mr. Whitaker. Did you have a presentation to make at this point?

Sergeant SOWASH. Yes.

Ms. HERSETH SANDLIN. About how long does that take?

Sergeant SOWASH. It will take 5 minutes.

Ms. HERSETH SANDLIN. That will bring us down to zero time remaining on the vote. So while we will have 15 minutes after that, I know the Majority Leader is interested in trying to address this issue sooner rather than later. We will have to come back for the presentation because we don't want to rush you. We do need to head over to the Capitol now.

We will recess for about 30 minutes and we will return. Thank you.

[Recess.]

Ms. HERSETH SANDLIN. Thank you for waiting on us. And now we will look forward to getting the presentation from Sergeant First Class Sowash. Thank you for being here and thanks for the work that you are doing. You are recognized for 5 minutes.

STATEMENT OF SERGEANT FIRST CLASS CHAD SOWASH

Sergeant SOWASH. Thank you, good afternoon Chairwoman and the rest of Committee.

I am Sergeant First Class Sowash, I am a U.S. Army Reservist, and I am sure you all know Army reservists are also civilians with jobs on the outside, so I am also Vice President of Business Development for DirectEmployers Association, and would like to share with you parts of the National Labor Exchange that actually focuses on getting veterans job, which is very near and dear to my heart.

So first thing we do is we go to the National Labor Exchange and we have got areas of interest, or you can actually just come over here for the actual veterans JPEG and it will take you to our VET Central site.

Now this site is focused on being able to help veterans to find jobs, and also to be able to single out Federal contractors for veterans. You can search via a keyword, which is very common on the Internet, but you can also search—if you are in the military, you can search by your military occupational specialty (MOS) or your military occupation (MOC) or what have you. So if you actually put in—let us say for instance 63 Juliet enlisted in the Army, I am just going to do an open search with that, then you will actually see that that MOS actually crosses over and pushes out civilian jobs that are comparable to the tasks, or I should say is skill sets, that that military person actually had. So as opposed to them trying to think of different key words that would fit them, they can just put their MOS in and they can see different jobs that focus on what they have done and their experience.

As you can see, little American flags, those denote Federal contractors. Obviously who give preference to veterans, which is obviously very important. If a veteran wants to only see jobs from Federal contractors, all they have to do is press this link right here and all that will show are jobs that are Federal contractor jobs.

One thing that is extremely important that we believe from DirectEmployers Association is we actually—we have the best interest of our member companies in mind, because we are a non-profit and we represent close to 500 of the Fortune 500 companies. So what we do is we send the veteran, we send the job seeker directly to the job on the corporate site. So this allows the job seeker to apply directly to the company as opposed to a third party, and it makes it much easier for the job seeker to get into the corporate database as opposed to applying to a third-party database. So again, trying to be more efficient and help with labor market efficiencies, as obviously on the other side of the ball trying to get veterans jobs as quick as humanly possible.

We back out to just the home site, you can see again, you can do any sort of keyword type of search, look for mechanic in Iowa, and once again you will see the Federal contractors jobs and you can go ahead and just focus on the Federal contractor jobs and click right through to the corporate site. This job is actually on the corporate site, so when I am applying right here I am applying to that company, I am not applying off to a job order or what have you.

Do this real quick, and I will actually give you an idea of the companies that comprise DirectEmployers Association. And again, these companies, when America's Job Bank (AJB) went away, wanted to, needed to, had to get their jobs down to the local level so that veterans could have an opportunity to actually see their jobs. So this is one of the mechanisms that was used was a Web interface was VET Central.

The main mechanism that is actually used is e-mail. We e-mail well over 3,500 different local veterans representatives and different local Wagner Pfizer locations with opportunities on a daily basis. So when a veteran walks through the door, and obviously a vet rep have these e-mails sent to them on a daily basis, they will have new and fresh jobs available to them. I appreciate the time.

Ms. HERSETH SANDLIN. Thank you for the presentation.

Sergeant SOWASH. Thank you.

Ms. HERSETH SANDLIN. Very helpful.

Ms. Roof, you are now recognized. Welcome back to the Subcommittee.

STATEMENT OF CHRISTINA M. ROOF

Ms. ROOF. Thank you, very much glad to be back.

Madam Chairwoman, Ranking Member Boozman, and distinguished Members of the Subcommittee, on behalf of AMVETS I extend our gratitude for being given the opportunity to discuss and share with you our views and recommendations on Veterans' Affairs contracting policies relating to title 38, section 4212.

AMVETS believes that the use of qualified veterans in Federal contracts is vital to the reintegration and business success of our veteran community.

AMVETS also believes that our veterans deserve the full opportunity to participate in the economic system sustained by their service.

The Committee has my complete statement for the record, and in my oral statement today, I would like to focus on compliance auditing ensuring title 38, section 4212, law is withheld in all VA contracts.

Contractors are required to develop and implement an affirmative action plan that complies with regulations that support three separate Federal laws as we are discussing today. These are Executive Order 11246, amended, the Rehabilitation Act of 1973, and VEVRAA.

Aside from VA, there are two agencies in place to perform the oversight of these laws. The DOL and their OFCCP.

The OFCCP is charged with monitoring Federal Contracts for Compliance to these three laws, as well as investigating any complaints against employers bound to these laws by a Federal contract.

It is important to remember these laws encompass both contractors and subcontractors involved in any procurement process with the government.

Performing audits and compliancy testing of Federal contracts are important tools to ensure that the purpose for the agreement and the performance of the contract actually occurs, and that all title 38, section 4212, compliance is maintained throughout the entire contract.

VA lacks reasonable assurance, at minimum, that it is receiving services that it has paid for and that contractors are taking all necessary steps to ensure our veterans' rights under title 38 are protected.

To AMVETS knowledge, VA rarely performs any compliance audits of completed projects. In non-government owned and operated businesses, audits of contracts often occur up to 5 years upon contract completion.

AMVETS recommends that VA include and enforce more uniformly this practice, as well as contractor's performance under the contract. This provides validation to VA that all terms of the contract, and most importantly ones regarding title 38, section 4212, were met and completed in the agreed manner.

AMVETS believes compliance audits are essential to the stability of a contracting system. It is in the opinion of AMVETS that a major impediment to current VA contracting policy is that of reactionary audits or audits that occur after a problem is identified.

Over the past few years, VA, OFCCP, and DOL audits have shifted from enforcement to more reactionary compliance audits.

Enforcement audits will allow VA to accurately validate and measure the current processes in place, identify those that need enhancement, and isolate weak processes that lead to fraud, collusion, and most importantly infringements to the title 38, section 4212, which protect our veteran population's business success.

AMVETS recommends the re-implementation and regular use of enforcement based audits.

AMVETS believes that a contributing factor in the failure of current compliance testing methods is on the overall process itself.

VA and OFCCP compliance auditing methods are unnecessarily lengthy in our opinion and lack accountability in uniformity. This reactionary style of auditing Federal contracts has proven ineffective to OFCCP because of the challenges it faces in locating former employees and records to substantiate the allegations of discrimination.

These types of audits usually result in small settlements. Unfortunately, the small settlement option not only costs VA millions of dollars every year, but more importantly, it costs our veterans their due entitlements sustained by their service.

Madam Chairwoman, Members of the Subcommittee, AMVETS thanks you for inviting us to partake in this discussion and is available for questions.

[The prepared statement of Ms. Roof appears on p. 33.]

Ms. HERSETH SANDLIN. Thank you for your testimony.

Mr. Sharpe, you are now recognized for 5 minutes.

STATEMENT OF JOSEPH C. SHARPE, JR.

Mr. SHARPE. Madam Chairman and Ranking Member Boozman, and Members of the Subcommittee, thank you for the opportunity to appear before you to discuss Federal Contract Compliance.

In the *Federal Register* of August 8, 2007, OFCCP significantly expanded the responsibilities of Federal contractors concerning their affirmative action plan for veterans.

The *Federal Register* noted that Federal contractors are required to conduct active outreach to find veterans; going far beyond posting their Internet listings.

Persons and organizations that Federal contractors are directed to partner with to ensure appropriate outreach for eligible veterans are the Local Veteran's Employment Representative, the Department of Veterans Affairs Regional Office, veteran counselors and coordinators on college campuses; and the service officers of the national veterans' groups active in the area of the contractor's establishment.

Based upon dialog with Local Veteran's Employment Representatives, veterans, and other organizations across the country, the American Legion found that Federal contractors have not consistently enlisted the assistance and support of the above mentioned persons and organizations in recruiting and developing on-the-job training opportunities for qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans to fulfill its commitment to provide meaningful employment opportunities to such veterans.

The American Legion recommends that a VETS-100 Report should no longer be filed electronically, because it goes around the laws intent of bringing employers and the One-Stop Career Centers together to discuss and develop employment opportunities for veterans. The American Legion also recommends VETS-100 be amended to measure direct compliance with OFCCP regulations. And additionally, the American Legion recommends that the Federal Contractor Veterans Employment Program presently under OFCCP should be placed under the direction of the Department of Labor's Veterans' Employment and Training Service so this pro-

gram can receive proper oversight, as well as input and guidance from stakeholders.

It is vital that eligible veterans to receive a fair and proportionate amount of Federal employment from Federal contractors so these veterans can build and maintain a quality of life while they contribute to the United States economy.

Madam Chairman, that concludes my statement.

[The prepared statement of Mr. Sharpe appears on p. 36.]

Ms. HERSETH SANDLIN. Thank you, Mr. Sharpe.

Mr. Weidman, welcome back to the Subcommittee. You are now recognized for 5 minutes.

STATEMENT OF RICHARD F. WEIDMAN

Mr. WEIDMAN. Thank you, Madam Chairwoman. Mr. Boozman, Mr. Moran good to see you again, and Mr. Teague.

The FCJL started in the Readjustment Act of 1973, and it was an effort by many Members of Congress to do something for Vietnam veterans who were struggling in a terrible job market when we came home in the early seventies, which was only compounded by the OPEC induced gas shortage, which only drove that in recession to be much longer and much deeper than anybody anticipated. It was a well meaning thing, but any kind of law that is passed without a mechanism for enforcement and implementation and compliance simply begs the question.

Unfortunately, OFCCP is full of terrific people, like the gentleman who has sent up his sacrificial lamb this morning, Lorenzo Harrison and Mr. Teague, he is a born again New Yorker. As soon as he could leave Teaneck, New Jersey, he moved to the city, so be easy on him.

The problem is, is they are not set up to be able to do their job. They don't do their job for women, they don't do their job for ethnic minorities, and they don't do it for vets, simply because they do not have the tools.

In about 2000, 2001, my good friend Congressman Jerry Solomon from Upstate New York, pushed hard to have improvements made to the VETS-100 Report, and that was then incorporated in the Jobs for Veterans Act as well, and then it took 5 years, plus to finally get the regulations in 2007, which have mostly been observed in a breach.

The question is, what do you do with the information and who enforces it? Perhaps moving it to VETS would help, but frankly we doubt it.

The entire set of tools, whether that in the Public Labor Exchange model of the DVOPs, LVERs, OFCCP, Federal contract job listings, and every other tool that we have depends upon a Public Labor Exchange that works, and I would submit to you to this distinguished body today that we do not have a Public Labor Exchange that works probably, and certainly does not work probably for veterans.

I have recommended a number of steps on behalf of Vietnam Veterans of America that would take us to a point where perhaps we could do this, have something that actually worked for the young people coming home.

First, and foremost, we urge that you federalize the DVOPs and LVERs and have them report directly to the Directors for Veterans' Employment (DVETs) across the country.

In many cases where the labor exchange actually does work, and there are States like South Dakota, and you are fortunate Madam Chairwoman that you have a State where it does work pretty well and it works pretty well for vets too, but in most States like New York, it doesn't work well at all. And so, on a memorandum of agreement, those now Federal employees, DVOPs and LVERs, could go right back into the same office on a memorandum of understanding, if in fact, it is an atmosphere that is truly practicing priority of service to veterans and in fact it is conducive to assisting veterans, particularly disabled and recently separated veterans. So it is a tool that would allow us to continue where it is working, and where it is not working to have alternatives to make it work.

Secondly, we now have a Secretary of Labor who is deeply committed to veterans, and her track record in the Congress suggests that she will in fact take steps to do it. But we also need an Assistant Secretary for Employment and Training who is committed. That is where the power lies and that is where the money lies at the Department of Labor. And until we have an Assistant Secretary of Employment and Training who is as committed to veterans as the Assistant Secretary for Veterans' Employment and Training, as well as a Secretary and a Deputy Secretary, we are not going to get much head way.

Thirdly, there needs to be a significant increase in the funding for the DVOP/LVER program to at least \$200 million fiscal year 2010.

Fourth, the Secretary of Labor needs to commit significant amounts of discretionary Workforce Investment Act funds to reward the States that do the best job in providing actual employment and training services.

Fifth, employers who are Federal contractors who—and if you do all those we will start to have an effective DVOP/LVER system again. And then if you have employers who are Federal contractors who want to do the right thing and who now need to have a signature from the Local Veteran's Employment Representative that in fact they have listed their jobs in that State where that location is, and at that point without that then they would be barred from seeking further contracts or securing contract extensions.

If there are no teeth there might as well not do the law. There has to be some mechanism for enforcement that is not over labor intensive; no pun intended.

And sixth, since OFCCP is not now, nor has it ever been effective, VVA proposes that veterans be given a right to sue Federal contractors for discrimination when they do not hire veterans, with up to \$300,000 punitive damages in addition to any actual damages, plus attorneys' fees.

It will only take a very few cases and the rest of the contractors will be coming and beating their way to the LVER's door to get signed up and to list jobs and to follow through with a proper plan to seek and hire qualified veterans, particularly those young people coming home today and those who are disabled veterans.

I thank you. I see my 5 minutes is up. And thank you for the opportunity to share these thoughts with you today, Madam Chairwoman.

[The prepared statement of Mr. Weidman appears on p. 38.]

Ms. HERSETH SANDLIN. Thank you, Mr. Weidman. What value do you place on the VETS-100 Report?

Mr. WEIDMAN. In the absence of an effective mechanism in order to do job matching, we don't place a lot.

I must admit I was surprised today because I know of most of the military job boards and I had never heard of VETS Connect, so I apologize to the distinguished vice president of that outfit for never having heard of it, and there has to be a way to get the listing of jobs to the individual.

The first Public Labor Exchange was in New York City founded in 1935 because it became too big for the Village Green to work anymore. And similarly in our country, the reason why we have veterans' preference, the reason why we have service disabled veteran businesses set aside, and the reason why we have OFCCP for Federal contractors is because we don't have bounty lands to give away to veterans as a reward for service and sacrifices made.

And so we need a mechanism, whereby first dibs on jobs, either in the Federal workforce or in the Federal contractor workforce, can go to qualified veterans. And we need some kind of mechanism to close that gap, ma'am, and we don't have that mechanism today.

Ms. HERSETH SANDLIN. Your response, what you just said in terms of not being aware of the VETS Central Web site was going to be a question I was going to ask the sergeant, but let me just ask each of you a question related to this.

Mr. Weidman, do you think it was a mistake to terminate America's Job Bank? And what is your opinion of its private sector successor, Job Central, with the technical operations being conducted by DirectEmployers Association and the Web site that they have created that you saw today?

And then my question, Sergeant, is how do veterans learn of this Web site?

Mr. Weidman, if you could answer first.

Mr. WEIDMAN. At the risk of reliving and reviving bad history, I thought that the way in which and the fact of ending the Public Labor Exchange and America's Job Bank, given the number of States that depended on that mechanism was highly irresponsible and a shameful decision and a shameful action.

The transfer over, if you will, to VET Central, as you might well imagine, Madam Chairwoman, I keep up on a lot of stuff when it comes to economic affairs and veterans, and was not aware of Job Central—VET Central and what they were doing in the same way, and I do not believe that it has replaced what we had 15 years ago when we had at least something that approached an effective Public Labor Exchange on a national basis.

Sergeant SOWASH. Thank you, Madam Chairwoman.

When America's Job Bank did go away, the employers mobilized to be able to create something that would replace it, especially with regard to getting jobs down to veterans at the local level. And I am assuming after this session we will have an opportunity to actually speak and get you a little bit more educated about the National

Labor Exchange the way it is today. Because there are actually more—we have 48 States that are actually participating in the National Labor Exchange, which actually is more than America's Job Bank had when it went away, which is very surprising to me right out of the gate with regards to uploads of jobs and downloads of jobs.

When we created the National Labor Exchange, along with our partners NASWA, we actually went down to the State level and we asked them what they liked about AJB and what they didn't like about AJB, and that is where we started. That was ground zero for us in creating a new National Labor Exchange, and actually creating relationships with North Carolina and other States, and being able to understand what happens at the local level so that we can get jobs down to the local level and we can ensure that when veterans come through the door, they have jobs available to them.

So I think this is actually more of an awareness for maybe this whole room and maybe even more, that the National Labor Exchange is actually a lot bigger than America's Job Bank was with regard to participation when it went away.

Ms. HERSETH SANDLIN. Thank you. Mr. Whitaker, what was your experience with America's Job Bank, and what was that experience in relationship to now working with DirectEmployers Association and VET Central?

