Cooley

DOL Issues Proposed Rules Clarifying Contractor Obligations Following Rescission of Executive Order 11246

August 7, 2025

On July 1, 2025, the US Department of Labor (DOL) – which includes the Office of Federal Contract Compliance Programs (OFCCP) – released three notices of proposed rules, outlining changes to federal contractors' affirmative action obligations following President Donald Trump's rescission of Executive Order (EO) 11246. As detailed below, these rules include formally rescinding EO 11246 regulations and modifying regulations under Section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA).

Rescission of EO 11246 implementing regulations

The proposed rulemaking seeks to formally rescind regulations implementing EO 11246, which Trump revoked in January 2025 via EO 14173. EO 11246 had long required federal contractors to implement affirmative action programs (AAPs) addressing race- and sex-based criteria. While EO 11473 eliminated such race- and sex-related requirements, it did not affect obligations to prepare AAPs covering protected veterans and individuals with disabilities under VEVRAA and Section 503 of the Rehabilitation Act.

The DOL explained that, although it considers the regulations "null and void," officially rescinding them will prevent confusion among contractors and the public. The agency also cited recent "course-corrections" in federal civil rights law – including US Supreme Court rulings in *Students for Fair Admissions v. Harvard* (2023), which struck down affirmative action in college admissions, and *Ames v. Ohio Department of Youth Services* (2025), which rejected a heightened burden standard for plaintiffs in demonstrating "reverse discrimination" under Title VII of the Civil Rights Act – as key reasons for the rescission. The DOL also took aim at certain "unsupported assumptions" underlying the AAP requirements for contractors. For example, the agency noted that such requirements were "imposed without any showing that discriminatory practices towards women and minorities do in fact exist" and assume, by the "mere existence of statistical disparities," that there is evidence of underutilization of women and minorities "based on the fundamentally flawed assumption that each and every federal contractor's workforce may harbor discrimination if it does not mirror the available labor pool for women or minorities." The agency also stated that the regulations underlying EO 11246 may have induced and incentivized contractors to consider characteristics like race and sex when making decisions to attempt to avoid a scheduled compliance evaluation or to avoid an OFCCP enforcement action.

Revisions to Section 503 regulations

The proposed revisions to regulations underlying Section 503 are twofold:

- The DOL first proposes eliminating the requirement that contractors invite applicants and employees to voluntarily self-identify their disability status. According to the agency, this conflicts with the Americans with Disabilities Act, which prohibits disability-related inquiries before a job offer and only allows them post-offer when the inquiries are job-related and consistent with business necessity.
- Second, the agency proposes to remove the utilization goal requirements underlying Section 503, which require, among other things, annually conducting utilization analyses to determine if a contractor's job groups meet the 7% utilization goal for the employment of individuals with disabilities. The agency stated that the utilization goal may, in practice, induce contractors to use quotas, which are prohibited under Section 503, to meet it. In addition, Section 503 regulations require contractors to conduct utilization analyses using the same job groups established for their analyses under EO 11246. However, with EO 11246 revoked, such utilization analyses are "unworkable."

Revisions to VEVRAA regulations

The proposed updates to the VEVRAA regulations are primarily technical and aim to align these rules with recent court decisions and executive orders, such as EO 14173 and EO 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative.” These changes include removing references to the now-revoked EO 11246 from the VEVRAA regulations and introducing provisions related to administration enforcement proceedings under VEVRAA.

What’s next?

Comments on these proposed regulations are due by September 2, 2025. Until they are finalized, current rules remain in effect; contractors must continue to invite applicants and employees to self-identify their disability status and conduct utilization analyses.

Additionally, the OFCCP has lifted the abeyance on OFCCP program activity, so Section 503 and VEVRAA enforcement has resumed, including the processing of any Section 503 and VEVRAA complaints. The OFCCP, however, elected to administratively close all pending compliance reviews. The OFCCP’s announcement states, “Contractors are reminded, however, that Section 503 and VEVRAA, along with their implementing regulations, remain in effect and contractors should continue to otherwise comply with their obligations under the Section 503 and VEVRAA regulatory schemes.”

If you have any questions about OFCCP developments, please reach out to a member of the Cooley employment team.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

MaryBeth Shreiner Reston	mshreiner@cooley.com +1 703 456 8169
Anna Matsuo New York	amatsuo@cooley.com +1 212 479 6827
Wendy Brenner Palo Alto	brennerwj@cooley.com +1 650 843 5371

Helenanne Connolly Reston	hconnolly@cooley.com +1 703 456 8685
Ross Eberly Santa Monica	reberly@cooley.com +1 310 883 6415
Lyndsey M. Kruzer Boston	lkruzer@cooley.com +1 617 937 2415
Joshua Mates San Francisco	jmates@cooley.com +1 415 693 2084
Carly Mitchell Washington, DC	cmitchell@cooley.com +1 202 842 7828
Gerard O'Shea New York	goshea@cooley.com +1 212 479 6704
Miriam Petrillo Chicago	mpetrillo@cooley.com +1 312 881 6612
Chris Stack London	cstack@cooley.com +44 (0)20 7556 4389
Ryan Vann Chicago	rhvann@cooley.com +1 312 881 6640

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.