

March 6, 2008

VIA ELECTRONIC MAIL TO
OIRA_SUBMISSION@OMB.EOP.GOV

Katherine Astrich
Desk Officer for Veterans' Employment Training Service
Office of Information and Regulatory Affairs
Office of Management and Budget
725 Seventeenth Street, NW
Washington, DC 20503

Re: **Comments on the Veterans' Employment and Training Service's Federal Contractor Veterans' Employment Reports (OMB No. 1293-0005)**

Dear Ms. Astrich:

The Equal Employment Advisory Council ("EEAC") welcomes the opportunity to file written comments on the Department of Labor's ("DOL") Veterans' Employment and Training Service's ("VETS") *Federal Contractor Veterans' Employment Report VETS-100* and *Federal Contractor Veterans' Employment Report VETS-100A* (OMB No. 1293-0005). Our letter responds to DOL's February 15, 2008 *Federal Register* notice indicating that this Information Collection Request ("ICR") has been submitted to the Office of Management and Budget ("OMB") for final review and clearance under the Paperwork Reduction Act ("PRA"). 73 Fed. Reg. 8905.

VETS has characterized the nature of this request as a "proposed revision" to a currently approved ICR. In reality, however, for thousands of federal contractors, what is being proposed by VETS is not a revision of a currently approved ICR, but rather the implementation of an entirely new one, the VETS-100A. This new report will impose significant additional costs and burdens on both employers and DOL, but yield no corresponding improvement in the employment of our nation's veterans, or in the monitoring and enforcement of veterans-related equal opportunity and affirmative action compliance requirements.

Indeed, by VETS's own conservative estimates, under the recordkeeping and reporting scheme that would result from this ICR's implementation:

- approximately 66,000 federal contractor establishments would be required to collect, maintain, and annually report employment data in (and only in) four "VETS-100 covered veterans" categories;

- another approximately 110,000 federal contractor establishments would be required to collect, maintain, and annually report employment data in (and only in) four largely different “VETS-100A covered veterans” categories; and
- yet another 44,000 federal contractor establishments would be required to collect, maintain, and annually report employment data in a total of seven combined “VETS-100 covered veterans” categories and “VETS-100A covered veterans” categories.

EEAC believes that the substantial amount of time and money contractors would spend implementing and maintaining compliance with this proposed ICR — and the substantial amount of time and money DOL would spend monitoring that compliance — instead should be deployed to more meaningful efforts to improve the overall employment status of our nation’s veterans. Clearly, this proposed ICR does little to enhance that status. In fact, we believe it will have just the opposite effect, causing federal contractors to redirect resources that otherwise would have gone to the recruitment, hiring, retention, and advancement of qualified covered veterans instead to the systems, forms, files, and procedures they will need to comply with this ICR’s paperwork requirements. That said, we understand that VETS’s options for minimizing the burdens of this ICR have been greatly limited by the statutory language of the 2002 Jobs for Veterans Act (“JVA”), which VETS has interpreted to require the proposed VETS-100A Report in addition to, rather than in lieu of, the existing VETS-100 Report already cleared under the PRA.

Consistent with the purpose of the PRA, and respecting the limitations imposed by the JVA, our comments today offer five specific recommendations for minimizing the burdens of this ICR while at the same time enhancing, as much as practicable, the quality, utility, and value of its attendant recordkeeping and reporting requirements. Specifically, EEAC recommends that OMB require in its “terms of clearance” for this ICR that:

- VETS engage in an aggressive communications campaign to help make contractors aware of their VETS-100 and/or VETS-100A compliance requirements, such that contractors subject to only one or the other do not needlessly incur the costs and burdens of attempting to comply with both.
- VETS confirm that the new VETS-100A report will not require contractors to resurvey their existing employees to collect data in the VETS-100A form’s new reporting categories.
- VETS provide guidance to federal contractors on “bridging” data from the VETS-100’s covered veterans categories to the VETS-100A’s covered veterans categories, to help maintain the accuracy and consistency of data reported in the new VETS-100A form.
- VETS adopt — and encourage other DOL enforcement agencies to adopt — a compliance monitoring and enforcement policy that places primary emphasis on the

contractor's good-faith efforts to comply with the newer VETS-100A Report, and only secondary, compliance assistance emphasis with respect to the older VETS-100 Report.