Mr. WHITAKER. We had an experience with the America's Job Bank, and I think it—when it started it was new and novel and provided a different layer and a different way to provide service too, but over a period of time, it lost some of that extra service that it could provide.

There were issues with the America's Job Bank with funding and being able to continue, because a lack of funding and some commitment from a number of States and other areas to be able to keep up with the new technology in providing service as customers expected that, and providing service in a very effective way.

So when the America's Job Bank ended there was certainly—or when it was coming to an end, there certainly was a vacuum. And NASWA, as a representative of the State workforce agencies, was aware of that issue, and we received a number of proposals from entities desiring to replace the America's Job Bank.

We selected Job Central and VET Central because of their proposal, because it is a free service to the States, it is a free service to veterans, and we believe it is working very effectively to replace the America's Job Bank and it is getting better every day.

Ms. HERSETH SANDLIN. Thank you. Mr. Boozman.

Mr. BOOZMAN. Thank you, Madam Chair. I would like to go ahead, with your permission, to pass my time in this round or to skip me and to go to Mr. Moran. He has an appointment in the future.

Ms. HERSETH SANDLIN. Mr. Moran.

Mr. MORAN. Thank you, Mr. Boozman and Madam Chairwoman.

Mr. Weidman, you mentioned in your testimony, perhaps kind of offhand about how South Dakota has a good program and New York less so. Is there some objective standard, or is there something that I as a Member of Congress ought to be paying attention

to, looking at, that would give me a clue as to how the programs are fairing across the country and particularly in my State of Kansas?

Mr. WEIDMAN. The smaller States tends to do much better, Mr. Moran, and from that point on having said that, it has to do with acculturation and a corporate culture that is built up around the State workforce development agency in that particular State.

So, that as an example, New Hampshire had a very strong veteran influence and always has been very good and has always worked very closely with VA voc rehab and State rehab particularly on dealing with disabled vets. South Carolina is very good. North Carolina is pretty good. Both the Dakotas are pretty good. In western Kansas where you are from, it is actually pretty good. It is tougher in the more urbanized eastern part of the State. And that pattern pretty much follows around the country. Is the more urbanized the area, the more difficult it is for a number of reasons. When it comes for veterans employment I am talking about.

Part of that has to do with the structure of the DVOP/LVER Program. You can attract people in a less urbanized area for what they are able to pay, and so that has partly to do with it, and part of it has to do with simply the sociological culture and the respect for veterans that you find are often in the more rural areas.

Mr. MORAN. Thank you very much.

Let me ask you an additional question, a more specific one. You suggest barring Federal contractors who do not comply with section 4212. Do you worry about with all the consolidation that has gone on in recent years, that such a move would put veterans who are working at those companies at a greater risk? Are there consequences for the veterans in barring those Federal contractors?

Mr. WEIDMAN. You have to have a way for people to reasonably get listed first and foremost, and you have to have a way to get the listing to people. VET Central may be one of those means. There are a number of private job boards. The most effective one, which we found we endorse in the VVA, and also others endorse, is VET Jobs.

So as long as it is clear to the employer community and to the Federal contractor community what the requirement is and how to satisfy it, I do not see it as placing veterans at a disadvantage.

What often has happened in my experience over the years, and unfortunately, Mr. Moran, I am an old guy, I have been at that for a long time, since 1973 dealing with veterans employment when I was doing it as a volunteer while teaching full-time at one of the Vermont State colleges, and once you get veterans through the door then they prove themselves and that employer generally says okay, I want to hire some more of those folks. They show up on time, they work hard, they are drug free, and they do whatever needs to be done to get the job done and out the door. And if that means staying an extra hour, they will do it and don't even blink an eye.

So the question is getting a leg up to get in the door. So I don't see it for those who are already working for Federal contractors as being an impediment to their future.

Mr. MORAN. Because they have proven themselves.

Mr. WEIDMAN. Because they have proven themselves, and frankly, set a good example.

Mr. MORAN. Right.

Mr. WEIDMAN. And a smart employer. Ross Perot became a billionaire hiring only veterans. It is useful to remember.

Mr. MORAN. Let me ask Mr. Sharpe. You suggest moving the Office of Contract Compliance to the VA. I want to see if others agree with you. I am sorry, the Veterans' Employment and Training Service, not the VA. Do you agree with the Vietnam Veterans Association, that disabled vet outreach program specialists and local vet employment representatives should be federalized?

Mr. SHARPE. We do believe that it should be moved to the Veterans' Employment and Training Service. That seems to be the consensus that we receive from those that work in that particular office all across the country. Many of them feel like the program is not working. There is a communication problem. Very little oversight. And we believe the only way that we could really improve the program overall is for it to be in the Veterans' Employment and Training Service Program.

It just seems logical that, you know, they are already looking at Uniformed Services Employment and Reemployment Rights Act, they already have the job of finding employment for veterans. That should be another component instead of it being spread out in so many different offices.

And as far as federalizing, that is the only way that we see that the Department of Labor can adequately monitor the money that is being sent to the States.

Right now there is very little compliance. The monitoring is not there. There is no way to actually track where the money is actually going. Every State that we have talked to, I mean, the complaints are, you know, are just astronomical.

Mr. MORAN. Do you mean complaints by veterans?

Mr. SHARPE. Complaints by veterans, complaints by DVOPs, LVERs, DVETs. They feel like the program is not being properly administered and that veterans are not receiving their preferences, their priority in job services, and we just feel like if it is federalized then Washington can really keep track of where the money is going, how is it being spent, and how is it being used.

Mr. MORAN. Thank you very much. Thank you Mr. Chairman.

Mr. ADLER [presiding.] Mr. Teague.

Mr. TEAGUE. Yes, thank you, Mr. Chairman, Ranking Member.

I would like to thank the panel for being here today and all of the information that you have given, the time that you have given. But I am a little concerned that we have—everybody seems to be in agreement that people are ignoring the rules and just being able to slide by. And you said, Mr. Sharpe, that you think it should be federalized. Has anybody done any scoring or anything to see what the cost of that would be?

Mr. SHARPE. Not that I am aware of.

Mr. TEAGUE. Do you have any idea how many people it would take it to do it or anything?

Mr. WEIDMAN. May I?

Mr. TEAGUE. Sure, please do, yes.

Mr. WEIDMAN. The administrative overhead of indirect costs that goes to States now, out of the \$162 million that is currently there fiscal year going out to the States, our scientific wild guesstimate

is probably about \$50 million worth of services. The administrative overhead indirect costs runs as high as 37 percent of that. For somebody who is making \$35,000 a year, in some cases it is costing the Federal Government in excess of \$70,000 by the time you add direct and indirect additional costs having to do with medical, insurance, et cetera, plus what the State is giving out.

We hear from DVOPs and LVERs that part of the direct administrative cost, which is travel moneys, and other kinds of supportive services, is not made available particularly when it gets to be in a budget crunch in that particular State. But the States aren't giving the money back to the feds.

So you have to ask the question here, are we getting the bang for the buck, and are we doing the right thing by the young men and women coming home? Not everybody is going to need a Vet Center, not everything is going to need medical care, but everybody is going to need a job, whether they are guard, reservists, or returning active duty from the wars, and it is the key readjustment program, and it is the flash point of the whole readjustment process, is the ability to obtain and sustain meaningful employment.

And so that is why, sir, that we believe that \$162 million would be enough to start, but with the cost of federalization, and it would be probably higher pay in certainly some localities, that is why we recommended at least \$200 million for fiscal year 2010 to handle those transitional costs. Those who wanted to stay as State employees who didn't have the opportunity in most States under their own Civil Service laws to transfer and become regular employment counselors within the office. Those who wanted to commit to working with vets would then go with the feds.

Mr. TEAGUE. I think probably the answer to both of the questions that you asked about, how good a job we are doing for our veterans, is probably no, we are not doing a very good job.

But I also heard you make a statement earlier in your testimony that you thought the programs work better in rural than urban areas because they were willing to work for the price that people paid. Would you explain that a little further?

Mr. WEIDMAN. I will give you an example, sir. Under Governor Cuomo I had returned to New York State and ran the State Veterans Employment and Training Program for 9 years. The person that you could attract in Watertown, New York, or in Massena, New York, in the north country for what I could pay as a beginning DVOP or LVER, which was about \$35,000 a year, that is a pretty good job up there. In New York City, \$35,000 you can't live without doing a second job.

So I had DVOPs in New York City 15 years ago who were working three jobs in order to be able to feed their kids and pay the rent. So that is why I say if we transitioned over to Federal employment, paid people decently, and with the differentials that are paid, depending on locality and Federal pay, we would be able to hold our people and not have them working themselves to death by working a second and third job just because they want to work with vets during the day.

Mr. TEAGUE. Okay, thank you. Thank you, Mr. Chairman.

Mr. ADLER. I would like to hear Ms. Roof for a second.

VEVRAA requires Federal contractors and subcontractors to compile and submit annual reports on the number of employees who are veterans. Has there been any concern about the lack of reporting and what happens when a Federal contractor or subcontractor does not submit a report, and who reviews the reports?

Ms. ROOF. You know, I am really glad you brought that up, that was one of my and AMVETS main concerns when going through this as I am calling compliancy auditing process.

There is not enough information out there, and if there is we were unable to find it.

Also could you ask your first part the question, I would like to address each point of it.

Mr. ADLER. Is there a requirement in VEVRAA to file and submit reports? Contractors and subcontractors. Are they doing it? If so, who gets access to the information? Is the information adequate? Because it seems to me the essence of this is trying to get veterans jobs. And if we have this information in the system we should be able to access it. So is the information in the system and who is using the information and how?

Ms. ROOF. And again, I think the VA is doing a good job getting the information into the system to a certain extent, but I think that is where it stops.

There is no compliancy auditing to check on these companies. To make sure that the information they submitted was not just an initial submission to get a contract, but that the veterans are actually being used. I think that is where the OFCCP comes in.

Again, that's why I touched on doing more audits, because things can look great on the front end, and I am going to submit all the information, it is going to go into the system, but now who is going to hold me accountable to that, to what I submitted?

And as far as who has access, I am not really sure to be quite honest with you. I can look into that and get back to you.

Mr. ADLER. I would ask if any of the other panelists know. I have certainly asked the VA the same question. Do any other panelists know what happens with the VEVRAA information? Does it come in? Are contractors and subcontractors complying? And are people getting access to the information?

Mr. WEIDMAN. If you mean does the average DVOP and LVER in a local office have access to this Federal contractor list the answer is I don't believe so.

Mr. ADLER. Anybody else?

All right, thank you. I thank all the panelists for your testimony this afternoon. Oh, I am sorry, you have got more? Mr. Boozman, please proceed.

Mr. BOOZMAN. I have just got a couple.

On the, and I made reference to it in my opening statement, on the VETS-100 Report how do you think we should disseminate that information? Evidently it is not getting out. Have you got any sort of advice as to an appropriate way to get the information out?

Mr. WEIDMAN. Well putting it online is one way and let veterans market themselves. Essentially the vets who are getting jobs today more and more are on their own, and that is despite the fact there are some wonderful DVOPs and LVERs out there and people can't get to them or they don't have time to see the number of people

that need help within their community. So veterans are having to market themselves more and more.

If, in fact, you had those listings online, the only place where I know there is a complete list that is searchable by State, by zip code, is through the small business that I talked about in Montpelier, Vermont, but there may be other ways. And then you have voluntary efforts, such as put together by DirectEmployers apparently, is one way to do it.

But if you put it online and we give veterans some additional tools—as an example, there is for all disabled veterans a tax credit of \$6,000 that the employer gets back for the first \$12,000 paid to any disabled vet. Instead of leaving it all up to the employer to do that, give the vet a certificate, simplify that program where he can walk into your office in Arkansas and say I have a certificate, I am skilled as an optician, optician assistant, you hire me and you get back the first \$6,000 of the first—\$6,000 of the first \$12,000 paid you can take off what you owe the feds. So you let veterans go market themselves. And the more you put the things out there, then you will have other services like DirectEmployers, like VET Jobs, and others who will work with the individual veterans to market themselves.

But that begs the question of does there need to be a publicly funded mechanism to accomplish the most important task in the readjustment process for our younger veterans who are returning home? And we don't have an effective mechanism and we need to create one, and we stand ready to work with you, Mr. Boozman, with Chairwoman Herseth Sandler, and with Mr. Adler, and with all other Members of the Committee to create a new paradigm that works.

Mr. BOOZMAN. A few years ago we allowed the ability for part-time DVOPs and LVERs. Is that a good idea or bad idea?

Mr. WEIDMAN. With all due respect, VVA never supported the part-time DVOPs. I mentioned that for 9 years I ran what at that time was the second largest program in the country and eliminated part-time LVERs, even though it meant at some of the smaller offices LVERs had to split their time between two separate small offices because you didn't get 100 percent of the person. It is supposed to be 50 percent DVOPs. You are lucky if you get the equivalent of 1 day a week, and that is just the plain fact, and that is not just from me. You can talk to folks right across the country and you will get the same answer. It was not a good idea, sir.

Mr. BOOZMAN. Gentlemen, would you like to comment?

Mr. SHARPE. We also agree that it is not a good idea. We hear from DVOPs and LVERs again from all over the country. They have been complaining about this program ever since it was enacted. Many of them complain that they are not working with veterans, they are forced to do other duties, other clerical type activities, and that was not the intention.

We were also told that the DVETs are being told not to visit the One-Stop offices as they used to, so it is very difficult for them to monitor and ensure that those offices are in compliance. And because of that we have been against it.

Mr. BOOZMAN. Thank you guys for being here. As always you are very, very helpful. Yield back.

Mr. ADLER. I also thank all of you for taking the time to be with us and for your service to our country. Thank you so very much. You are excused with our gratitude.

We have a second panel. We now invite panel number two to the witness table.

Joining us on our second panel are Mr. Lorenzo Harrison, Acting Deputy Assistant Secretary for the Office of Federal Contract Compliance Programs, United States Department of Labor; and Mr. Jan Frye, Deputy Assistant Secretary for Acquisition and Logistics, United States Department of Veterans Affairs.

Mr. Harrison, welcome, you are recognized for 5 minutes.

STATEMENT OF LORENZO HARRISON, ACTING DEPUTY ASSISTANT SECRETARY, OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, U.S. DEPARTMENT OF LABOR; AND JAN R. FRYE, DEPUTY ASSISTANT SECRETARY FOR ACQUISITION AND LOGISTICS, U.S. DEPARTMENT OF VETERANS AFFAIRS

STATEMENT OF LORENZO HARRISON

Mr. HARRISON. Thank you Chairman, Mr. Boozman, and Members of the Subcommittee. Thank you for this opportunity to testify on Federal Contract Compliance.

The Office of Federal Contract Compliance Programs has an important and unique role in the enforcement arena in protecting veteran's rights, ensuring that covered veterans are provided with equal employment opportunities, and that companies doing business with the Federal Government take affirmative action to recruit, hire, and promote qualified veterans.

OFCCP is one of three agencies within the Department of Labor with responsibilities for administering the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).

The Employment and Training Administration oversees priority referrals for veterans seeking employment, and the Veterans' Employment and Training Service oversees the VETS-100 and VETS-100A Reports.

Under VEVRAA, Federal contractors are required to list most job openings with the appropriate employment service delivery system, and protected veterans are entitled to receive priority in referrals to the job openings that Federal contractors are required to list. However, VEVRAA does not require Federal contractors to give veterans a special preference in hiring. That is, VEVRAA does not require Federal contractors to give veterans a special preference in hiring.

On average, OFCCP conducts approximately 4,000 compliance evaluations and 900 compliance assistance events annually for Federal contractors and subcontractors in supply and service and construction industries.

During the compliance evaluation, OFCCP will verify that Federal contractors are listing appropriate job openings with the Employment Service Delivery System so that veterans may be given priority in referral. That is, priority in referral, not preference.

So far in fiscal year 2009, roughly 15 percent of all on-site reviews conducted by OFCCP have found violations of the mandatory

job listing requirement by Federal contractors and subcontractors, as we witness the application of private entities like Direct-Employers.

OFCCP also receives approximately 500 to 700 complaints each year, of which 15 to 20 percent of these are filed under VEVRAA. During fiscal year 2008, OFCCP received 83 complaints filed by veterans. Over the past 5 fiscal years, 19 complaints resulted in \$399,926 in benefits being provided to veterans.

Where voluntary compliance cannot be achieved, OFCCP may continue to use conciliation efforts with the contractor, refer the matter to the Solicitor of Labor to institute formal administrative enforcement proceedings, or refer the case to the Attorney General for litigation, as appropriate.

OFCCP does not presently have formal agreements to share such information with other Federal agencies. We treat information received from Federal contractors during a compliance evaluation as confidential.

The Subcommittee also asked about the most important analysis of the VETS-100 Report and associated result. Previously, OFCCP did not analyze VETS-100 and VETS-100A Reports, but only verified that these forms were submitted to VETS.

Recently, OFCCP met with VETS and secured access to the VETS-100 database.

