

§ 4212. Veterans' employment emphasis under Federal contracts

(a)(1) Any contract in the amount of \$100,000 or more entered into by any department or agency of the United States for the procurement of personal property and nonpersonal services (including construction) for the United States, shall contain a provision requiring that the party contracting with the United States take affirmative action to employ and advance in employment qualified covered veterans. This section applies to any subcontract in the amount of \$100,000 or more entered into by a prime contractor in carrying out any such contract.

(2) In addition to requiring affirmative action to employ such qualified covered veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the Secretary of Labor shall prescribe regulations requiring that—

(A) each such contractor for each such contract shall immediately list all of its employment openings with the appropriate employment service delivery system (as defined in section 4101(7) of this title), and may also list such openings with one-stop career centers under the Workforce Investment Act of 1998, other appropriate service delivery points, or America's Job Bank (or any additional or subsequent national electronic job bank established by the Department of Labor), except that the contractor may exclude openings for executive and senior management positions and positions which are to be filled from within the contractor's organization and positions lasting three days or less;

(B) each such employment service delivery system shall give such qualified covered veterans priority in referral to such employment openings; and

(C) each such employment service delivery system shall provide a list of such employment openings to States, political subdivisions of States, or any private entities or organizations under contract to carry out employment, training, and placement services under chapter 41 of this title.

(3) In this section:

(A) The term "covered veteran" means any of the following veterans:

(i) Disabled veterans.

(ii) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized.

(iii) 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 No. 12985 (61 Fed. Reg. 1209).

(iv) Recently separated veterans.

(B) The term "qualified", with respect to an employment position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

(b) If any veteran covered by the first sentence of subsection (a) believes any contractor of the

United States has failed to comply or refuses to comply with the provisions of the contractor's contract relating to the employment of veterans, the veteran may file a complaint with the Secretary of Labor, who shall promptly investigate such complaint and take appropriate action in accordance with the terms of the contract and applicable laws and regulations.

(c) The Secretary of Labor shall include as part of the annual report required by section 4107(c) of this title the number of complaints filed pursuant to subsection (b) of this section, the actions taken thereon and the resolutions thereof. Such report shall also include the number of contractors listing employment openings, the nature, types, and number of positions listed and the number of veterans receiving priority pursuant to subsection (a)(2)(B).

(d)(1) Each contractor to whom subsection (a) applies shall, in accordance with regulations which the Secretary of Labor shall prescribe, report at least annually to the Secretary of Labor on—

(A) the number of employees in the workforce of such contractor, by job category and hiring location, and the number of such employees, by job category and hiring location, who are qualified covered veterans;

(B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are qualified covered veterans; and

(C) the maximum number and the minimum number of employees of such contractor during the period covered by the report.

(2) The Secretary of Labor shall ensure that the administration of the reporting requirement under paragraph (1) is coordinated with respect to any requirement for the contractor to make any other report to the Secretary of Labor.

(Added Pub. L. 92-540, title V, §503(a), Oct. 24, 1972, 86 Stat. 1097, §2012; amended Pub. L. 93-508, title IV, §402, Dec. 3, 1974, 88 Stat. 1593; Pub. L. 94-502, title VI, §§605, 607(2), Oct. 15, 1976, 90 Stat. 2405; Pub. L. 95-520, §6(a), Oct. 26, 1978, 92 Stat. 1821; Pub. L. 96-466, title V, §509, title VIII, §801(j), Oct. 17, 1980, 94 Stat. 2206, 2217; Pub. L. 97-306, title III, §310(a), Oct. 14, 1982, 96 Stat. 1442; renumbered §4212 and amended Pub. L. 102-83, §§4(b)(8), 5(a), (c)(1), Aug. 6, 1991, 105 Stat. 405, 406; Pub. L. 103-446, title VII, §702(a), Nov. 2, 1994, 108 Stat. 4674; Pub. L. 105-339, §§7(a), 8, Oct. 31, 1998, 112 Stat. 3188, 3189; Pub. L. 106-419, title III, §322(a), (b), Nov. 1, 2000, 114 Stat. 1855; Pub. L. 107-288, §2(b)(1), (2)(A)-(C), Nov. 7, 2002, 116 Stat. 2034, 2035.)