- VETS not require the first VETS-100A Reports to be filed until the 2009 reporting cycle at the earliest, and also allow federal contractors *a minimum of six (6) months* from the date this ICR is finalized to begin collecting and maintaining all of the veterans data necessary to comply with its requirements, and/or allow contractors to report only partial-year hiring data for 2009, if necessary.

As set forth below, we also recommend a technical change to clarify an inconsistency between the VETS-100 Report and the proposed VETS-100A Report.

Statement of Interest

EEAC is the nation's largest nonprofit association of employers dedicated exclusively to the advancement of practical and effective programs to eliminate workplace discrimination. Founded in 1976, EEAC's membership now includes more than 300 of the nation's largest and most progressive private-sector companies, which collectively employ more than 19 million workers in the United States alone. All of EEAC's members are firmly committed to the principles and practice of workplace nondiscrimination and affirmative action.

Nearly all EEAC member companies are federal contractors subject to the existing VETS-100 recordkeeping and reporting requirements set forth in 41 C.F.R. Part 61-250 and approved under OMB Number 1293-0005, with most of them responsible for filing hundreds and, in some cases, thousands of VETS-100 Reports each year. By virtue of the size and frequency of their federal contracts and subcontracts, most of our member companies would become subject to the new VETS-100A recordkeeping and reporting requirements now being considered by VETS in this PRA clearance process.

In addition, because of the long-term nature of their contracts, we estimate that a considerable number of our members will be subject to both the VETS-100 and the VETS-100A requirements, thereby requiring them to develop and maintain duplicative recordkeeping and reporting mechanisms to meet their mandatory veterans-related compliance reporting obligations under this ICR. EEAC's member companies thus have a significant interest and stake in the final outcome of VETS's current proposal.

Proposed ICR Will Create a Burdensome "Duplicate Reporting" Requirement for Many Contractors

To help provide context for our comments, and to underscore just how needlessly burdensome VETS's proposed VETS-100A requirement will be for some federal contractors, we

offer the following illustration of how this proposal will impact the human resources data management practices of those federal contractor establishments — some 44,000 by VETS's own conservative estimates — that will be subject to both the VETS-100 and the VETS-100A recordkeeping and reporting requirements of this ICR.

Specifically, these 44,000 federal contractor establishments will be able to satisfy their recordkeeping and reporting obligations under this ICR only by implementing a burdensome and largely redundant protocol for collecting, maintaining, and reporting the demographic data called for by the VETS-100 and VETS-100A Reports, a protocol which would require them to:

1. Provide newly hired and incumbent employees the opportunity to voluntarily self-identify as a **Special Disabled Veteran**;
2. Provide newly hired and incumbent employees the opportunity to voluntarily self-identify as a **Disabled Veteran**;
3. Provide newly hired and incumbent employees the opportunity to voluntarily self-identify as a **Vietnam Era Veteran**;
4. Provide newly hired and incumbent employees the opportunity to voluntarily self-identify as an **Other Protected Veteran**;
5. Provide newly hired and incumbent employees the opportunity to voluntarily self-identify as a **Newly Separated Veteran discharged or released from active duty within the preceding 12 months**;
6. Provide newly hired and incumbent employees the opportunity to voluntarily self-identify as a **Newly Separated Veteran discharged or released from active duty within the preceding 36 months**; and
7. Provide newly hired and incumbent employees the opportunity to voluntarily self-identify as an **Armed Forces Service Medal Veteran**.

As would be required under this proposed ICR, these 44,000 contractor establishments then would be obligated to tabulate and report for the same workforce population the following veterans data:

- Employees who responded affirmatively to the first, third, and/or fifth question would be reported only on the VETS-100 Report;
- Employees who responded affirmatively to the second, sixth, and/or seventh question would be reported only on the VETS-100A Report; and
- Employees who responded affirmatively to the fourth question would be reported on both the VETS-100 Report and the VETS-100A Report.

In our view, there is nothing to be gained by requiring a federal contractor to collect and maintain the same veterans-related demographic data using two different classification systems, nor is there any utility in requiring these contractors to report these data for the same workforce populations using two different mandatory compliance reports. Regrettably, however, this is exactly what would be required for the thousands of federal contractor establishments that would be subject to both the VETS-100 and VETS-100A components of this ICR.