In 2008, we established an incentive program called The Good-Faith Initiative For Veterans Employment, affectionately known as G-FIVE, and it recognizes the good efforts of contractors in the area of veterans employment.

In summary, although we have made progress in addressing equal employment opportunities for veterans among Federal contractors and subcontractors, we know that there is still work to be done to increase the employment of covered veterans.

OFCCP looks forward to working with our new Deputy Assistant Secretary once that person is announced and on board, and with Members of this Committee, in order to improve opportunities for veterans with Federal contractors.

This concludes my oral statement, and I would be more than happy to answer the questions of this Committee.

[The prepared statement of Mr. Harrison appears on p. 39.]

Mr. ADLER. Mr. Harrison, thank you. Let me start with something you said toward the end. You said, "There is still work to be done." Talk to us for a moment about that. What should be done? What should your Department do? What should Congress do? What should Federal agencies do collectively, cooperatively to help our veterans get placed?

Mr. HARRISON. One is to hopefully have President Obama and Secretary Solis' 2010 budget ratified so that we can go about bringing on 213 new Equal Opportunity Specialists, which would increase considerably, definitively, compliance of contractors under VEVRAA.

Two, we should be committed to working with the Direct-Employers, National Association of State Workforce Agencies, and other important stakeholders like the ones you have just heard from, to ensure that veterans are being helped and they are getting job prioritization, and that veterans are getting assisted.

Mr. ADLER. Let me follow up with the second one first. Why hasn't there been that sort of effort with the panelist from the previous panel to reach that sort of positive result in the past?

Mr. HARRISON. I believe there have been efforts in the past to work with various stakeholders. OFCCP has been in operation for 30 years. In recent years, there has been an emphasis, systemic discrimination, that is on focusing on classes of individuals who could have been harmed by personnel practices that in some ways de-emphasized focus on VEVRAA.

Mr. ADLER. So I just want to understand. We hire 213 more people that are specialists—

Mr. HARRISON. We haven't hired—

Mr. ADLER. No, we do that. That is one of the things we do. Tell me what else we should be doing going forward to enhance the cooperation among agencies and with the various entities that were represented by the panelists in the previous panel. I just want to get a better sense of what we should be doing collectively to address the needs of our veterans who want to work.

Mr. HARRISON. I mean, very simply stated, Congressman Adler, a commitment to reaching out. Very simply stated, sir. A commitment to reaching out to the panelists, to the diverse stakeholder community on these issues, and a commitment to following up on matters that are distilled in those kinds of discourses, and, generally speaking, a commitment to reach out.

Mr. ADLER. Let me just still understand. The commitment to reaching out, does it come from the Department of Labor? Does it come from some other entity?

Mr. HARRISON. It comes from all of us that are involved in seeing to it that veterans are treated as they should be. Those of us interested in ensuring that VEVRAA is enforced to the fullest extent. Those of us who are committed to veterans getting the benefits again that they deserve. Most certainly it includes a commitment from the OFCCP.

Mr. ADLER. It is hard for me to quantify what that means, a commitment to reaching out. I believe in it, I think everyone in the room believes in it—

Mr. HARRISON. Well, we have—

Mr. ADLER. Let me just finish my question to you. Do you have a sense in fact there is a commitment to reaching out on the part of the Department of Labor at this point?

Mr. HARRISON. I most certainly do, Congressman Adler.

We are, between now and next fall, that would be fall of 2010, going to conduct some 20 odd public forums that would provide a platform like has not existed in recent years for these issues to be further discussed, and commitments and potential commitments made.

There will be over 1,000 compliance assistance events that are non-enforcement driven opportunities—safe havens—for partnerships to be made, opportunities to be distilled and defined that would be beneficial to veterans.

Mr. ADLER. I am truly gratified by the enthusiasm you speak about in terms of trying to reach out to the veterans.

Do you have a sense there are other entities in Washington within the Federal Government that don't share the Department of La-

bor's commitment to reaching out, and how can we infuse them with your enthusiasm?

Mr. HARRISON. Well, I would hope that some of them are sitting as witnesses in the gallery; otherwise, I don't know of any, sir, that would be certainly against this kind of collaboration.

We have strong partnerships with the Veterans' Employment and Training Service and we have a strong commitment to collaboration with the Office of Disability Employment Policy at the United States Department of Labor. And as you know, Secretary Solis is very committed to having a rigorous enforcement program that would be beneficial to veterans in this country when many men and women are returning from these wars overseas.

Mr. ADLER. I thank you for your testimony and for your commitment. Mr. Boozman.

Mr. BOOZMAN. Thank you, Mr. Chairman, we appreciate you guys being here.

Mr. Harrison, you testified that 15 percent of on-site reviews in 2009 have found violation of the job listing requirements, as well as numerous cases where veterans claim violations of section 4212. Assuming that OFCCP found similar and other violations in past years, can you explain the lack of any such data in the annual report required by 38 U.S.C. 4107(c)?

Mr. HARRISON. No, I am unable to explain that, sir. Except that I can say that those data will be publicly available in the report that is going through clearance currently.

Mr. BOOZMAN. Okay. I guess the next question, which we like to know up here is, is when could we expect that?

Mr. HARRISON. I would have to get back to you with that for the record for the Subcommittee.

[The DOL subsequently provided the following information:]

Section 4212(c) requires that the annual report prescribed in Section 4107(c) include information on the number of complaints filed alleging that a contractor has failed or refused to comply with its contractual obligations relating to the employment of protected veterans. Accordingly, the U.S. Department of Labor Veterans' Employment and Training Service's (VETS) Annual Report to Congress for Fiscal Year (FY) 2008 included information on the number of complaints filed with OFCCP involving claims by veterans. Although section 4212(c) does not require the Secretary to provide information on violations of VEVRAA uncovered during compliance reviews, such as violations of the mandatory job listing requirement, that information will be included in the FY 2009 Annual Report to Congress and in future reports.

Mr. BOOZMAN. Okay. Counsel reminds me that it was due in February.

NASWA has mentioned several concerns about inconsistent application of the laws and regulations by OFCCP field staff. For example, e-mail posting are not considered compliant, third-party posting are not allowed, many States lack the technology demanded by field staff. More specifically, NASWA members cited a lack of a comprehensive, official, and accurate Federal contractor list, a lack of standardized communication protocol, during and after audits, and minimal contact between State and regional OFCCP staff. Can you comment on that?

Mr. HARRISON. What I would say to you as was indicated by Mr. Whitaker, as is reflected in the correspondence I shared with Mr. Whitaker, we are absolutely committed to having a topnotch pro-

fessional core of Equal Opportunity Specialists that abide by our guidelines and regulations. Those that were distilled under the Jobs for Veterans Act, which amended VEVRAA in 2002, it provides a tremendous amount of flexibility to all of us who would have openings made available in an efficient and effective manner for veterans.

Mr. BOOZMAN. We are being told that DOL canceled the Federal contractor job bank shortly after passage of the Jobs for Veterans Act. Can you tell us why?

Mr. HARRISON. No, I am unable to. I am unable to tell you why, sir. I was not functioning in this capacity at that time.

Mr. BOOZMAN. Okay. And as you have heard earlier, I think there has been concern on our part. I mentioned in my opening statement about really not using the VETS-100 data. I guess, a question is, when was the last time that we really analyzed that data? How is it being used?

Mr. HARRISON. Well, as I mentioned, there will be detail in this upcoming annual report. And I am encouraged that we may find, via technological advancement, ways that were not available prior to now in utilizing information provided by the VETS-100 Reports to hopefully improve our evaluations of VEVRAA and investigations of VEVRAA.

Mr. BOOZMAN. Just one more thing. Is there a central database of Federal contractors?

Mr. HARRISON. No. Not all encompassing, sir. There are various databases that we utilize to identify contractors.

Mr. BOOZMAN. Is that something that we need to do? Would that be helpful? And I guess the next question would be, if so, who should maintain?

Mr. HARRISON. The Department hasn't really arrived at a position on that. I wouldn't want to misspeak about that. It seems like that might be a policy related matter. I would have to leave it there, Mr. Boozman.

Mr. BOOZMAN. Okay, very good. Again, thank you for being here and we appreciate your testimony.

Mr. HARRISON. Thank you. It is an honor and privilege.

Mr. ADLER. Mr. Frye, you are now recognized for 5 minutes.

STATEMENT OF JAN R. FRYE

Mr. FRYE. Thank you, Mr. Chairman, Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss VA's acquisition operations with regards to Federal Contractor Compliance.

It is a privilege for me to represent the many dedicated and hardworking acquisition and logistics professionals throughout the Department that provide mission-critical support every day to ensure quality care and benefit delivery for our Nation's most special citizens, our veterans.

I have been asked specifically to address the issue of Federal Contractor Compliance with regard to employment of veterans in Federal contracting. The Committee requested that VA respond to four questions, and I would like to take this opportunity to do so.

The first question centers on how VA monitors contractor compliance with 38 U.S.C. 4212.

VA contracting officers comply with the Federal Acquisition Regulation (FAR). They are required to verify vendor compliance prior to the award or modification of a contract. They may accomplish this by several appropriate means, but in all cases they rely on the Department of Labor's Veterans' Employment and Training Service-100 or VETS-100 database to ensure that apparent successful officers have completed the required reporting for the appropriate reporting year.

To improve VA's oversight and ensure vendors doing business with the VA are complying with the requirements I have instituted two significant changes.

The first will be the issuance of an information letter to VA's heads of contracting activities reinforcing that contracting officers must be aware of this important requirement and their responsibilities to query the VETS-100 database.

Second, to establish an electronic record of the contracting officer's compliance with the policy I have directed that VA's contract writing system be modified to add a mandatory feature to require contracting officers to record electronically the execution of a VETS-100 database query prior to award or the exercise of contract options. This feature will create the electronic record that VA will be able to use to monitor compliance on a recurring basis in the future.

The second question from the Subcommittee inquired as to how many VA contractors are non-compliant.

In response to the Subcommittee's request, we conducted a review of a statistically significant, randomly selected sample of contract files throughout VA.

All contracts in the sample had the appropriate FAR Part 52 contract clauses in place, and all contractors were fully compliant with the Department of Labor's reporting requirements.

Third, the Subcommittee requested information on any action VA takes to address non-compliant contractors.

And last, whether noncompliance affects a company's ability to do business with VA.

At this time, we are not aware of vendors who are non-compliant. Non-compliance would affect a company's ability to contract with VA. For those contractors deemed to be non-compliant, VA will take action as set forth in FAR Part 22.

The first step of course would be to notify the Department of Labor and then make efforts to negotiate a mutually acceptable remedy. Failure to reach a remedy could result in termination of the contract for default.

Mr. Chairman, I would like to close by thanking you for the opportunity to discuss VETS-100 Reporting, and the Federal Contractor Compliance program at VA. We will continue to work diligently to improve and set a standard worthy of emulation throughout the Federal acquisition community.

I would be pleased to respond to any questions you or the Subcommittee's Members may have.

[The prepared statement of Mr. Frye appears on p. 44.]

Mr. ADLER. Mr. Frye, thank you.

You heard from witnesses on the first panel that said there wasn't really a problem with vendor compliance prior to the award

or modification of a contract, but at least a couple of the witnesses were suggesting there was a problem with compliance after a contract had been awarded or modified. Do you care to comment on that?

Mr. FRYE. Yes, I would. My view is that the contracting officer's job is to ensure that the required FAR clauses are in the solicitation, and that those required clauses are then incorporated into the contract award.

Secondly, contracting officers have to ensure that the contractors have submitted reports to the Department of Labor prior to the contract being awarded.

And thirdly, contracting officers take actions if the Department of Labor was notified by a veteran of noncompliance, the Department of Labor I assume would conduct an investigation and provide VA with information, and VA would then take action contractually against that contractor.

But as far as contracting officers doing anything beyond that, I don't see that as part of the contracting officer's role.

Mr. ADLER. Is there a discrepancy here? We heard the panelists say that somehow it is just not happening. Is it in fact not happening, or is it in fact somewhere along the system there is a breakdown that is preventing the compliance or the termination of contracts or some sort of sanction for those vendors that are not complying?

Mr. FRYE. Well, I would respond by saying that I have no knowledge of noncompliance.

In the last 3½ years during my tenure with the VA, I don't know of a single instance of reported noncompliance.

We did query the Department of Labor to find out if we could get specific examples of contractor noncompliance prior to my testimony here today, we were unable to get a report that was specifically related to the VA. In other words, they weren't able to sort their database for noncompliance specific to the VA.

So again, I have not heard of any noncompliance in the last 3½ years that I have been at VA, and certainly we would aggressively tackle noncompliance if it were related to VA.

Mr. ADLER. Let me again understand jurisdictionally who monitors the compliance. Is it the Department of Labor that tells you, or do you have your own system of monitoring contract compliance?

Mr. FRYE. Again, we monitor contract compliance by making sure the required clauses are in the contract. We also monitor contract compliance by making sure that the required reports have been issued with Department of Labor, but it is Department of Labor's job to handle any complaints that might come forward. If those complaints were related to a contracting officer from a veteran, we would refer those complaints to the Department of Labor who would conduct the investigation, and we would take action accordingly based upon the Department of Labor's recommendations.

Mr. ADLER. Okay. Maybe I could jump back to Mr. Harrison for a second.

Is it your sense that the Department of Labor is hearing complaints and handling them properly and when appropriate referring those concerns as well to the Department of Veterans Affairs?

Mr. HARRISON. I believe so. I am not quite sure how much, if I am hearing you clearly, Congressman Adler, have come from Veteran Affairs. You know, we have had 530 veterans' complaints filed with us over the past 5 fiscal years, 83 last year.

Mr. ADLER. So I guess I heard from at least one of the panelists from the previous panel that there was a multitude of concerns of veterans not being given the opportunity to have employment and may be the real break down in the compliance.

Is there such a break down, or you don't think there is a break down in compliance? And maybe there was an exaggeration by a previous panelist.

Mr. HARRISON. Well, as I have already stated, 15 percent of the on-site evaluations of the 850 some odd on-site evaluations we conducted this past fiscal year, fiscal year 2008, showed mandatory job listing violations. That would be, I think, 150, if my arithmetic is correct, of the 800 on-sites, or close to that amount anyway. My arithmetic I suppose is a little off. You know, showed mandatory job listing violations.

Mr. ADLER. Do we have adequate sanctions in place to punish those employers or vendors that are not complying?

Mr. HARRISON. What we do is make certain that a conciliation agreement is made to ensure that that company, that contractor, reports to the Department of Labor and is underneath a monitoring process that is carried out by the OFCCP until they come into compliance.

Mr. ADLER. Is there any consideration of stronger sanctions than this sort of probation period? I heard a previous panelist talk about maybe banning such violators from access to future government contracts for some period of time.

Mr. HARRISON. Well OFCCP, the Department of Labor, has not made a position on that.

Mr. ADLER. Mr. Frye, does the Department of Veterans Affairs have any concern in that regard?

Mr. FRYE. Certainly. I think one of the things that could be done for noncompliance or repeated noncompliance is debar the contractor, eliminate their ability to contract with the government. That is certainly a contractual action that can be taken.

Mr. ADLER. I would think that would be an obvious conclusion. I thank you both for your testimony.

Mr. Boozman.

Mr. BOOZMAN. Thank you, Mr. Chairman.

Are the requirements of section 4212, are they included in the curriculum at the Acquisition Academy of Frederick?

Mr. FRYE. I can't answer that now. But I will take that for the record and get you a statement.

[The VA subsequently provided the following information:]

This topic is addressed in SBLD 013B—Federal Acquisition Regulation (FAR) /Veterans Affairs Acquisition Regulation (VAAR) and VA Regulation Workshop; a 2nd year skill building and knowledge retention workshop in the VA Acquisition Academy Internship Program.

Type of training: Classroom setting

How in-depth the training is: Approximately 2 to 4 hours in duration. Overview of subject and FAR language, introduction to the VETS-100 form, database and reporting system, and what contracts the Act applies to.

Who receives the training: VA Acquisition Academy Interns

This training can be revised, as required, to meet VA needs. The VA Acquisition Academy also includes this in its Federal Acquisition Certification—Contracting (FAC-C) curriculum taught to the VA Acquisition Team.

Mr. BOOZMAN. Okay.

Let us go back a little bit. You mentioned the compliance with clauses required by FAR 52. It appears that there are over 250 different clauses in that regulation. Which clause or clauses are you referring to relative to compliance with section 4212?

Mr. FRYE. There are two required clauses. First is FAR clause 52.222-35, and it is entitled “Equal Opportunity for Special Disabled Veterans.” And the second required clause is FAR clause 52.222-37, and it is entitled “Employment Reports on Special Disabled Veterans.”

There are some variant clauses, for instance a legal cause that you would put in if these are not commercial items that you are buying, but those two clauses that I just gave you are the two primary clauses that are required.

Mr. BOOZMAN. If there isn’t an administered list of Federal contractors how can we be confident that all the contractors are submitting the VETS-100 Report?

Mr. FRYE. If you could repeat the question again.

Mr. BOOZMAN. If there is no list of Federal contractors—a master list—how can we be confident that all the contractors are submitting the VETS-100 Report?