REFERENCES IN TEXT

The Workforce Investment Act of 1998, referred to in subsec. (a)(2)(A), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Executive Order No. 12985, referred to in subsec. (a)(3)(A)(iii), is set out as a note preceding section 1121 of Title 10, Armed Forces.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-288, §2(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Any contract in the amount of \$25,000

or more 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, recently separated veterans, 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. The provisions of this section shall apply to any subcontract entered into by a prime contractor in carrying out any contract for the procurement of personal property and non-personal services (including construction) for the United States. In addition to requiring affirmative action to employ such veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the President shall implement the provisions of this section by promulgating regulations which shall require that (1) each such contractor undertake in such contract to list immediately with the appropriate local employment service office all of its employment openings except that the contractor may exclude openings for executive and top management positions, positions which are to be filled from within the contractor's organization, and positions lasting three days or less, and (2) each such local office shall give such veterans priority in referral to such employment openings."

Subsec. (c). Pub. L. 107-288, §2(b)(2)(A), struck out "suitable" before "employment openings" and substituted "subsection (a)(2)(B)" for "subsection (a)(2) of this section".

Subsec. (d)(1). Pub. L. 107-288, §2(b)(2)(B)(i), struck out "of this section" after "subsection (a)" in introductory provisions.

Subsec. (d)(1)(A), (B). Pub. L. 107-288, §2(b)(2)(B)(ii), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

"(A) the number of employees in the work force of such contractor, by job category and hiring location, who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized;

"(B) the total number of new employees hired by the contractor during the period covered by the report and the number of such employees who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, or other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized; and"

Subsec. (d)(2). Pub. L. 107-288, §2(b)(2)(C), struck out "of this subsection" after "paragraph (1)".

2000—Subsec. (a). Pub. L. 106-419, §322(a), inserted "recently separated veterans," after "veterans of the Vietnam era," in first sentence.

Subsec. (d)(1)(A), (B). Pub. L. 106-419, §322(b), inserted "recently separated veterans," after "veterans of the Vietnam era,".

1998—Subsec. (a). Pub. L. 105-339, §7(a)(1), in first sentence, substituted "\$25,000" for "\$10,000" and "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" for "special disabled veterans and veterans of the Vietnam era".

Subsec. (b). Pub. L. 105-339, §7(a)(2), substituted "veteran covered by the first sentence of subsection (a)" for "special disabled veteran or veteran of the Vietnam era".

Subsec. (d)(1)(A), (B). Pub. L. 105-339, §7(a)(3), substituted "special disabled veterans, veterans of the Vietnam era, or other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized" for "veterans of the Vietnam era or special disabled veterans".

Subsec. (d)(1)(C). Pub. L. 105-339, §8, added subpar. (C).

1994—Subsec. (a)(1). Pub. L. 103-446 substituted "all of its employment openings except that the contractor may exclude openings for executive and top management positions, positions which are to be filled from within the contractor's organization, and positions lasting three days or less," for "all of its suitable employment openings,".

1991—Pub. L. 102-83, §5(a), renumbered section 2012 of this title as this section.

Subsec. (c). Pub. L. 102-83, §5(c)(1), substituted "4107(c)" for "2007(c)".

Pub. L. 102-83, §4(b)(8), substituted "Secretary of Labor" for "Secretary".

Subsec. (d). Pub. L. 102-83, §4(b)(8), substituted "Secretary of Labor" for "Secretary" wherever appearing.

1982—Subsec. (d). Pub. L. 97-306 added subsec. (d).

1980—Subsec. (a). Pub. L. 96-466, §801(j), inserted "special" after "qualified" and substituted "regulations which shall require" for "regulations within 60 days after the date of enactment of this section, which regulations shall require".