Recommendations for Mitigating This Proposed ICR's Burdens

We turn now to our recommendations for mitigating the burdens of this ICR in a way that is consistent with the objectives of the PRA clearance process and within the limitations imposed by the JVA's language.

OMB's Terms of Clearance Should Require VETS To Engage in an Aggressive Communications Campaign To Help Make Contractors Aware of Their VETS-100 and/or VETS-100A Compliance Requirements, Such That Contractors Subject To Only One or the Other Do Not Needlessly Incur the Costs and Burdens of Attempting To Comply With Both

According to the paperwork burden estimates submitted by VETS in conjunction with this ICR, roughly 66,000 federal contractor establishments will be subject only to the VETS-100 reporting requirements, while another 110,000 establishments will be subject only to the VETS-100A reporting requirements. However, judging from feedback we have received from many of our members, a significant number of these federal contractor establishments understandably may be under the mistaken impression that they actually will be subject to both sets of requirements. As illustrated above, such a mistaken impression comes at substantial cost. We therefore respectfully urge OMB to include in its terms of clearance that VETS develop and implement an aggressive communications campaign, the primary objective of which should be to help federal contractors understand which of these compliance requirements applies to them, or whether both in fact apply. Specifically, VETS should continue to advise contractors that any modification made on or after the JVA's effective date of December 1, 2003 to any contract or subcontract valued at \$100,000 or more, and which but for its original date of execution would have been subject to the VETS-100A requirements, brings the contract or subcontract within only the VETS-100A requirements, and not also within the VETS-100 requirements.

As part of this communications campaign, VETS should provide clear guidance to contractors on the kinds of modifications that would make their "older" contracts subject only to the VETS-100A requirements. This guidance should afford contractors with as much latitude as possible to modify these older contracts for the purpose (and with the effect) of minimizing — or perhaps even eliminating — the duplicate reporting problem created by this proposed ICR. EEAC believes that this recommended approach is consistent with the purpose of the JVA and the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA"). This approach also will

help free up the resources of both contractors and VETS to pursue the implementation and monitoring of more meaningful and effective veterans employment programs.

OMB's Terms of Clearance Should Instruct VETS To Confirm That the New VETS-100A Report Will Not Require Contractors To Resurvey Their Existing Employees To Collect Data in the VETS-100A Form's New Reporting Categories

While we understand that VETS previously has indicated that it does not intend to require federal contractors to resurvey their incumbent employees for purposes of complying with the new VETS-100A requirements, we respectfully recommend that OMB include in its terms of clearance that VETS formally reiterate this guidance when finalizing this ICR. Such a resurvey would impose extraordinary additional burdens on the approximately 154,000 federal contractor establishments that, by VETS's own conservative estimates, would be subject to the VETS-100A requirements, either alone or in combination with the VETS-100.

To Help Maintain the VETS-100A Report's Accuracy and Consistency, OMB's Terms of Clearance Should Require VETS To Provide Guidance to Federal Contractors on "Bridging" Data From the VETS-100 Covered Veterans Categories to the VETS-100A Covered Veterans Categories

At the same time as we urge VETS not to require a resurvey to comply with the VETS-100A requirements, we also respectfully urge OMB to include in its terms of clearance that VETS publish guidance on the "bridging" of workforce data collected in the VETS-100 categories to the new VETS-100A categories. For example, as we understand the definitions of each of the covered veterans categories mentioned above, all Special Disabled Veterans can properly be "bridged" over to the new Disabled Veterans category. Similarly, all One-Year Recently Separated Veterans can properly be "bridged" to the new Three-Year Recently Separated Veterans category (assuming the currency of the data), and of course all Other Protected Veterans data can be "bridged" as well, as that category is defined the same way under both the VETS-100 and the VETS-100A requirements.

However, significant confusion exists as to whether federal contractors may properly bridge to any VETS-100A category those employees who currently are classified as Veterans of the Vietnam Era. While some of these veterans would in fact meet the definition of one or more of the new VETS-100A categories, without following up directly with these veterans (which we do not believe VETS should require), contractors will not know which, if any, VETS-100A category or categories these veterans may be "bridged" to. As a result of this confusion, some contractors may "bridge" them to one or more VETS-100A categories, while others may not, thereby making the aggregate VETS-100A data reported less accurate, less consistent, and less comparable from contractor to contractor.