Mr. FRYE. Again, our requirement, the contracting officer’s requirement is to query the database in DOL and they can do that in two ways. They can directly query the database or they can send an e-mail to DOL to find out if that particular contractor has submitted the report.

Mr. BOOZMAN. Okay. Mr. Harrison.

Mr. HARRISON. I would have to check back with my colleagues. I just don’t know.

[The DOL subsequently provided the following information:]

The Department is not able to determine whether every contractor subject to the reporting requirement in section 4212(d) submits the required veterans’ employment report. However, the Department does monitor compliance with VEVRAA’s reporting requirement through audits of contractors selected by the Federal Contractor Selection System (FCSS). When a contractor is selected for a compliance review, OFCCP checks to see whether the contractor has filed the VETS-100 Report (or the VETS-100A Report after October 2009). If it is determined that the contractor failed to file the required veterans’ employment report, OFCCP will notify VETS as outlined in 41 CFR 250.60(c) and 41 CFR 300.60(c). In addition, VETS maintains a database of contractors that file the VETS-100 Report that is available to Federal contracting officers who are required by 31 U.S.C. 1354 and 48 CFR 22.1302 to verify that a prospective contractor subject to the reporting requirements in Section 4212(d) filed the required report in the prior fiscal year.

Mr. BOOZMAN. Okay, very good. Thank you all again for being here, and we do appreciate your hard work.

Mr. ADLER. I join Mr. Boozman in thanking you. We appreciate your testimony today that we have heard with great insight and interest of the topic. Today’s hearings provides us with an opportunity to learn more about the ongoing problems facing disabled veterans seeking out equal employment opportunities and Federal contractor compliance.

This hearing stands adjourned.
[Whereupon, at 3:36 p.m., the Subcommittee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. Stephanie Herseth Sandlin, Chairwoman, Subcommittee on Economic Opportunity

Providing our servicemembers and veterans with employment opportunities is indeed a way of investing in our brave men and women of the Armed Forces for the sacrifices they have made while serving our country. Providing them with opportunities and establishing equity in employment opportunities can help veterans become gainfully employed.

The U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Program (OFCCP) plays an important role in protecting veterans by ensuring that they are not discriminated and are given equal employment opportunity. While OFCCP provides certain veterans protection against discrimination, it also requires that contractors are actively involved in providing employment or advancement opportunities by providing outreach, recruitment, and training. In addition, contractors must make good faith efforts to maximize their current qualified workforce, develop and update affirmative action plans, and submit an annual report to DOL.

The Vietnam Era Veterans' Readjustment Assistance Act of 1974 also known as VEVRAA and section 4212 of Title 38, provide legal authority to enforce veterans' equal employment opportunities. VEVRAA provides enforcement for Federal contracts to provide equal employment opportunities for special disabled veterans and veterans of the Vietnam Era. This provision would apply to prime contractors and subcontractors who engage in personal property and non-personal services, including construction. All employment is required to be listed in the Federal Contractor Job Listing Program which gives priority referral to qualified disabled veterans and Vietnam Era veterans.

Currently, the OFCCP provides enforcement measures for compliance. For example, compliance reviews are conducted to ensure that employers are following their affirmative action program established as a prerequisite for reaching a contract threshold. To assist in this effort, OFCCP provides training, consultations, and technical assistance to contractors.

I have become deeply concerned over reports of Federal contractors not complying with Federal regulations. This is specifically troubling considering the increased number of servicemembers returning to civilian workforce. It is also disturbing when I hear that disabled veterans hiring practices are inadequate coupled with the lack of effort by contractors to employ disabled veterans. Federal contractors and subcontractor have the opportunity to work with the Department of Veterans Affairs' Vocational Rehabilitation and Employment Program, or Department of Labor's Veteran Employment and Training Service, both of which are equipped to assist veterans gain employment. These resources along with the LVERs and DVOPs should provide for contractor compliance.

I am hopeful that today we can determine to the extent that these enforcements are beneficial, if they lack incentives for compliance, or if there is a need for stricter enforcement measures. I look forward to exploring the options to assist employers who are making good faith effort in hiring and promoting qualified disabled veterans in the workforce. This Subcommittee is fully committed to protecting our veterans and providing protections against employment discrimination.

Finally, today's hearing is an important one. It is the first time this Subcommittee has held a hearing on Federal contractor compliance; therefore, we hope that we are able to learn more about the issue while conducting oversight and gaining from the insight provided to us by our witnesses on the topic.

**Prepared Statement of Hon. John Boozman, Ranking Republican Member,
Subcommittee on Economic Opportunity**

Good afternoon.

Madam Chair, the current recession is affecting veterans just like the rest of American labor force. According to the Bureau of Labor Statistics, the unemployment rate among adult men was 9.4 percent and adult women was 7.1 percent. Interestingly, BLS does collect data on veterans in its monthly report but does not publish the data. One would think that given the current War On Terror and the recognition that veterans are an important sector of society, veterans would be included in any national level unemployment report. The following table from the Veterans Employment and Training Service illustrates today's employment challenges to veterans and as you will see, things are not good.

**Veteran and Non-veteran Unemployment Rates for the First Seven
Months of FY 2009 and FY 2008**

(May 11, 2009)

FISCAL YEAR	ALL AGES		AGES 18-24	
	Veteran	Non-veteran	Veteran	Non-veteran
FY 2009 (10/1/08-4/30/09)	7.1%	7.8%	18.3%	14.0%
FY 2008 (10/1/07-4/30/08)	4.1%	4.7%	14.9%	9.9%

Using 2008 national data for comparison, it appears that veterans in general continue to have lower unemployment rates than their non-veteran counterparts. However, that same data shows that younger veterans still experience significantly higher unemployment rates than older veterans and non-veterans. But veterans are supposed to have some advantage in seeking employment in the private sector, especially by companies that are Federal contractors.

Title 38 section 4212 requires Federal contractors to take affirmative action to hire veterans and tasks state employment services and the Department of Labor with roles in promoting hiring by Federal contractors. I believe each of those bear some responsibility in achieving the goals of section 4212.

While there are many reasons for higher unemployment among younger veterans, lack of attention to veterans in general by the Federal Government should not be among those reasons. For example, in addition to not being identified in BLS data, section 4212(c) of title 38 requires the Department of Labor to report annually on veteran hiring by Federal contractors. Included in that report, the law requires the following data:

- The number of complaints filed against Federal contractors
- The actions taken by the Department on those complaints
- The results of the Department's actions on those complaints
- The number of contractors listing job openings
- The nature and types of positions
- The number of veterans given priority referral by the local employment services

If one looks at the section on Federal contractor compliance on pages 20 and 21 in the most recent DoL report, there is no data on actions taken to investigate complaints regarding contractors' affirmative action to hire veterans. I hope the Office of Federal Contractor Compliance can explain this lack of focus to us today.

Section 4212 also includes several requirements for information to be supplied annually by Federal contractors which are included in the VETS 100 report which should form the basis for the Department's annual report to Congress. I have a feeling that the only time anyone looks at the VETS 100 report is when DoL receives a congressional inquiry.

Finally, the question of enforcement raises an issue of common sense. We hear suggestions that failure to have an affirmative action plan or submit the VETS 100 report should be grounds for debaring a company from doing business with the Federal Government. While I fully support affirmative hiring under section 4212, do we really think the Federal Government would debar a major contractor like a Lockheed or IBM or Pfizer or Boeing? The only alternative is to fine such companies and there is no such provision in current law. I also believe we should take a close look at whether placing the investigation responsibility with OFCCP is the right thing to do and whether that responsibility should more properly reside in VETS.

Madam Chair, the situation surrounding section 4212 is less than optimal to put it kindly and I want to work with you to fix it.

**Prepared Statement of Thomas S. Whitaker,
President, National Association of State Workforce Agencies, Deputy
Chairman/Chief Counsel, North Carolina Employment Security
Commission, Raleigh, NC**

Chairwoman Herseth Sandlin, Representative Boozman, and Members of the Subcommittee, on behalf of the National Association of State Workforce Agencies (NASWA), I thank you for the opportunity to submit written testimony addressing Federal contractors' hiring practices and the performance of the U.S. Department of Labor (USDOL), Office of Federal Contractor Compliance Program (OFCCP) in monitoring the compliance of Federal Contractor Job Listings (FCJL). NASWA and its members are strong proponents of activities benefiting the employment of qualified veterans through programs such as those under the Subcommittee's jurisdiction.

The members of our association constitute State leaders of the publicly funded workforce investment system vital to meeting the employment needs of veterans through the Disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representatives (LVER) programs. The mission of NASWA is to serve as an advocate for State workforce programs and policies, a liaison to Federal workforce system partners, and a forum for the exchange of information and practices. Our organization was founded in 1937. Since 1973, it has been a private, non-profit corporation, financed primarily by annual dues from member State agencies.

Starting in 2007, NASWA began offering its State workforce agency members a new and free service called JobCentral National Labor Exchange (NLX). NLX is a labor exchange solution which also includes a FCJL compliance mechanism. In addition to our members programs and activities targeted to veterans, this mechanism has given NASWA and its partners a more direct involvement with OFCCP. In our experience most employers want to not only fulfill their obligations under OFCCP requirements, but also fulfill the intent of the legislation.

NLX's technical operations are headed by DirectEmployers Association (DEA), a trade association of over 485 Fortune 500 companies represented by their human resource directors. DEA's flagship service is JobCentral, a sophisticated job-search engine which NASWA endorsed as the successor to America's Job Bank (AJB, a national public labor exchange defunded by USDOL in 2007). Today a total of 48 State workforce agencies have signed participation agreements creating JobCentral National Labor Exchange (NLX). Talks are underway with the remaining States to join this alliance. DEA provides all online labor exchange services to State workforce agencies and States' employer and jobseeker customers for free. State job-banks across the United States can transmit job orders to each other, plus, receive thousands of job orders via electronic download from DEA's members. Job orders are updated daily, avoiding duplication and ensuring job opportunities are still open.

This public-private alliance has created a cost-effective system dedicated to improving labor market efficiency and reflecting our Nation's diverse workforce. The initiative uses no Federal funds toward its operations and its research and development; rather it leverages private, non-profit-owned technology with existing State workforce agency resources.

The NLX's FCJL compliance mechanism is a sister-site called VetCentral. VetCentral was designed to provide employers OFCCP compliance with the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) as amended by the Jobs for Veterans Act (JVA). VetCentral sends daily emails of FCJL jobs to the appropriate local employment service delivery system. The emails are directed to LVERs and DVOPs. The emails contain links to the FCJL job orders, a "how to apply" link, and are very user-friendly. The NLX has received positive responses from the field-staff who use these emails every day in referring veterans. State workforce agencies designate who receives emails, and also review and correct current email addresses used by VetCentral. In addition to VetCentral emails, FCJL jobs are also directly being downloaded into many States' job-banks through the broader NLX initiative.

We believe current regulations published in 41 CFR Part 60-300 create a process that brings increased opportunities to our Nation's veterans, while simultaneously allowing affected employers to meet their responsibilities under the JVA.

I want to preface the following discussion by stating our appreciation for the response by and interaction with the Office of Federal Contractor Compliance Pro-

gram (OFCCP). Without their clear guidance and strong communication significant problems would escalate.

Recently, DEA and State workforce agency officials informed NASWA of major discrepancies in how some regional OFCCP staff members were handling compliance audits. The way some OFCCP regional staff members were interpreting Jobs for Veterans Act (JVA) regulations on FCJL jobs we believe was inconsistent with the law and regulations. Some regional OFCCP staff had informed several States and employers that emails of FCJL jobs to the appropriate local employment service delivery system would not constitute compliance. Also, they were told that third parties could not list FCJL jobs for employers in State job banks.

Finally, State workforce agencies were told that accepting an FCJL job-download from NLX would not give employers compliance unless the State could produce a historical report demonstrating that jobs had been posted. Most States do not have the ability to keep such historical records unless they invest in new technologies. Some States can store and provide such historical records, but this would require employers to register and follow each State's separate registration process—a costly approach, and also contrary to the spirit of flexibility outlined in pertinent regulations.

Such an interpretation would shift the burden of compliance from employers to State workforce agencies and create an undue burden for both. Most importantly, this type of interpretation would reduce the number of job openings available to veterans, ultimately harming the very customer legislation and regulations aim to benefit. The employers involved are DEA members who have been regularly forwarding job openings to local offices via emails, automatically downloading job orders to State job banks, or both. Employers that are not DEA members can also use the system to download FCJL jobs to State job banks and have these jobs automatically emailed to the local level, also at no cost.

In response, NASWA sent a request to Mr. Lorenzo Harrison, Acting Director, at the national OFCCP office. NASWA has received written communication from the department that reaffirms the validity of the VetCentral process. The letter also indicates the Department will be communicating to field staff reinforcing the same message. This will allow State workforce agencies to receive FCJL jobs in a flexible manner without incurring added costs and give them the opportunity to make more referrals. It also will give employers a cost-effective means to meet and exceed compliance. And it will increase the number of real jobs available to veterans.

NASWA is pleased with the Department's attention to this matter and appreciates its quick response. NASWA looks forward to partnering further with USDOL, Veterans' Service Organizations, employers, and others to help inform veterans, State workforce agency staff, Federal staff, and businesses of the appropriate roles and responsibilities of involved stakeholders.

In crafting this testimony, NASWA also queried its members on OFCCP compliance issues. Their responses are summarized below. It is important to note, our members are the State workforce agencies who, through the Wagner-Peyser (employment services) DVOP and LVER programs, have been working with OFCCP's FCJL requirements for a long time under Title 38, and other Federal legislation and regulations. This long-term involvement in FCJL implementation, and the State workforce agencies' priority of service to veterans' requirement, uniquely positions our members to comment on compliance issues.

Several State workforce agencies expressed frustration over the lack of a **comprehensive, official and accurate Federal contactor list**. State workforce agencies believe the compilation of such a list by OFCCP would enable States' LVER and DVOP staff to contact Federal contractors in their areas and build strong alliances to put veterans to work. Should the Federal Government create such a list, States can request the NLX copy electronic job orders appearing on Federal contractors' corporate websites and import them into State job banks at no cost. Overall, State workforce agencies believe this can be an opportunity for improved Federal-state coordination and an opportunity to educate employers about the valuable services provided through the publicly funded workforce development system.

State workforce agencies also are interested in **standardizing communication protocols with OFCCP during and at the conclusion of the employer audit process**. Ideally, State workforce agencies indicate OFCCP would send official notification to the appropriate State officials when initiating monitoring reviews. State workforce agencies would also want to receive an outcome report at the conclusion of employer audits. This practice would allow States to assist Federal contractors and ultimately lead to veterans gaining employment and career opportunities.

NASWA is willing to facilitate making the necessary connections between OFCCP and appropriate State level officials.

Some States indicated minimal contact between State and regional OFCCP staff and expressed frustration in not being able to get questions answered. Further, LVERs and DVOPs are particularly frustrated when they have knowledge of Federal contractors who will not list with the employment service but cannot get Federal action initiated. State workforce agency officials acknowledge that the lack of a standard communications protocol or the lack of contact between State workforce staff and OFCCP are partly a result of OFCCP understaffing and are hopeful this will be changed in the near future. Overall, our members support the addition of more OFCCP personnel to help resolve issues and further working relationships.

The workforce system remains dedicated in promoting veterans' employment and in helping employers expand their pool of veteran applicants. Some larger States have indicated OFCCP is placing the **burden of compliance reporting** on the State workforce agencies instead of the employers. Many times OFCCP audit procedures involve in-depth querying of State staff and systems for detailed information on job postings, referrals, applicant information, specific interview dates, start work dates, interview outcomes, etc.

While State workforce agencies do maintain some of these data at various levels of detail, the primary responsibility to maintain and provide such information does not rest with the States. Such information is known best by the employer but seldom, if ever, is it communicated back to State workforce agencies. Even if States had this information it will not accurately reflect reality, if the employer does not exclusively recruit through that State's labor exchange system. Finally, this type of expectation often requires allocation of resources in both staff time and IT systems that might otherwise be used in more direct service delivery-related capacities to veterans.

Based on the concerns outlined above, NASWA and its employer partner, Direct-Employers Association, would be supportive of a **coordinated educational initiative**. This initiative should be targeted to all involved stakeholders and seek to clarify the policy and operational roles of the State workforce agencies and USDOL agencies including: OFCCP, Veterans' Employment and Training Service (VETS), and the Employment and Training Administration (ETA). The initiative should also better communicate the OFCCP requirements and expectations for FCJL employers. This will ultimately result in better use of available funds, staff, and IT resources, and bring better customer service and more job opportunities to our Nation's deserving veterans.

NASWA and its members remain dedicated to enhancing the delivery of employment services to our Nation's veterans. We are willing to assist the Subcommittee and the U.S. Department of Labor in any way possible.

Thank you for the opportunity to address these important issues.

**Prepared Statement of Christina M. Roof,
National Deputy Legislative Director, American Veterans (AMVETS)**

Madam Chairwoman, Ranking Member Boozman, and distinguished Members of the Subcommittee, on behalf of AMVETS, I extend our gratitude for being given the opportunity to discuss and share with you our views and recommendations on Veterans Affairs contracting policies relating to title 38, sec. 4212. AMVETS believes that the use of qualified veterans in Federal contracts is vital to the reintegration and business success of our veteran community.

