

Office of Federal Contract Compliance Programs

Directive (DIR) 2018-02



U.S. DEPARTMENT OF LABOR Office of Federal Contract Compliance Programs

A Directive (DIR) is intended to provide guidance to OFCCP staff or federal contractors on enforcement and compliance policy or procedures. A DIR does not change the laws and regulations governing OFCCP's programs and does not establish any legally enforceable rights or obligations.

Effective Date: May 18, 2018

1. **SUBJECT:** TRICARE Subcontractor Enforcement Activities
2. **PURPOSE:** To extend the moratorium on enforcement of the affirmative obligations required of TRICARE subcontractors.¹
3. **REFERENCE:** None.
4. **AFFECTED POLICY:** This amends the moratorium in Directive 2014-01.
5. **BACKGROUND:** The Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order (E.O.) 11246, as amended, Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA), as amended. Collectively, these laws prohibit, among other things, federal contractors and subcontractors from discriminating on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, and status as a qualified individual with a disability or protected veteran. They also require federal contractors and subcontractors to take affirmative steps to ensure equal employment opportunity in their employment processes. In addition, these laws require that federal contracting agencies include in all covered contracts, and that contractors include in their subcontracts, an equal opportunity clause. For a definition of the terms "government contract," "subcontract," "prime contractor," and "subcontractor" see 41 C.F.R. § 60-1.3 (E.O. 11246); 41 C.F.R. § 60-300.2 (VEVRAA); and 41 C.F.R. § 60-741.2 (Section 503). The authority to administer these laws, and to promulgate these regulations, rests solely with the Secretary of Labor.

On May 7, 2014, OFCCP issued Directive 2014-01, establishing a five-year moratorium on enforcement of the affirmative obligations required of all TRICARE subcontractors. In Directive 2014-01, OFCCP recognized that "[r]ecent events have brought to OFCCP's attention that there has been a difference in understanding between the Department of Labor and some entities affiliated with the TRICARE community, as to who is a covered subcontractor under the laws enforced by OFCCP." During the moratorium period OFCCP committed to "engag[ing] in outreach and technical assistance to provide greater clarity for the TRICARE subcontractor community about their obligations under the laws administered by OFCCP" and to "work with other federal agencies to clarify the coverage of health care providers under federal statutes applicable to subcontractors." If not extended, the moratorium would expire on May 7, 2019.

6. **POLICY:** At this time, OFCCP has determined that it would be beneficial to the national interest and the health of veterans and their families to extend the moratorium to provide additional time to receive feedback from stakeholders. The difficulties active-duty and retired service members and their families have accessing healthcare are well-documented.² OFCCP is concerned that the continued uncertainty over the extent to which the E.O., Section 503, and VEVRAA apply to TRICARE subcontractors has contributed to this difficulty, and that the approaching expiration of the moratorium and accompanying uncertainty further exacerbate the difficulty.

Moreover, OFCCP understands that Congress may enact legislation affecting this area in the near future. This further supports extending the moratorium so that OFCCP may evaluate and address any legislative changes.

Accordingly, OFCCP will exercise its prosecutorial discretion to extend the moratorium by two years, until May 7, 2021, which OFCCP believes will provide sufficient time to fully address the matter.

7. **ATTACHMENT:** None.

/S/

Ondray T. Harris
 Director
 Office of Federal Contract Compliance Programs

¹ The moratorium is also amended to include Veterans Affairs Health Benefits Program Providers as well as TRICARE subcontractors. The reasons supporting a moratorium, discussed herein, are the same for these contractors and subcontractors as for TRICARE subcontractors. This moratorium does not apply to healthcare providers holding separate, independent, non-healthcare-related federal contracts or subcontracts. In addition, this moratorium does not affect Medicaid and Medicare healthcare providers, which are not considered contractors or subcontractors subject to OFCCP's jurisdiction.

² See, e.g., Government Accountability Office Report, GAO-13-364, TRICARE Multiyear Surveys Indicate Problems with Access to Care for Nonenrolled Beneficiaries (Apr. 2013), available at <http://www.gao.gov/assets/660/653487.pdf> (last accessed Apr. 16, 2018).

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

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