Accordingly, we urge OMB to include in its terms of clearance a requirement that VETS publish clear guidance on whether employees previously classified in one or more VETS-100 categories may properly be “bridged” to one or more VETS-100A categories without a resurvey, and if so, how this bridging should occur.

OMB’s Terms of Clearance Should Require VETS To Adopt and Communicate an Enforcement Policy That Places Primary Emphasis on VETS-100A Compliance, and Compliance Assistance Emphasis on VETS-100 Compliance

To further mitigate the needless burden that will be imposed on many contractors as a result of this proposed ICR, EEAC also urges OMB to include in its terms of clearance provisions requiring VETS to take certain steps that will result in primary emphasis being placed on the newer VETS-100A compliance requirements. These steps should include VETS adopting a “compliance assistance” enforcement approach with respect to the outgoing VETS-100 compliance requirements; urging other DOL agencies including the Office of Federal Contract Compliance Programs (“OFCCP”) to do the same; and effectively communicating this compliance assistance emphasis to the federal contractor community.

In our view, placing primary emphasis on the newer VETS-100A requirements would allow both VETS and contractors to derive the most practical utility from the veterans-related data collected, maintained, and reported under this ICR, while at the same time minimizing its unnecessary burdens.

OMB’s Terms of Clearance Should Make Clear That VETS May Not Require the First VETS-100A Reports To Be Filed Until the 2009 Reporting Cycle at the Earliest, and Also Instruct VETS To Allow Federal Contractors a Minimum of Six (6) Months From the Date This ICR Is Finalized To Begin Collecting and Maintaining VETS-100A Category Data

Given the significant amount of time that most large federal contractors will need to reengineer the human resources systems, forms, and procedures to collect, maintain, and report the veterans data required by the new VETS-100A Report, EEAC respectfully recommends that OMB include in its terms of clearance that VETS allow contractors to report partial-year new hire data on their 2009 VETS-100A Reports (if the first reports are to be filed for the 2009 reporting cycle), and that federal contractors be provided a minimum of six (6) months from the date this ICR is finalized before they are required to collect and maintain data in these new categories.

Accordingly, if the first implementation of the VETS-100A occurs with the 2009 reporting cycle, and the 2009 VETS-100A Report requires contractors to report their incumbent workforce data as of any pay period in July or August of 2009 and their new hire data for the 12-month period preceding that date, federal contractors would be required to begin collecting and

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maintaining data in the new veterans reporting categories by August of 2008 in order to acquire one full year of data on new hires. Because many contractors will need *at least* six months to develop and implement the infrastructure for collecting and maintaining these new data, this ICR would need to be finalized and published by VETS no later than February 2008 for contractors to meet this timetable and provide a full year of new hire data on their 2009 VETS-100A Reports, which plainly is not possible considering this PRA clearance request is open until March 17, 2008. Thus, we respectfully urge OMB to include in its terms of clearance that VETS should either delay implementation of the VETS-100A Report to the 2010 reporting cycle or, in the alternative, allow federal contractors to report partial-year new hire data on their 2009 VETS-100A Reports.

Recommendations for Minor Technical Corrections


Finally, EEAC recommends that OMB in its terms of clearance instruct VETS to make the recordkeeping periods for both the VETS-100 and the VETS-100A Reports the same; currently the VETS-100 form's instructions state that the VETS-100 Report is to be retained for two (2) years, while the VETS-100A form's instructions state that the VETS-100A Report is to be retained for one (1) year.

Conclusion

EEAC respectfully recommends that OMB only approve this ICR subject to the recommendations offered in our comments. We believe that these recommendations will help minimize the burdens of this proposed ICR, while at the same time enhancing the quality, utility, and value of its attendant recordkeeping and reporting requirements for both federal contractors and DOL.

We appreciate the opportunity to present our views on this important matter. Please do not hesitate to contact me or any of the EEAC staff if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, reading "Jeffrey A. Norris". The signature is written in a cursive, flowing style.

Jeffrey A. Norris
President