AMVETS is privileged in having been a leader, since 1944, in helping to preserve the freedoms secured by the United States Armed Forces. Today our organization prides itself on the continuation of this tradition, as well as our undaunted dedication to ensuring that every past and present member of the armed forces receives all of their due entitlements. These individuals, who have devoted their lives to upholding our values and freedoms, deserve nothing less.

President Clinton signed Executive Order 12985 in 1996. The Order established the Armed Forces Service Medal with accompanying ribbons and appurtenances, for award to members of the Armed Forces of the United States who, on or after June 1, 1992, in the opinion of the Joint Chiefs of Staff: (a) participate, or have participated, as members of United States military units in a United States military operation in which personnel of any Armed Force participate that is deemed to be significant activity. The Order added anyone receiving this medal to the categories of veterans covered by the regulations set forth by title 38, sec 4212, established to require employers to take affirmative action in employing qualified special disabled

veterans, Vietnam Veterans, and any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, to include any veteran during the 1 year beginning date of such veteran's discharge or release from active duty.

The Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) requires covered Federal Government contractors and a subcontractor to take affirmative action to employ and advance in employment specified categories of veterans protected by the Act and prohibits discrimination against such veterans. In addition, VEVRAA requires contractors and subcontractors to list their employment openings with the appropriate employment service delivery system, and that covered veterans receive priority in referral to such openings. Further, VEVRAA requires Federal contractors and subcontractors to compile and submit annually a report on the number of current employees who are covered veterans. The Employment Standards Administration's Office of Federal Contract Compliance Programs (OFCCP) within the U.S. Department of Labor (DOL) enforces the affirmative action and mandatory job-listing provisions of VEVRAA. DOL's Veterans Employment and Training Service (VETS), which was established to provide veterans and transitioning servicemembers with the resources to succeed in the 21st century workforce by maximizing their employment opportunities, protecting their employment rights and meeting labor-market demands with qualified veterans, administer the veterans' employment reporting requirement. VETS-100—Federal contractors and subcontractors with a Federal contract of \$25,000 or more, entered into before December 1, 2003, are required to complete an annual report showing the numbers of qualified special disabled veterans, veterans of the Vietnam era, and any other protected veterans hired or employed during the reporting period. Note that the Job for Veterans Act (JVA) has amended VEVRAA, changing the VETS-100 Reporting requirements for contracts entered into on or after December 1, 2003. These changes (1) raise the reporting threshold from \$25,000 to \$100,000, and (2) modify the categories of covered veterans in the report. Any contractor or subcontractor whose only Federal contract is a contract of \$100,000 or more entered into on or after December 1, 2003, is not required to file a VETS-100 Report until new regulations are published by DOL's VETS implementing these changes. Prior to amendments made by the JVA, VEVRAA applied to contracts in the amount of \$25,000 or more, and covered other categories of veterans. The JVA amendments apply only to contracts entered into on or after December 1, 2003. For contracts or subcontracts of \$25,000 or more, entered into before December 1, 2003, VEVRAA requires contractors to employ and advance in employment qualified disabled veterans, veterans of the Vietnam era, recently separated veterans (veterans within 1 year of their discharge or release from active duty), and other protected veterans. Only employers with Federal contracts valued at \$100,000 or more entered into on or after December 1, 2003 will be required to file the VETS-100A report. Modifications made on or after December 1, 2003 of pre-December 2003 Federal contracts create new contracts and are subject to the \$100,000 threshold. Therefore, contractors would no longer be required to file the VETS-100 Report for these modified contracts and would only be required to file the VETS-100A report if the modified contract meets the \$100,000 threshold.

Federal contractors are required to preserve any personnel or employment records made or kept by the contractor for 2 years from the date of the making of the personnel record or the personnel action, whichever occurs later. Examples of records that must be maintained include but are not limited to job postings and advertisements, records of job offers, applications and resumes and personnel files. Contractors with fewer than 150 employees or who do not have a government contract of at least \$150,000 only need to keep records for 1 year. OFCCP enforces Executive Order 11246 and other laws that prohibit employment discrimination by Federal contractors. The agency monitors Federal contractors to ensure that they provide equal employment opportunities without regard to race, gender, color, religion, national origin, disability or veteran status.

Performing audits and compliancy testing of Federal contracts are important tools to ensure that the purpose for the agreement or the performance of the contract actually occurs. As AMVETS has discussed before VA has increasingly had reason for concern regarding controls over performance monitoring and contract compliancy testing. The Office of Inspector General reported that on small contracts alone, this would result in the avoidance of contract fraud, more efficient verification processes, and an estimated savings of \$47.4 million.¹ VA's difficulties in some areas of con-

¹Office of Inspector General, Department of Veterans Affairs Statement before the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies. Committee on Appropriations United States House of Representatives. Hearing on Department of Veteran Affairs Challenges; March 12, 2009

tract administration illustrate that VA's major challenge lies in monitoring performance of previously awarded contracts.

AMVETS believes that this is due to VA not having a centralized and uniform contracting system in place. VA lacks reasonable assurance, at minimum, that it is receiving the services it paid for and that contracts are being closed within the designated period and all work is completed to contract terms. To AMVETS knowledge, VA rarely performs any audits of completed projects. In non-government owned and operated businesses audits of contracts often occur up to 5 years of contract completion. Most of these types of contracts contain a clause that allows organizations to perform and stipulate what will be re-inspected and what can be randomly inspected.

AMVETS recommends that VA include and enforce more uniformly these aspects as well as a contractor's performance under the contract, including but not limited to its billings, certified payroll records and any other document showing expenditures. This provides validation to the award/contract grantor that all terms of the contract were met and completed in the agreed manner. The audit clause should also specify complete corporation on the part of the contractor whom performed the work, as well as specifying how long the contractor should retain all records relating to the contract.

Audits are essential to the stability of a contracting system. Audits validate and measure the current processes in place, identify those that need enhancement, and isolate the weak processes that lead to fraud, collusion, and most importantly to infringements of title 38, section 4212 which protect our veteran population's business successes. Contract compliance monitoring is as necessary an element to maintain an open and fair procurement process, as the implementation of ethics policies.

It is in the opinion of AMVETS that a major impediment to current VA contracting policies is that of "reactionary" audits or audits that occur after a problem is identified. Over the past few years VA, Office of Federal Contracting Compliance, and Department of Labor compliance audits have shifted from enforcement to reactionary compliance reviews. Reactionary measures can never be as successful as random enforcement audits. Once an agency is contacted by an individual to report a violation of Executive Order 11246 as amended, 503 amended, or VEVRAA the probability of this violation being a companies' first or only non-compliant act is extremely low. This means that it will never be known how many veterans have lost work and financial means due to infringement of their legal rights.

Currently, only initial or pre-contract verification processes are in place for most contracts. During the initial and often only review of a company's bid, the company will present all required documentation, including evidence that they will use veterans as employees or subcontractors to fulfill the title 38, sec. 4212 qualifications; or they themselves may qualify as veteran preference contractors and then will be granted the award. After being awarded contracts on these terms, the verification process ceases and VA is using no means to guarantee that the contractor continues to stay compliant.

AMVETS believes that a contributing factor in the failure of current compliance testing methods is the overall process of current VA and OFCCP auditing methods are unnecessarily lengthy and lack accountability and uniformity. Currently to prevent duplication of efforts the DOL and OFCCP will decide whether this is an individual complaint or a class complaint. Once the proper agency takes jurisdiction, the primary request for audit documentation occurs. Again, this is an example of reactionary auditing which has proven to be ineffective. Numerous field offices that AMVETS contacted reported major problems in the execution and timely completion with these types of compliance investigations. The common problem that was repeatedly brought to the attention of AMVETS, by numerous OFCCP personnel, was that when allegations of infringements of Executive Order 11246, title 38, sec 4212, or VEVRAA were reported to them for investigation it was very hard to locate former employees and records to substantiate the allegations, thus resulting in small settlements by the contractor or company in question to avoid formal audit processes. Unfortunately, this option not only costs VA millions of dollars every year, more importantly it cost our veterans the due entitlements that VA, OFCCP, and DOL have worked so hard on providing to them.

AMVETS believes VA professionals should partner with OFCCP to prevent further fraud of VA and discrimination among our veteran community. OFCCP is equipped with an arsenal of employees and tools to address these problems nationwide. OFCCP is present in every state and has the manpower to start doing enforcement audits of VA contracts and help steer VA contracts back to full compliancy, saving VA money, time, and guaranteeing the integrity VA contracts.

AMVETS also most respectfully asks the Committee to mandate a uniform contract compliance standard to which every VA contract is held accountable to.

In closing, AMVETS believes that a return to enforcement audits, a stronger partnering of VA with OFCCP and DOL, and uniformed contract compliance codes will help assure the integrity of VA awarded contracts and protect the rights of our veterans.

Madam Chairwoman and Members of the Committee, AMVETS thanks you for inviting us to address this important matter and share our recommendations with you. This concludes my testimony and I can now address any questions you may have for me.

**Prepared Statement of Joseph C. Sharpe, Jr.,
Director, National Economic Commission, American Legion**

Madame Chairwoman, Ranking Member Boozman and Members of the Subcommittee:

Thank you for the opportunity to present The American Legion's views on Federal Contractor Compliance.

The Department of Labor (DOL), Office of Federal Contract Compliance Program (OFCCP) ensures employers comply with nondiscrimination and affirmative action laws and regulations when doing business with the Federal Government. The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, section 4212, title 38, United States Code (USC), states that covered contracts entered into by any department or agency for the procurement of personal property and non-personal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era and any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

In the *Federal Register* of August 8, 2007, OFCCP significantly expanded the responsibilities of Federal contractors concerning their affirmative action plan for veterans. The *Federal Register* noted that Federal contractors are required to conduct active outreach to find veterans; going far beyond posting their Internet listings. Listed are persons and organizations that Federal contractors are directed to partner with to ensure appropriate outreach for eligible veterans.

- The Local Veterans' Employment Representative in the local employment service office nearest the contractor's establishment;
- The Department of Veterans Affairs Regional Office nearest the contractor's establishment;
- The veterans' counselors and coordinators (Vet-Reps) on college campuses;
- The service officers of the national veterans' groups active in the area of the contractor's establishment; and
- Local veterans' groups and veterans' service centers near the contractors establishment.

Based upon dialog with Local Veterans' Employment Representatives (LVERs), veterans, and other organizations across the country, The American Legion found that Federal contractors have not consistently enlisted the assistance and support of the above mentioned persons and organizations in recruiting, and developing on-the-job training opportunities for, qualified disabled veterans recently separated veterans, other protected veterans, and Armed Forces service medal veterans, to fulfill its commitment to provide meaningful employment opportunities to such veterans. In 2005, the Government Accountability Office (GAO) reported that State workforce administrators cited lack of Federal contractor compliance with the law's provisions as most likely to have limited veterans' employment opportunities. Currently, Federal contractors are listing Internet openings without discussion with state staff or LVERs within the One-Stop Career Centers.

America has benefited immeasurably from the service of its 23.4 million living veterans, who have made great sacrifices in the defense of freedom, preservation of democracy, and the protection of the free enterprise system. The current Global War on Terror has had a devastating impact on the Armed Forces and has contributed to exacerbating this country's veterans' unemployment problem, especially within the Guard and Reserve components of the military. According to DOL, the present unemployment rate for recently discharged veterans is an alarming 20 percent, and one out of every four veterans who do find employment earn less than \$25,000 per year.

Small business creates an estimated 60 percent to 80 percent of net new jobs, therefore providing a central element for strong economic growth. One way of combating high unemployment among veterans is through the creation of new jobs through Federal contractors. Currently, too many military families are suffering financial hardship while their loved ones are recuperating in military hospitals around the country. Spouses are leaving their jobs to be with that disabled service-member only to watch their family finances deteriorate. Seamless transition, in many cases, is just a wishful thought; however, if Federal contractors/subcontractors would hire a suitable amount of veterans, it would have a significant impact on veterans' unemployment rate and overall morale of the country.

Listed below are several states with Federal contractors who obtained contracts with the Federal Government in excess of \$100,000 for April 2009.

STATE	TOTAL FEDERAL CONTRACTORS	CITIES	MANUFACTURING CONTRACTORS	CONSTRUCTION CONTRACTORS	OTHER BLUE COLLAR CONTRACTORS
SOUTH DAKOTA	115	34	16	21	5
ARKANSAS	201	67	41	41	8
VIRGINIA	3,029	179	304	148	39
ARIZONA	577	64	101	61	27
NEW JERSEY	858	270	250	81	15
NEW MEXICO	365	59	37	54	11
FLORIDA	1,486	207	383	142	35
KANSAS	289	56	61	38	5
NEW YORK	1,417	341	79	96	31
CALIFORNIA	3,800	499	932	339	64

The above mentioned figures show measurable opportunities for small businesses that obtain Federal contracts to hire qualified veterans.

RECOMMENDATIONS

The American Legion believes veterans should be considered and hired first by these contractors and subcontractors who receive contracts from the Federal Government. It was the veteran who volunteered to defend this nation, the veteran who continues to keep this democracy intact, and the veteran who deserves the right to participate in rebuilding America's infrastructure and other necessary projects.

Every contractor and subcontractor has the requirement to file a Vets- 100 report to measure compliance for the year. Many LVERs, Disabled Veterans' Outreach Program (DVOPs) Specialists, state veterans' staff, and veterans' advocates believe non-compliance with the filing of the Vets-100 is rampant since there is little if any consequence to non-compliance in the program. The American Legion recommends that Vets-100 report should no longer be filed electronically, because it goes around the law's intent of bringing employers and the One-Stop Career Centers together to discuss and develop employment opportunities for veterans. The American Legion also recommends Vets- 100 be amended to measure direct compliance with OFCCP regulations. Listed are two suggestions in relation to this issue:

- The Vets-100 should require the signature of a LVER to ensure that businesses are performing their required outreach at least once a year.
- The completed Vets- 100 submitted to the LVER for signature should have the name, signature, title, and phone number of the required affirmative action officer so the LVER has the optimal company contact information for veterans.

Additionally, The American Legion recommends that the Federal Contractor Veterans Employment Program presently under OFCCP should be placed under the direction of the DOL's Veterans and Employment Training Service (DOL-VETS), so this program can receive proper oversight, as well as input and guidance from stakeholders.

The mission of The American Legion's National Economic Commission is to take actions that affect the economic well-being of veterans, including issues relating to veterans' employment, home loans, vocational rehabilitation, homelessness, and small business owned by veterans, especially those with service-connected disabilities. It is vital that eligible veterans receive a fair and proportionate amount of Federal employment from Federal contractors so these veterans can build and maintain a quality-of-life, while they contribute to the United States economy.

We look forward to continue working with the Subcommittee to enhance employment among America's veterans. The American Legion appreciates the opportunity to present this statement for the record.

Again, thank you Madame Chairwoman, Ranking Member Boozman and Members of the Subcommittee for allowing The American Legion to present its views on this very important issue.

**Prepared Statement of Richard F. Weidman, Executive Director for
Policy and Government Affairs, Vietnam Veterans of America**

Good afternoon, Madame Chairwoman, Ranking Member Boozman and distinguished Members of the Subcommittee. Thank you for giving Vietnam Veterans of America (VVA) the opportunity to offer our comments on a Federal Contract Job Listing (FCJL), whether this program as it is currently being operated is effective in producing job opportunities for veterans, and whether the authority for this program should be modified or expanded.

The intent of this program, first established in the early seventies to assist with very high unemployment of young Vietnam veterans (we were actually young then, hard as that is to believe now) coming back from military service into a severe recession made much worse by the OPEC-caused gas shortage. The FCJL program was one of many measures that very well intentioned Members of Congress established in order to help veterans get started on civilian careers.

FCJL was never a particularly well run program, for anyone. It was not particularly effective for women or minority citizens or for Vietnam veterans. Merely putting the law on the books without any enforcement or implementation mechanisms made a difference only with those employers/Federal contractors who would have probably done the right thing anyway in their employment practices.

From 1999 to 2002 this Committee labored long and hard to achieve significant reform in the ability of the public labor exchange to assist veterans, particularly disabled veterans and recently separated veterans, receive meaningful assistance with securing work. One of those changes was making the VETS-100 Report mandatory. Those efforts mostly came to naught for a variety of reasons, mostly countervailing political pressure generated by the State workforce development agencies. Finally, in 2002, Congress passed the "Jobs for Veterans" bill that made some significant changes.

As VVA has noted numerous times in the past 6½ years, the U.S. Department of Labor only implemented the parts of that legislation that gave increased "latitude" to the State workforce development agencies in how they employed DVOP and LVER personnel. Some even went so far as to say that this legislation, which was largely opposed by VVA, was to give managers of local one-stop offices virtual license to use the supposedly dedicated-to-veterans-only staff in any way they pleased, particularly because the funds for even doing on site or remote audits by the USDOL VETS staff was dramatically reduced.