Subsec. (b). Pub. L. 96-466, §509, among other changes, substituted reference to a special disabled veteran for reference to a disabled veteran, struck out provisions relating to the filing of a complaint by any veteran entitled to disability compensation who believed that a contractor had discriminated against such veteran because such veteran was a handicapped individual within the meaning of section 706(6) of title 29, and substituted provisions relating to the filing of a complaint with the Secretary of Labor for provisions relating to the filing of a complaint with the Veterans' Employment Service of the Department of Labor and prompt referral of the complaint to the Secretary.

1978—Subsec. (b). Pub. L. 95-520 authorized filing of a complaint by a veteran entitled to disability compensation under laws administered by the Veterans' Administration based on a contractor's discrimination against the veteran because the veteran is handicapped.

1976—Subsec. (b). Pub. L. 94-502, §607(2), substituted "the contractor's" for "his".

Subsec. (c). Pub. L. 94-502, §605, added subsec. (c).

1974—Subsec. (a). Pub. L. 93-508, §402(1), (2), substituted "Any contract in the amount of \$10,000 or more entered into" for "Any contract entered into", "the party contracting with the United States shall take affirmative action to employ and advance in employment" for "in employing persons to carry out such contract, the party contracting with the United States shall give special emphasis to the employment of", and "In addition to requiring affirmative action to employ such veterans under such contracts and subcontracts and in order to promote the implementation of such requirement, the President shall" for "The President shall".

Subsec. (b). Pub. L. 93-508, §402(3), substituted "relating to the employment of veterans" for "relating to giving special emphasis in employment to veterans".

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-288 applicable with respect to contracts entered into on or after the first day of the first month that begins 12 months after Nov. 7, 2002, see section 2(b)(3) of Pub. L. 107-288, set out as a note under section 4211 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 509 of Pub. L. 96-466 effective Oct. 1, 1980, see section 802(e) of Pub. L. 96-466, set out as a note under section 4101 of this title.

Amendment by section 801(j) of Pub. L. 96-466 effective Oct. 1, 1980, see section 802(h) of Pub. L. 96-466, set out as a note under section 3452 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-502 effective Dec. 1, 1976, see section 703(c) of Pub. L. 94-502, set out as an Effective Date note under section 3693 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-508 effective Dec. 3, 1974, see section 503 of Pub. L. 93-508, set out as a note under section 3452 of this title.

EFFECTIVE DATE

Section effective 90 days after Oct. 24, 1972, see section 601(b) of Pub. L. 92-540, set out as an Effective Date of 1972 Amendment note under section 4101 of this title.

PRESCRIPTION OF REGULATIONS

Section 310(b) of Pub. L. 97-306 provided that: "Within 90 days after the date of the enactment of this Act [Oct. 14, 1982], the Secretary of Labor shall prescribe regulations under subsection (d) of section 2012 [now 4212] of title 38, United States Code, as added by the amendment made by subsection (a)."

EX. ORD. NO. 11701. EMPLOYMENT OF VETERANS BY FEDERAL AGENCIES AND GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

Ex. Ord. No. 11701, Jan. 24, 1973, 38 F.R. 2675, provided: On June 16, 1971, I issued Executive Order No. 11598 to facilitate the employment of returning veterans by requiring Federal agencies and Federal contractors and their subcontractors to list employment openings with the employment service systems. Section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (Public Law 92-540; 86 Stat. 1097) added a new section 2012 [now 4212] to Title 38 of the United States Code which, in effect, provides statutory authority to extend the program developed under that order with respect to Government contractors and their subcontractors.

NOW, THEREFORE, by virtue of the authority vested in me by section 301 of Title 3 of the United States Code and as President of the United States, it is hereby ordered as follows:

SECTION 1. The Secretary of Labor shall issue rules and regulations requiring each department and agency of the executive branch of the Federal Government to list suitable employment openings with the appropriate office of the State Employment Service or the United States Employment Service. This section shall not be construed as requiring the employment of individuals referred by such office or as superseding any requirements of the Civil Service Laws. Rules, regulations, and orders to implement this section shall be developed in consultation with the Civil Service Commission.