Parts of the Jobs for Veterans Act that were of little interest to USDOL and the states were the elements that would enable the DVOPs, LVERs, and others to do a better job of securing job openings and actually placing veterans. One of those elements was the FCJL program and generating the VETS-100 Report for use by the LVER to secure job listings from Federal contractors, which was supposedly mandatory.

The military dictum is that "A unit does well that which a Commander checks well." But nobody at USDOL was checking as to whether the reports were being generated, the jobs being listed, etc. In fact, the last Administration even went so far as to basically eliminate the public labor exchange altogether, and to actually close down "America's Job Bank."

So, where are we today? There is a very good compilation of the contractors that has been done by a private small business in Vermont that is available, and who is committed to working with this distinguished Subcommittee and your staff toward a plan for making those reports more complete. One suggestion they had is that the LVER must sign off on the VETS-100 Report, and that contractors that do not have a valid signature of the Local Veterans Employment Representative that they have listed all jobs and actually have a plan for hiring veterans, particularly recently separated and disabled veterans, that is truly being implemented be barred from either receiving new Federal contracts or extending current contracts.

For the above to work, VVA suggest that a number of other changes need to be made:

First, Congress must “federalize” the DVOP and LVER positions, and have them report directly to the USDOL Director, Veterans Employment & Training Service (DVET). In some cases it may mean that the same personnel are located in the same one stop centers, but only on an MOU under the control of the DVET for that State. If an office is in fact practicing priority of service for veterans, then that good relationship can continue. If not, then the DVET can place his or her staff in more conducive locations. In any case, they will be serving the needs of veterans.

Second, as we now have a Secretary of Labor who is apparently very concerned about veterans, particularly the veterans of our current conflicts, we need to ensure that we also get an Assistant Secretary of Labor for Employment & Training who is as committed to veterans’ priority of service as this Committee is. It is not enough to have a decent Assistant Secretary of Labor of Veterans Employment & Training, as the real money, and the real power to affect behavior at the local level, resides with the Employment and Training Administration. It will take all of these three officials, plus the Deputy Secretary of Labor (as the Chief operating officer of USDOL) being committed to making this work for veterans for it to be effective.

Third, there needs to be a significant increase in the funding for the DVOP/LVER program, to at least \$200 million for FY 2010.

Fourth, the Secretary of Labor needs to commit significant amounts of her discretionary Worker Investment Act (WIA) funds to reward the states who do the best job in providing actual employment and training services to veterans that measurably result in meaningful employment at a living wage.

Fifth, employers who are Federal contractors who consistently do not hire and promote veterans, especially disabled veterans and recently separated veterans, need to be barred from seeking or securing contract extensions or new contracts.

Sixth, since the OFCCP is not now nor has it ever been effective, VVA proposes that veterans be given the right to sue Federal contractors for discrimination when they do not hire veterans, with up to \$300,000 punitive damages in addition to any actual damages, and attorney’s fees. It will only take a very few cases and all Federal contractors will get with the program and modify their behavior. The analogy that is apt in this instance is our “voluntary” system of paying Federal Income Tax.

Will all of these steps lead to effective tools and mechanisms to assist veterans, especially disabled veterans and recently separated veterans to seek and secure meaningful employment at a living wage? All or at least some of these steps would lead in very short order to something that is far better than we have today, which really is a total mess.

Thank you for the opportunity to share our views here today. I will be happy to answer any questions.

**Prepared Statement of Lorenzo Harrison, Acting Deputy Assistant
Secretary, Office of Federal Contract Compliance Programs,
U.S. Department of Labor**

Chairwoman Herseth Sandlin, Ranking Member Boozman, and Members of the Subcommittee:

Thank you for the opportunity to testify on “*Federal Contractor Compliance*” as authorized by the affirmative action provisions of the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (“VEVRAA”; or “Section 4212”), as amended, 38 U.S.C. 4212. Your invitation letter asked for an in-depth look into how the Department of Labor’s (DOL) – Office of Federal Contract Compliance Programs (OFCCP) monitors compliance, what steps it takes to provide affirmative employment opportunities to covered veterans, and how it ensures that the laws are enforced. Further, your invitation listed several specific questions concerning veteran complaints, sharing of Federal contractor information among other Federal agencies, Federal contractors’ compliance, OFCCP’s use of penalties and incentives to increase compliance, and the results of the most recent analysis of the VETS-100 Report.

OFCCP is one of four programs within the Department of Labor’s Employment Standards Administration. It has a staff of approximately 585 employees, most of whom are Compliance Officers. OFCCP has six Regional Offices and more than 45 district and area offices nationwide.

As you are aware, OFCCP enforces three equal employment opportunity laws: Executive Order 11246, as amended (Executive Order); section 503 of the Rehabilitation Act of 1973, as amended; and VEVRAA. Taken together these laws require affirmative action and prohibit Federal contractors and subcontractors from discriminating on the bases of race, color, religion, sex, national origin, or status as a qualified individual with a disability or protected veteran.

VEVRAA and its implementing regulations originally prohibited Federal contractors from discriminating in employment and required them to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era. Statutory amendments made in 1998, 2000, and 2002 modified VEVRAA's coverage to include other protected veterans (veterans who served on active duty or in a campaign or expedition for which a campaign badge has been authorized, recently separated veterans, Armed Forces Service Medal veterans, and all veterans with service-connected disabilities).¹

VEVRAA requires Federal contractors to take special steps to recruit, hire, train, and promote qualified protected veterans. In addition, to implement the affirmative action requirement, VEVRAA and its implementing regulations found at 41 C.F.R. Parts 60-250 and 60-300, require contractors to list most job openings with the appropriate employment service delivery system and each such employment service delivery system is to provide protected veterans who are qualified priority referrals to those job openings.

VEVRAA does not require Federal contractors to give veterans a special preference in hiring. Under VEVRAA, protected veterans are entitled to receive priority in referrals to the job openings that Federal contractors are required to list with the appropriate employment service delivery system.

OFCCP is one of three agencies within the Department of Labor (DOL) with responsibilities for administering the affirmative action provisions of VEVRAA. The other agencies with responsibilities under VEVRAA are the Employment & Training Administration (ETA) and the Veterans' Employment and Training Service (VETS). ETA oversees priority referrals for veterans seeking employment, and VETS oversees the VETS-100, and VETS-100A Reports.

OFCCP is responsible for ensuring compliance with the requirement in section 4212 (a)(1) that contractors take affirmative action to employ and advance in employment qualified protected veterans, and the requirement in section 4212(a)(2)(A) that contractors list their employment openings with the appropriate employment service delivery system. ETA is responsible for ensuring that the appropriate employment service delivery systems comply with the requirement in section 4212(a)(2)(B) that covered veterans receive priority in referral to Federal contractor employment openings. ETA also provides leadership and oversight over the employment service offices of State workforce agencies. VETS administers the requirement in section 4212(d) that Federal contractors report annually on the number of employees and new hires in their workforces who are covered veterans. Further, VETS administers a local veterans' employment representative program to assist local employment service offices and One Stops in providing priority job referrals to veterans (38 U.S.C. 4104), and investigates complaints under the Uniformed Services Employment and Reemployment Rights Act program, which also protects veterans from employment discrimination.

According to the Department's Bureau of Labor Statistics (BLS), as of the first quarter of the calendar year ending March 2009 approximately 12 million veterans are in the civilian labor force. VEVRAA protects specified categories of veterans that are employed or seeking employment with covered Federal contractors and sub-contractors.

There are two primary enforcement procedures that OFCCP utilizes to ensure that Federal contractors and subcontractors are complying with VEVRAA – scheduled compliance evaluations of Federal contractors, and investigations of individual or class complaints alleging discrimination that are filed by veterans.

On average, OFCCP conducts approximately 4,000 compliance evaluations and 900 compliance assistance events annually nationwide for Federal contractors and subcontractors in the supply, service, and construction industries. In FY 2008, nearly 20 percent of the compliance evaluations included an examination of the contractor affirmative action program (AAP) for veterans as required by the regulations in 41 C.F.R. Parts 60-250 and 60-300.

During FY 2008, OFCCP conducted nearly 800 on-site investigations. OFCCP's investigative procedures during an on-site investigation include verification that the employer is listing appropriate job openings with the employment service delivery system so that veterans may be given priority in referral, as stated in 41 C.F.R. 60-250.5(a)(2) and 60-300.5(a)(2). So far, in FY 2009, roughly 15 percent of all on-site reviews conducted by OFCCP found violations of the mandatory job listing requirement for veterans by Federal contractors and subcontractors.²

¹The Veterans Employment Opportunities Act of 1998, the Veterans Benefits and Health Care Improvement Act of 2000, and the Jobs for Veterans Act enacted in 2002.

²41 C.F.R. 60-300.5(a)(2).

OFCCP's efforts on behalf of equal opportunity for veterans extend beyond compliance evaluations of Federal contractors and subcontractors. If a veteran believes a Federal contractor or subcontractor has discriminated against him or her or that a Federal contractor has otherwise violated VEVRAA and the regulations, he or she may file a complaint with OFCCP. Complaints may also be filed through VETS in DOL or through a local Veteran's Employment Representative (LVER) at a local One-Stop Career Center. Complaints filed through VETS or LVERs are promptly referred to OFCCP.

During FY 2008, OFCCP received 543 complaints from individuals under the three equal employment opportunity laws enforced by OFCCP. Eighty-three (83) of those complaints were filed by veterans under VEVRAA. The table below responds to the Subcommittee question regarding the number of complaints that OFCCP receives each year. Using the number of initial complaints received, OFCCP has received approximately 500–700 complaints each year over the past 5 fiscal years, with 15 to 20 percent of these being complaints based on veteran's status. Once a complaint is received and prior to conducting an investigation, OFCCP must determine if the employer is a covered Federal contractor and if the complaint was timely filed.

OFCCP Complaints Received

(FY 2004–2008)

Fiscal Year	Total Complaints Received	E.O. 11246		Sec. 503		Veterans 38 U.S.C. 4212	
		#	% Rec'd	#	% Rec'd	#	% Rec'd
FY 2004	691	315	45.59%	200	28.94%	136	19.68%
FY 2005	717	354	49.37%	191	26.64%	119	16.60%
FY 2006	594	276	46.46%	151	25.42%	116	19.53%
FY 2007	519	251	48.36%	159	30.64%	76	14.64%
FY 2008	543	275	50.64%	148	27.26%	83	15.29%

Source: OFIS CI-006B 10/21/08 and 04/28/09.

Over the last 5 fiscal years, OFCCP conducted a total of 321 investigations resulting from complaints filed by veterans. Nineteen of these investigations identified violations and were ultimately closed with financial agreements, which resulted in a total of \$399,926 in benefits provided to veterans. Additionally, OFCCP investigates cases under VEVRAA that result from scheduled compliance evaluations. In FY 2008, 68 contractors were cited for violations of the mandatory job listing requirement, which resulted in conciliation agreements with OFCCP to correct the violation and to report their progress to OFCCP.

In response to the Subcommittee question concerning how long it takes to resolve a complaint, on average, most complaint investigations are completed within 8 to 12 months. Investigatory time includes time spent with the complainant to be sure that the complaint adequately reflects the nature of the acts that led the individual to file, time spent researching jurisdiction to ensure that the company was a covered Federal contractor at the time of the alleged discriminatory act, and the time spent conducting the investigation of the complaint.

The Subcommittee asked which type of businesses and which geographical areas receive the highest number of complaints. Over 75 percent of all complaints made by veterans come from seven industries, which are identified in the table below.

VETERANS COMPLAINTS RECEIVED BY INDUSTRY

NAICS ³	INDUSTRY	PERCENT
31–33	Manufacturing	27.5
54	Professional, Scientific & Tech. Services	12.6
56	Administration & Waste Management	10.0
61	Educational Services	9.5
48–49	Transportation & Warehousing	7.6
51	Information	5.2
62	Health Care	4.4
	All Other	23.2

³North American Industry Classification System (NAICS): The NAICS is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

Over the past 5 years, the Southeast and Midwest Regions of OFCCP have received the most veterans' complaints.

VEVRAA enforcement activities include:

- Conducting compliance evaluations and complaint investigations of Federal contractors and subcontractors personnel policies and procedures;
- Offering technical assistance to Federal contractors and subcontractors to help them understand the regulatory requirements and review process;
- Securing relief for victims of discrimination that includes, but is not limited to, back pay for lost wages;
- Negotiating conciliation agreements with contractors and subcontractors who are in violation of regulatory requirements;
- Monitoring contractors' and subcontractors' progress to ensure that they are fulfilling the terms of their conciliation agreements by reviewing periodic compliance reports;
- Forming linkage agreements between contractors and job training programs to help employers identify and recruit covered veterans; and
- Recommending enforcement actions to DOL's Solicitor of Labor.

The Subcommittee further asked what penalties OFCCP uses to increase Federal contractor compliance. Where voluntary compliance cannot be achieved, OFCCP may continue conciliation efforts with the contractor; refer the matter to the Solicitor of Labor to institute formal, administrative enforcement proceedings; or refer the case to the Attorney General for litigation, as appropriate. If there is a finding of discrimination against a protected veteran, the contractor would be required to provide back-pay and other make-whole remedies.

Regarding the Subcommittee's question whether OFCCP shares information with other agencies on Federal contractors who have failed to comply, OFCCP does not presently have formal agreements to share such information. However, OFCCP does use its available resources, such as media releases, to communicate OFCCP policies, accomplishments, best practices, awards, and enforcement actions. Information about enforcement actions OFCCP may publicize would include the filing of administrative complaints, the signing of conciliation agreements, the entry of consent decrees, orders of debarment, or other news that may be appropriate for public dissemination as determined by OFCCP's National Headquarters.

OFCCP treats information received from Federal contractors during a compliance evaluation as confidential, to the maximum extent allowable under the Freedom of Information Act (FOIA). It is OFCCP practice not to release data where the contractor is still in business and where the contractor asserts, and a Department of Labor review process determines, that the data are confidential and that disclosure would subject the contractor to commercial harm. The Department's FOIA regulations at 29 C.F.R. 70.26 require OFCCP to notify affected contractors on a case-by-case basis whenever a FOIA request is made. This notification gives contractors the opportunity to object to the disclosure of any data they consider confidential.

The Subcommittee also asked about the most recent analysis of the VETS-100 Report and associated results. OFCCP does not analyze the VETS-100 or 100A Reports. During a compliance evaluation, OFCCP verifies that the required VETS-100 or 100A Reports have been submitted to VETS.

VEVRAA also requires that government contractors track and annually report the number of employees in their workforces who are veterans covered under the law. The reporting requirements under VEVRAA are administered by VETS. The VETS-100 Report is filed by contractors who entered into covered contracts prior to December 1, 2003. The VETS-100A Report is filed by contractors who entered into covered contracts on or after that date. Those with covered contracts entered both before and after December 1, 2003 file both reports. The reports differ in terms of the contract coverage threshold for filing the report as well as the categories of protected veterans included in each report.

Federal contractors and subcontractors awarded a Federal contract of \$25,000 or more prior to December 1, 2003 are required to report annually to the Secretary of Labor the number of employees and recent hires who are:

- Special disabled veterans;
- Vietnam Era veterans;
- Recently separated veterans (within 12 months of discharge from active duty); and
- Veterans who served on active duty in the U.S. military during a war or campaign or expedition for which a campaign badge is awarded.

The regulations in 41 C.F.R. Part 61-250 require contractors to use the Federal Contractor Veterans' Employment Report VETS-100 (VETS-100 Report") form to

provide the information on the covered veterans in their workforces. In FY 2008, 22,159 Federal contractors and subcontractors filed a VETS-100 Report, and reported the employment of 341,000 Vietnam Era veterans and 62,000 Special Disabled veterans. Of these figures, 32,000 Vietnam Era veterans and nearly 15,500 Special Disabled veterans were newly hired during the 2008 reporting period.

The Jobs for Veterans Act (JVA) amended the VEVRAA reporting requirements for those contractors and subcontractors with Federal contracts of \$100,000 or more awarded or modified on or after December 1, 2003. The JVA requires reporting on the following categories of veterans:

- Disabled veterans; Veterans who served on active duty in the U.S. military during a war or campaign or expedition for which a campaign badge is awarded;
- Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985; and
- Recently separated veterans (with 36 months from discharge from active duty).

The regulations that implement the JVA amendments are found in 41 C.F.R. Part 61-300, and require filing of a VETS-100A Report. The VETS-100A reporting requirements apply to reports submitted for 2009 and future years. Covered Federal contractors and subcontractors are required to submit their first VETS-100A between August 1, 2009, and September 30, 2009.

There are some contractors that will be required to submit both the VETS-100 and the VETS-100A Reports in 2009 and subsequent years. Contractors that hold “unmodified” active contracts valued at \$25,000 or more that were awarded before December 1, 2003, who also enter into or modify one or more contracts valued at \$100,000 or more on or after December 1, 2003, will be required to submit both the VETS-100 and VETS-100A Reports. The VETS 2010 Annual Report to Congress will include information on the number of Federal contractors and subcontractors that were required to submit both a VETS-100 and a VETS-100A Report in 2009.

Federal Contracting Officers are prohibited from awarding or modifying Federal contracts unless the latest VETS-100 or VETS-100A Report has been submitted (31 U.S.C. 1354). The Secretary of Labor makes a database available to Federal Contracting Officers listing the VETS-100 and VETS-100A Reports received from Federal contractors and subcontractors.

We know that there is still work to be done to increase the employment of covered veterans. In response to the Subcommittee question regarding incentives that OFCCP uses to increase compliance by Federal contractors, in 2008 OFCCP established the “Good-Faith Initiative for Veterans Employment (G-FIVE),”⁴ which is an incentive program that recognizes the efforts of contractors in the area of veterans’ employment. G-FIVE reaffirms OFCCP’s commitment to ensure compliance with the requirements of VEVRAA; recognizes companies’ “best practices” for the employment and advancement of veterans; creates an incentive for Federal contractors and subcontractors to increase their employment of, and affirmative action for, covered veterans; and strengthens VEVRAA partnerships between OFCCP, other Federal agencies and veterans advocacy groups.

The following factors are considered when evaluating Federal contractor and subcontractor establishments for G-FIVE recognition:

- Evidence of covered veterans in the contractor’s labor force;
- During the AAP year, evidence of an increase in the number of covered veterans in the contractor’s labor force;
- The number of partnerships with local veterans’ service organizations to employ or advance covered veterans;
- Established liaison with the state workforce agency job bank or the local employment service delivery system representative to facilitate the posting of their job listings;
- Whether appropriate job openings were sent to the state and/or local employment service delivery system;
- Number of veterans hired by the contractor during the AAP year;
- Recruitment efforts at educational institutions to reach students who are covered veterans;
- The number of job advertisements in the local community targeting veterans;
- Targeted recruitment of qualified covered veterans during company career days and/or related activities in contractor communities;

⁴OFCCP’s Good-Faith Initiative for Veterans Employment (G-FIVE) web page, http://www.dol.gov/esa/ofccp/g_five.htm.

- For prime contractors, evidence that demonstrates a commitment to encourage their subcontractors to seek qualified covered veterans for employment opportunities;
- Affirmative action steps taken to attract qualified special disabled or disabled veterans through the nearest Veterans Administration job placement program; and
- The number of on-the-job training opportunities provided to covered veterans.

G-FIVE rated contractors and subcontractors are eligible to receive certificates and are recognized on the OFCCP Web site. Additionally, the establishments of contractors or subcontractors which received a G-FIVE rating are excluded from an OFCCP compliance evaluation for 3 years following the receipt of the rating, unless: 1) a complaint suggests equal employment opportunity issues that warrant a compliance evaluation; 2) an EEOC or State fair employment practices agency investigation reveals significant equal employment opportunity issues; or 3) the OFCCP Deputy Assistant Secretary, acting upon a credible report of a violation of a law enforced by OFCCP, determines that a compliance evaluation is warranted. Since calendar year 2008, OFCCP has recognized five Federal contractors for their exemplary efforts in hiring covered veterans.

Another initiative sponsored in part by OFCCP is Operation Stand Down, an annual event held in Nashville, Tennessee to assist homeless veterans. Operation Stand Down provides services to honorably discharged veterans, including employment services, transitional housing, and referrals to other support services agencies.

In summary, although we have made progress in addressing equal employment opportunity for veterans among Federal contractors and subcontractors, we have an opportunity at this point in time to build on our efforts to further full economic opportunity for veterans throughout America's workforce. OFCCP looks forward to working with our new Deputy Assistant Secretary, once that person is announced and on board, and Members of this Committee in order to improve contracting opportunities for veterans.

This concludes my statement, and I would be happy to respond to any questions.

**Prepared Statement of Jan R. Frye,
Deputy Assistant Secretary for Acquisition and Logistics,
U.S. Department of Veterans Affairs**

Madam Chair, Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss VA's acquisition operations with regards to Federal Contractor Compliance. It is a privilege for me to represent the many dedicated and hardworking acquisition and logistics professionals throughout the Department that provide mission-critical support everyday to ensure quality care and benefit delivery for our Nation's most special citizens: our Veterans.

I have been asked specifically to address the issue of Federal contractor compliance with regard to employment of Veterans in Federal contracting. The Committee requested that VA respond to a series of questions and I would like to take this opportunity to do so.

The first question centers on how VA monitors contractor compliance with 38 USC § 4212. VA contracting officers comply with the Federal Acquisition Regulation (FAR). They are required to verify vendor compliance prior to the award or modification of a contract. They may accomplish this by several appropriate means, but they must rely on the Department of Labor's Veterans' Employment and Training Service-100 (VETS-100) database to ensure that apparently successful offerors have completed the required reporting for the appropriate reporting year.

To improve VA's oversight and ensure vendors doing business with the VA have complied with the requirements, as amended, of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, I have instituted two significant changes:

The first is the issuance of an information letter to VA's Heads of Contracting Activities reinforcing that contracting officers must be aware of this important requirement and their responsibility to query the VETS-100 database. Second, to establish an electronic record of the contracting officer complying with the policy, I have directed that VA's contract writing system be modified to add a mandatory feature to allow contracting officers to record when they query the VETS-100 database prior to award or the exercise of contract options. This feature will create the electronic record that VA will be able to use to monitor compliance on a recurring basis in the future.

Until changes are implemented with VA's contract writing system, we will continue to work with the Department of Labor to extract VA-specific compliance information from the VETS-100 system.

The second question from the Subcommittee inquired as to how many VA contractors are non-compliant. In response to the Subcommittee's request, we conducted a review of a statistically significant, randomly selected sample of contract files throughout VA. All contracts in the sample had the appropriate FAR Part 52 contract clauses in place, and all contractors were fully compliant with the Department of Labor's reporting requirements.

Third, the Subcommittee requested information on any action VA takes to address non-compliant contractors, and last, whether non-compliance affects a company's ability to do business with VA.

At this time we are not aware of vendors who are non-compliant. Non-compliance would affect a company's ability to contract with VA. For those contractors deemed to be non-compliant, VA will take action as set forth in FAR Part 22. The first step would be to notify the Department of Labor and then make efforts to negotiate a mutually acceptable remedy. Failure to reach a remedy could result in termination of the contract for default. VA will also improve the capability of its information systems to ensure that no contract is awarded or modified unless the current VETS-100 Reports have been submitted by the apparent successful offeror.

Madam Chair, I would like to close by thanking you for the opportunity to discuss VETS-100 Reporting, and the Federal Contractor Compliance program at VA. We will continue to work diligently to improve and set a standard worthy of emulation throughout the Federal acquisition community. I would be pleased to respond to any questions you or the Subcommittee's Members may have.

Statement of National Veteran-Owned Business Association

Madam Chairwoman Sandlin, Ranking Member Boozman, Committee Members and staff. Thank you for the opportunity to submit this statement for the record. NaVOBA represents over 2000 veteran-owned small businesses in the United States. We are concerned about Federal contractor compliance with Title 38 U.S. Code section 4212 requiring for any contract over \$100,000 or more "the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans."

We understand the U.S. Department of Labor, Office of Federal Contract Compliance Program (DOL-OFCCP) has primary responsibility for insuring employment possibilities for qualified covered veterans. Federal Acquisition Regulation (FAR) Part 22.1306 requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of covered veterans. The contractor and subcontractor must use Form VETS-100, Federal Contractor Veterans' Employment Report to submit the required reports. FAR Part 22.1302(b) states: "except for contracts for commercial items or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract or procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted as required annual Form VETS-100, Federal Contractor Veterans' Employment Report (VETS-100 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year". We do not believe contracting officers regularly check with DOL-OFCCP to see whether the required reports have been submitted.

NaVOBA respectfully requests the Committee survey contracting officers in government agencies, including VA to see:

1. Are contracting officers aware of the need for VETS-100 Reporting?
2. Do contracting officers include the required clauses in solicitations and contracts?
3. Do contracting officers check with DOL-OFCC to determine if prospective contractors have submitted required reports prior to contract execution?
4. Do contracting officers provide necessary material to contractors to post at their work places?

NaVOBA is also concerned as to whether DOL-OFCCP is enforcing the requirements of 38USC4212. We are not aware of DOL-OFCCP running any reports from the Federal Procurement Data System award data against the list of companies delinquent in filing their VETS-100 Reports to identify if any non-compliant compa-

nies are receiving awards. We are also concerned about what happens with any data collected. We are aware of instances when Federal agencies have requested VETS-100 data from DOL-OFCCP and have been told the data is "proprietary information" and is not releasable by DOL. We question why DOL expends valuable resources to collect data and then does nothing with it? Why collect contractor utilization data if the information cannot be made publicly available?

NaVOBA commends the Committee for holding this hearing on an important issue in the veterans' community. We look forward to working with the Committee to improve this process.

MATERIAL SUBMITTED FOR THE RECORD

Committee on Veterans' Affairs
 Subcommittee on Economic Opportunity
 Washington, DC.
 May 20, 2009

Mr. Thomas S. Whitaker
 President, National Association of State Workforce Agencies
 Deputy Chairman/Chief Counsel
 North Carolina Employment Security Commission
 444 North Capitol Street, N.W.
 Suite 142
 Washington, DC 20001

Dear Mr. Whitaker:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on *Federal Contractor Compliance* on May 14, 2009. Please answer the enclosed hearing questions by no later than Wednesday, July 1, 2009.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-4150.

Sincerely,

Stephanie Herseth Sandlin
 Chairwoman

**NASWA's Response to Questions Posed by
 Chairwoman Herseth Sandlin in her May 20, 2009, Letter**

Question 1: Should the Department of Labor generate an official list of Federal contractors?

Response: Yes. All Federal contractors need to be recorded as such in a central location. This will allow States to contact employers with Federal contracts for veterans' job referrals. The U.S. Department of Labor should commission a study to identify the best process to create and maintain such a list. The study should also identify suitable technological solutions. In the past, there was an attempt to create such a list which was initially successful. However, manual update processes rendered such efforts useless as information quickly became outdated.

Without a Federal contractor list, the States' one-stop center staff members, including DVOPs and LVERs, often have to speculate which employers might be Federal contractors, and take action accordingly. A list would help them to direct efforts to employers on the contractor list.

Question 2: Can you explain what you mean by your statement, "state workforce agencies are also interested in standardizing communication protocols with OFCCP during and at the conclusion of the employer audit process."

Response:

- a. Each State workforce agency has different procedures established to handle the provision of requested information to OFCCP regional staff during Federal contractor audits. It is important that regional OFCCP staff contact the designated State representative to facilitate effective communication. NASWA can assist in identifying the appropriate State workforce agency personnel for these purposes.
- b. In addition, it appears that OFCCP regional offices do not follow standardized audit procedures when contacting State workforce agencies or request the same type of information from State workforce agencies. NASWA has communicated

this concern with OFCCP, and they have indicated a desire to work with us to improve communications between States and OFCCP.

- c. Finally, States have indicated that they hardly ever receive information about audit outcomes on particular employers once audits are completed. Receiving some resolution information would be helpful in working with employers following the audit.

Question 3: In your testimony you State that LVERs/DVOPs are particularly frustrated when they have knowledge of Federal contractors who will not list with the employment service but cannot get Federal action initiated? Can you explain what you mean by this?

Response: Many times LVERs/DVOPs contact employers, whom they believe are Federal contractors, and are met with a refusal to list in the employment service. (State staff also indicated many times employers are genuinely not aware of their FCJL obligations or at the local level are not aware of their corporation's Federal contractor status).

Since there is no list of Federal contractors, LVERs/DVOPs make such contacts based on their past knowledge of an employer's Federal contractor status or because OFCCP has recently asked them to report on whether an employer has listed with the employment service (therefore indicating they are Federal contractors). In addition, they outreach to employers they believe are Federal contractors based on information received through local social/business networks or through media coverage.

In many cases, after LVERs and DVOPs report employer refusals to cooperate to OFCCP, no action appears to have been taken. If there is any action, LVERs and DVOPs are not informed of any progress. LVERs and DVOPs indicate it is their experience that action is only forthcoming when it involves a formal Equal Opportunity complaint by a customer. This situation enforces the LVERs and DVOPs perception FCJL requirements are superficial.

Question 4: How do veterans get priority in the daily emails VetCentral sends of Federal Contractor Job Listings jobs?

Response: VetCentral emails are emailed to staff designated by State workforce agency administrators. These primarily are LVERs and DVOPs who only serve veterans. An example of how such emails are used is a Georgia LVER, who upon receiving his daily VetCentral email immediately forwards this to his list of veteran customers.

Question 5: How much more personnel does OFCCP need and where?

Response: It does appear that OFCCP could benefit from more personnel. However, since we do not know how many Federal contractors there are or where they are located, it is really difficult to suggest specific increases in personnel needed within OFCCP. Once resolution regarding the issue of the Federal contractors list is underway and with the input from State workforce agencies, it would be easier to gauge personnel needs in the various OFCCP regions.

Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Washington, DC.
May 20, 2009

Mr. James King
Executive Director
AMVETS
4647 Forbes Blvd.
Lanham, MD 20706

Dear Mr. King:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on *Federal Contractor Compliance* on May 14, 2009. Please answer the enclosed hearing questions by no later than Wednesday, July 1, 2009.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter

size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-4150.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

**Response To Committee's Questions For The Record By
Christina M. Roof, AMVETS National Deputy Legislative Director
Submitted to Subcommittee on Economic Opportunity
of the House Committee on Veterans' Affairs
Concerning Federal Contract Compliance**

Question 1: In your testimony, you state that the Department of Labor and OFCCP auditing methods are unnecessarily lengthy and lack accountability and uniformity. How can we improve these audits?

Response: AMVETS believes that in order for an organization to sufficiently provide control and oversight, that contract auditing should be performed periodically by the organization's auditing department, or if this kind of department is not yet established, via a contract auditing agency or firm. These audits will provide the necessary information required to ensure the integrity of all VA contracts, as well as providing verification that the reason(s) for issuing the contract or that the savings envisioned as part of the award are being met. A well organized, timely audit provides transparency to the total procurement process and confirms that public trust is fulfilled. As we know, most of the time VA contracts are put into place, but the contract reviews fail to occur. It is vital to the stability of any contracting system that there is a set, structured process in place to verify that all pertinent issues of a contract are being met. These include, but are not limited to, the obligations regarding title 38 U.S.C., section 4212, terms and conditions regarding price, procedure, and invoicing, as well as the quality of work performed. VA and OFCCP must start performing organized, non-reactionary audits if VA hopes to deter fraudulent activities, protect our veteran business community, and assure that the funds allotted per award are used properly.

A well organized procurement auditing system begins with the contract and procurement officers. Deterring fraudulent activities and behaviors at the beginning of the contracting process will greatly reduce the rate and occurrences of future non-compliant activities by contractors. A competitive bid process has inherent controls that afford reduced risk. A key factor AMVETS believes is hurting our veteran business population in the current procurement process is collusive bidding and fraud in the reporting of use of SDVOSB and VOSB as subcontractors in these large procurements. AMVETS believes that as a part of restructuring the auditing process, VA should start from the ground up and involve their procurement officers. AMVETS suggests a stronger, more job dependent training process, and annual re-testing of current procurement officers to ensure all officers are up to date on current VA procurement policy. If VA starts by promoting knowledge and education from within the agency as a means eliminating fraud, VA only stands to better the entire procurement process and aid our veteran business community.

The next step AMVETS believes is vital in strengthening VA's auditing process is the reevaluation of enforcement authority. Failure to comply with all nondiscretionary or affirmative action provisions is essentially a violation of the contract. OFCCP was initially founded as a subsection of DOL, and was designed to be the ultimate authority, unmatched by any other government agency, in their ability to conduct reviews and audits of employers' employment practices to ferret out any discrimination.

Currently, DOL's OFCCP has the authority to enforce these laws through audits and evaluations of a company's Affirmative Action Program and employment practices.

Nonetheless, AMVETS believes that VA and OFCCP have become too heavily reliant on contractors engaging in self-evaluation, designed originally for the purpose of discovering any barriers to equal employment opportunity, but now are being used as a way of getting around any compliance issues that may be present. In view of the fact that VA testified, on May 14, 2009, that they had not conducted a single contract audit in the past four years and were not able to collect any information

from DOL on VA contracts that have been audited, AMVETS cannot specifically recommend any improvements to a non-enforced process. This being the case, AMVETS will use the current OFCCP auditing process as described in their training material as well as interviews we conducted with field officers on the challenges they face on a daily basis, that inhibit a productive auditing system. AMVETS deemed it is particularly important to speak with different OFCCP offices throughout the country to get a better understanding of the true challenges they feel are inhibiting their individual performances and the overall performance of the OFCCP auditing system. AMVETS continually hears the same concerns when speaking with OFCCP field officers. The field officers state that due to current statutes and timeframes given to contractors to reply to OFCCP's request for documentation to begin the compliancy audit process. The field agents were greatly troubled by this lengthy time period due to the fact that by the time they actually get the access to records they need, it is often too late, because former employees can not be reached to substantiate claims or the contractor hires a lawyer resulting in settlements for pennies on the dollar of what they would have truly owed for breaching contract terms. If and when a contractor does settle to avoid an audit the only consequences for their noncompliance is that they are required to file a quarterly report with the OFCCP showing the steps they have implemented to correct any problems with compliance. What is even harder to understand is why after being recognized as a possible risk to a contract there is rarely ever surprise onsite visits that occur to validate that everything they are reporting quarterly is actually occurring. Most of the field officers AMVETS spoke with said that currently contractors are aware that there is a significant lack of oversight on VA awards and contractors know they can and will get away with noncompliance no matter how small or large of a violation it is. AMVETS finds this totally unacceptable. Between VA, OMB, OIG and OFCCP, AMVETS finds there is no valid reason that this type of behavior is widely known and practiced. GAO has pointed out these shortfalls in oversight numerous times, yet they are still occurring? Respectfully, if VA and this committee are truly dedicated to helping our veteran business community, then they should take immediate steps to implement change and improve oversight. Furthermore, OMB Circular No. a-133 states that the Federal agency that awards a grant or contract to a recipient is responsible for ensuring the recipient stays in compliance with Federal laws, regulations, and all of the provisions of the award agreement.