SEC. 2. The Secretary of Labor is hereby designated and empowered to exercise, without the approval, ratification, or other action of the President, the authority of the President under Section 2012 [now 4212] of Title 38 of the United States Code.

SEC. 3. The Secretary of Labor shall gather information on the effectiveness of the program established under this order and Section 2012 [now 4212] of Title 38 of the United States Code and of the extent to which the employment service system is fulfilling the employment needs of veterans. The Secretary of Labor shall, from time to time, report to the President concerning his evaluation of the effectiveness of this order along with his recommendations for further action which the Secretary believes to be appropriate.

SEC. 4. Appropriate departments and agencies shall, in consultation with the Secretary of Labor, issue such amendments or additions to procurement rules and regulations as may be necessary to carry out the purposes of this order and Section 2012 [now 4212] of Title 38 of the United States Code. Except as otherwise provided by law, all executive departments and agencies are directed to cooperate with the Secretary of Labor, to furnish the Secretary of Labor with such information and assistance as he may require in the performance of his functions under this order, and to comply with rules, regulations, and orders of the Secretary.

SEC. 5. Executive Order No. 11598 of June 16, 1971, is hereby superseded.

RICHARD NIXON.

§ 4213. Eligibility requirements for veterans under Federal employment and training programs

(a) Amounts and periods of time specified in subsection (b) shall be disregarded in determining eligibility under any of the following:

- (1) Any public service employment program.
- (2) Any emergency employment program.
- (3) Any job training program assisted under the Economic Opportunity Act of 1964.

(4) Any employment or training program carried out under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(5) Any other employment or training (or related) program financed in whole or in part with Federal funds.

(b) Subsection (a) applies with respect to the following amounts and periods of time:

(1) Any amount received as pay or allowances by any person while serving on active duty.

(2) Any period of time during which such person served on active duty.

(3) Any amount received under chapters 11, 13, 30, 31, 32, and 36 of this title by an eligible veteran.

(4) Any amount received by an eligible person under chapters 13 and 35 of this title.

(5) Any amount received by an eligible member under chapter 106 of title 10.

(Added Pub. L. 92-540, title V, §503(a), Oct. 24, 1972, 86 Stat. 1098, §2013; amended Pub. L. 96-466, title VIII, §801(k)(1), (2)(A), Oct. 17, 1980, 94 Stat. 2217; Pub. L. 102-54, §14(c)(10), June 13, 1991, 105 Stat. 285; renumbered §4213, Pub. L. 102-83, §5(a), Aug. 6, 1991, 105 Stat. 406; Pub. L. 103-446, title VII, §702(b), Nov. 2, 1994, 108 Stat. 4675; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(29)(C), (f)(21)(C)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-424, 2681-432; Pub. L. 106-419, title IV, §404(a)(9), Nov. 1, 2000, 114 Stat. 1865.)

REFERENCES IN TEXT

The Economic Opportunity Act of 1964, referred to in subsec. (a)(3), is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, which was classified generally to chapter 34 (§2701 et seq.) of Title 42, The Public Health and Welfare, prior to repeal, except for titles VIII and X, by Pub. L. 97-35, title VI, §683(a), Aug. 13, 1981, 95 Stat. 519. Titles VIII and X of the Act are classified generally to subchapters VIII (§2991 et seq.) and X (§2996 et seq.) of chapter 34 of Title 42. For complete classification of this Act to the Code, see Tables.

The Workforce Investment Act of 1998, referred to in subsec. (a)(4), is Pub. L. 105-220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

AMENDMENTS

2000—Pub. L. 106-419 amended text generally. Prior to amendment, text read as follows: "Any (1) amounts received as pay or allowances by any person while serving on active duty, (2) period of time during which such person served on such active duty, and (3) amounts received under chapters 11, 13, 30, 31, 35, and 36 of this title by an eligible veteran, any amounts received by an eligible person under chapters 13 and 35 of such title, and any amounts received by an eligible person under chapter 106 of title 10, shall be disregarded in determining eligibility under any public service employment