While studying the current auditing processes (or lack thereof) AMVETS recommends the following practices be implemented or reinstated to improve VA's procurement system.

1. Implement the use of a well designed audit program that provides:
 - Immediate access to all field audit data at any level, using a secure extended enterprise server.
 - Establish a database that is also accessible to all field and central locations to enable, but is not limited to, real-time and historical data, employment practice analysis, inventory losses, and affirmative action plan violation database.
 - Automate and streamline the data entry process of the audit and investigations of complaints data to minimize errors and centralize all historical relevant data on a contractor and award. This system should be set up to automatically flag inconsistent data and repeat compliance offenders. This will help eliminate human error as well as provide VA with more reliable data on their awards.
 - Enable auditors to review audit scores interactively with other necessary personnel or agency involved in the compliance audit process allowing internal review of individual audits as a means of continuing education and constant review of current processes to identify weaknesses in the auditing methods being used by VA. This "real scenario" form of systems review has been proven the most successful in offering Fortune 500 companies the internal data needed to implement improvements to their systems. A well-integrated training program will ensure that all auditors and centralized personnel conform to the uniformed standards of any auditing process. To put it simply, "When everyone is on the same page there is little room for confusion and error." By implementing this practice, VA will be using an *"audit solution that is auditable."*
2. Enable a centralized system for communication between all agencies and personnel involved in the VA contract auditing process. There should be uniformed standards of data reporting and communication to ensure accurate results, so corrective actions can be taken immediately. VA must be able to manage all

data quickly and effectively to be successful in the procurement process and in regards to protecting the rights of those who served.

3. Transparency in an auditing process will yield clearer standards, better performance and a significant savings in funds for VA. Field auditors must know that management and central office reviewers have full visibility and access to their data and results. This should also be true for central office personnel. These practices of contract management help implement a procurement program designed around successful results and accountability.

After extensive research of written compliancy auditing procedures set forth by DOL, in regards to OFCCP, I found that they are quite detailed and should prove to be an excellent model from which VA can build its foundation of a uniformed auditing system. However, just because these laws, regulations, and procedures are in place, there is still absolutely no guarantee that they are being used as they were designed to be or that all personnel have been taught proper procedure. After 6 years of contract auditing and human resource consulting, I can honestly say that VA's gross lack of oversight on the awards they have granted has likely cost them millions of dollars, and even more disturbing is the cost paid by thousands of veterans who were never given the chance that laws and their service entitles them to.

Finally, AMVETS strongly believes that in order for VA to successfully implement all of the actions necessary regarding improvements of procurement activities, including audits, that it is vital that this Committee or another agency the Committee deems fit, to have oversight on the process in a way that VA is probably not used to. We have full confidence that VA is more than capable of implementing the training and use of these procedures, but it will come down to whether or not they are held accountable to do so.

Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Washington, DC.
May 20, 2009

Mr. Peter Gaytan
Executive Director
The American Legion
1608 K Street, NW
Washington, DC 20006

Dear Mr. Gaytan:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on *Federal Contractor Compliance* on May 14, 2009. Please answer the enclosed hearing questions by no later than Wednesday, July 1, 2009.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore, it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-4150.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

The American Legion
Washington, DC.
July 1, 2009

Honorable Stephanie Herseth Sandlin, Chairwoman
Subcommittee on Economic Opportunity
Committee on Veterans' Affairs
U.S. House of Representatives
335 Cannon House Office Building
Washington, DC 20515

Dear Madam Chairwoman:

Thank you for allowing The American Legion to participate in the Subcommittee hearing on Federal Contractor Compliance on May 14, 2009. I respectfully submit the following in response to your additional questions.

1. Why do you think that Federal contractors and subcontractors are not hiring veterans?

The American Legion believes the Office of Federal Contract Compliance Program (OFCCP) does not ensure employers comply with non-discrimination and affirmative action laws and regulations in hiring veterans when doing business with the Federal Government because it is not a priority.

2. In your estimation are veterans being hired as a result of section 4212 of Title 38?

The American Legion does not believe veterans are being hired as a result of section 4212 of Title 38. Prior to the hearing on May 14, requests were made by The American Legion repeatedly to the OFCCP for written and oral documentation on the success of their office in hiring veterans. We were also concerned with their ability to monitor and track veteran hiring compliance of Federal contractors and subcontractors. We found representatives of OFCCP to be extremely uncooperative, written performance reports were denied to us, phone calls were not returned, and the only information that was provided was taken from their website. Therefore, along with negative comments made by LVER's and DVETS from around the country, The American Legion has recommended that the Federal Contractor Veterans Employment Program presently under OFCCP should be placed—with additional funding and staffing—under the direction of the Department of Labor's Veterans Employment Training Service (DOL-VETS). This move will provide this program with adequate oversight, as well as input and guidance from stakeholders.

Thank you for your continued commitment to America's veterans and their families.

Sincerely,

Joseph C. Sharpe Jr., Director
National Economic Commission

Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Washington, DC.
May 20, 2009

Mr. Lorenzo Harrison
Acting Deputy Assistant Secretary for the
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Mr. Harrison:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on *Federal Contractor Compliance* on May 14, 2009. Please answer the enclosed hearing questions by no later than Wednesday, July 1, 2009.

In an effort to reduce printing costs, the Committee on Veterans' Affairs, in cooperation with the Joint Committee on Printing, is implementing some formatting changes for material for all Full Committee and Subcommittee hearings. Therefore,

it would be appreciated if you could provide your answers consecutively on letter size paper, single-spaced. In addition, please restate the question in its entirety before the answer.

Due to the delay in receiving mail, please provide your response to Ms. Orfa Torres by fax at (202) 225-2034. If you have any questions, please call (202) 226-4150.

Sincerely,

Stephanie Herseth Sandlin
Chairwoman

U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Programs
Washington, DC.
July 17, 2009

Hon. Stephanie Herseth Sandlin
United States House of Representatives
Chairwoman,
Committee on Veterans' Affairs
Washington, DC 20515

Dear Congresswoman Herseth Sandlin:

This letter responds to your May 20, 2009 correspondence requesting answers for the record regarding the Department of Labor, Office of Federal Contract Compliance Programs, May 14, 2009, hearing before your House Committee on *Federal Contractor Compliance*.

Please find the enclosed responses to each of the Committee questions for the record. Per your request, I am also providing my response by email to Ms. Orfa Torres and by fax at (202) 225-2034.

If you have any follow-up questions, please do not hesitate to forward them to me for a prompt response.

Sincerely,

Lorenzo D. Harrison
Acting Deputy Assistant Secretary for Federal Contract Compliance

Enclosure

**U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
HEARING HELD—MAY 14, 2009**

RESPONSES TO QUESTIONS FOR THE RECORD

Question 1: Besides collecting the VETS-100 Report, what else does the Department of Labor do with the information?

Response: The information collected by the Department in the VETS-100 Report is used to support the overall Federal procurement process. Federal Contracting Officers (CO) are prohibited from awarding or modifying Federal contracts unless the latest VETS-100 or VETS-100A Report has been submitted by the contractor. The Department electronically maintains the information submitted annually by contractors to the Veterans' Employment and Training Service (VETS), as prescribed by 38 U.S.C. § 4212(d)(1). The information is stored in a system called the "VETS-100 Reporting System," which is accessible by all Cos. A CO can either go directly to the VETS-100 Web site or telephone VETS to verify a contractor's submission.

In addition, the information is also used to support intradepartmental initiatives. For example, VETS provided the Office of the Federal Contract Compliance Programs (OFCCP) a copy of the FY 2007 VETS-100 Report (filed by Federal contrac-

tors for the reporting period that ended September 30, 2007). The report was used by OFCCP for their initial review of “Good-Faith Initiative for Veterans Employment” (G-FIVE) candidates. OFCCP’s G-FIVE initiative is an incentive program that recognizes the good-faith efforts of contractors in the area of veterans’ employment.¹

Within the coming months, VETS will provide the OFCCP with direct, real-time access to the VETS-100 Reporting System. OFCCP anticipates using the data to:

- Screen and investigate Federal contractors that have few or no protected veterans on their payroll;
- Enhance compliance investigations by determining whether a contractor has hired protected veterans that applied for job openings; and
- Validate whether a contractor has submitted the appropriate VETS-100 Report.

Furthermore, the Department will be steadfast in its effort to strengthen OFCCP’s enforcement capacity under the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA). The enforcement strategy will include, *inter alia*, working collaboratively with VETS in the utilization and analysis of the VETS-100 and 100A reports; consideration of comprehensive revision of VEVRAA regulations to enable OFCCP to conduct more in-depth reviews and investigations of Federal contractor personnel practices, and working collaboratively with the Employment and Training Administration (ETA) and VETS to strengthen the Department’s approach in the enforcement of VEVRAA, and reaching out to the Department of Veterans Affairs to identify and improve employment results for covered veterans. The Department is convinced that the best administration of veterans’ rights under VEVRAA is fundamentally tied to statutory authority that enables OFCCP to proactively review the contractor’s compliance, even in the absence of a complaint. In the near term, the Department will determine whether regulatory changes should be proposed that would allow evaluation of recruitment and placement results under the current statute.

Question 2: Does the Department of Labor review any award data reports from the Federal Procurement Data System against the delinquent filing companies to see if any have received a contract?

Response: As previously indicated, Federal COs are prohibited from awarding or modifying Federal contracts unless the latest VETS-100 or VETS-100A Report has been submitted (31 U.S.C. § 1354). Once the appropriate VETS-100 Report is submitted, the award of the contract can be made. The Federal Acquisition Regulation provision that implements this requirement is 48 CFR 22.1302(b).

Currently, OFCCP uses the Federal Procurement Data System to establish jurisdiction and to assist in the proper identification of contractors that should be scheduled for compliance reviews. In addition, during the compliance review, OFCCP verifies that the VETS-100 Report has been submitted to VETS. If, during the review process, it is determined that the contractor failed to file a VETS-100 or 100A, OFCCP will notify VETS as outlined in 41 CFR Parts 60-250.60(c) and 60-300.60(c). See also 41 CFR 61-250.20.

Question 3: The 2005 Government Accountability Office report, notes that Department of Labor cut the contract that provided a central repository of contractors maintained by the National Veterans Training Institute. Does Department of Labor or anyone maintain a central repository of contractors today?

Response: Unfortunately, there is no all-encompassing central database for Federal contractors. Currently, OFCCP utilizes the Standard Form 100, Employer Information Report, (commonly referred to as the “EEO-1 Report”) database as a means to identify Federal contractors who may be subject to VEVRAA and other laws enforced by OFCCP. The Equal Employment Opportunity Commission (EEOC) and OFCCP jointly require larger employers and Federal contractors to file the EEO-1 Report annually. The EEO-1 Report contains information on the employer’s minority and female workforce² and asks the employer to identify whether it is a Federal contractor. EEO-1 Report data are used to analyze patterns of employment discrimination and to support civil rights enforcement. The OFCCP also uses EEO-1 Report data to determine which employer facilities to select for compliance evalua-

¹OFCCP’s Good-Faith Initiative for Veterans Employment (G-FIVE) web page, http://www.dol.gov/esa/ofccp/g_five.htm.

²See 42 U.S.C 2000e-8(c). For more information on who must file the EEO-1 Report, see <http://www.eeoc.gov/eo1survey/whomustfile.html>.

tions. In addition, OFCCP uses the Federal Procurement Data System to verify that a contractor has current Federal contracts.

Question 4: If veterans have priority in hiring (referrals) from Federal contractors how does simply posting all jobs on the Internet give veterans priority?

Response: VEVRAA does not require Federal contractors to give veterans special preference in hiring. VEVRAA does, however, require that protected veterans receive priority from state employment service delivery systems when such systems are referring applicants to job openings listed by Federal contractors. Should a veteran apply for a job with a Federal contractor as a result of a referral, the veteran will be invited to voluntarily identify whether he or she is a veteran protected by VEVRAA. Federal contractors may not discriminate against protected veterans and must take affirmative action to employ qualified veterans. The affirmative action prescribed by VEVRAA does not include providing hiring preferences to protected veterans by contractors.

Contractors may satisfy VEVRAA's mandatory job listing requirement by listing job openings with the state workforce agency job bank in the state where the job opening occurs or with the appropriate local employment service delivery system where the opening occurs.

States have prescribed a variety of procedures for listing job openings and a particular state may permit listing in its employment service delivery system by various methods, such as electronic posting/notification. In some states, a Federal contractor may satisfy its mandatory job listing requirement under VEVRAA by sending an email message to the local employment service office or to the appropriate employment service delivery system that includes a link: to a specific job opening on the contractor's Web site. Irrespective of the method used, the VEVRAA job listing obligation requires that the contractor provide information about an employment opening in the manner prescribed by the employment service delivery system. The contractor must provide information that is sufficient to allow the appropriate employment service delivery system to carry out its responsibilities under VEVRAA to give protected veterans priority in referrals to Federal contractor employment openings.

Question 5: Should all Federal contractors be required to send a copy of their jobs listings to the local DVOP/L VER before it is posted anywhere?

Response: Under current OFCCP regulations, contractors must list all employment opportunities, except those exempted under 41 CFR 60-250.5(a)6 and 60-300.5(a)6, with the appropriate employment service delivery system. Listing with the state workforce agency job bank: will satisfy this requirement. Once the jobs are listed, state and local employment personnel, to include DVOPS and L VERs, have access to the listings and can use them to identify qualified veterans for the job openings.

Committee on Veterans' Affairs
Subcommittee on Economic Opportunity
Washington, DC.
May 20, 2009

Mr. Jan R. Frye
Deputy Assistant Secretary for Acquisition and Logistics
U.S. Department of Veterans Affairs
810 Vermont Ave., NW
Washington, DC 20420

Dear Mr. Frye:

I would like to request your response to the enclosed questions for the record I am submitting in reference to our House Committee on Veterans' Affairs Subcommittee on Economic Opportunity hearing on *Federal Contractor Compliance* on May 14, 2009. Please answer the enclosed hearing questions by no later than Wednesday, July 1, 2009.

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Sincerely,

Stephanie Herseth Sandlin
Chairwoman

Questions for the Record
Hon. Stephanie Herseth Sandlin, Chairwoman
Subcommittee on Economic Opportunity
House Committee on Veterans' Affairs
May 14, 2009

Federal Contractor Compliance

Question 1: Do any companies provide the Department of Veterans Affairs regional offices with their job listings?

Response: The Department of Veterans Affairs (VA) does not receive job listings from any companies. Department of Labor (DOL) requires contractors and sub-contractors to provide job listings to the nearest State employment service. The requirement applies to vacancies at all locations of a business not otherwise exempt under the company's Federal contract. Qualified targeted Veterans receive priority for referral to Federal contractor job openings listed at those offices. The priority for referral does not guarantee Veterans will be hired.

Question 2: In your testimony you state that "until changes are implemented with the Department of Veterans Affairs contracting system, we will continue to work with the Department of Labor to extract VA-specific compliance information." Can you elaborate on what you mean by this statement?

Response: At this time, VA does not have an automated process in place to monitor DOL's Veteran's employment and training service-100 (VETS-100) database. VA contracting officers comply with the Federal Acquisition Regulation and the requirement to verify vendor compliance prior to award or modification of a contract. The VA's Office of Acquisition and Logistics Programs and Policy is adding a mandatory feature to its electronic contract management system. This feature will be effective October 30, 2009, and will allow contracting officers to record when they query the VETS-100 database prior to award or the exercise of contract options. Contracting officers must use this system to provide an electronic record of compliance with VETS-100. This feature will provide an electronic record for each action and track compliance. VA will continue to work with DOL to extract VA specific compliance information on the appropriate actions.

Question 3: Does the Department of Veterans Affairs check subprime contractors for compliance?

Response: Contractors and subcontractors are held to the same standards of VETS-100 Reporting. For that reason, VA uses the same process to verify compliance. VA's contracting officers use DOL to access the information required to verify compliance prior to award of actions above the appropriate dollar threshold.

