December 3, 2013

The Honorable Tom Perez
Secretary of Labor
The Honorable Patricia Shiu
Director, Office of Federal Contract Compliance Programs
200 Constitution Ave., NW
Washington, DC 20210

Dear Secretary Perez and Director Shiu:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Veterans and Military Families Task Force are writing to thank the Department of Labor (Department) and its Office of Federal Contract Compliance Programs (OFCCP) for issuing the final rules implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974, as amended. The workforce participation rate of veterans with disabilities is well below that of the general population and this final rule is an important step in addressing this challenge. CCD is a coalition of national consumer, service provider, and professional organizations which advocates on behalf of people with disabilities and chronic conditions and their families.

We commend the Department for retaining the requirement in Section 60-300.45 that contractors establish annual hiring benchmarks for protected veterans as a means for them to identify their progress in employing these individuals. We also appreciate the explicit assurances that failure to meet a benchmark alone is insufficient to prompt an enforcement action. Although our task force had recommended harmonizing the record keeping requirements across all categories of affirmative action obligations, the fact that the final rule reduces documentation retention rules from five to three years is a positive step toward reduction of paperwork burdens.

We also believe that the provisions in Section 60-300.42 allowing individuals to identify themselves as protected veterans at the pre-offer stage and more specifically as veterans with disabilities at the post-employment offer stage appear to be consistent with the protections afforded under the Americans with Disabilities Act. Furthermore, inclusion of the sample self-identification letter in Appendix B is a very useful tool that OFCCP has provided to contractors. Providing veterans with disabilities the opportunity to self-identify will allow greater opportunities for these individuals to benefit from affirmative action programs.

We are disappointed, however, that the Department chose not to require the linkage agreements necessary for contractors to reach out to protected veterans. While the final rule retains existing language calling for contractors to undertake "appropriate outreach and positive recruitment activities" and provides several suggested resources, including Local Veterans' Employment Representatives (LVERs) and veterans' service organizations, these may be insufficient to connect contractors with organizations whose mission is specifically tailored to assisting veterans with disabilities obtain employment. For example, the final rule makes no mention of Disabled Veteran Outreach Program personnel nor the Transition Assistance Program offered to transitioning servicemembers. We urge the Department to seek ways to foster connections between the contractor community and groups advocating for employment of veterans with disabilities.

We also disagree with the Department's decision to retain the waiver language in Section 60-300.4 (b)(2) allowing the head of a contracting agency to waive these regulations in the name of "national security." Much of the federal government's contracting dollars are being spent through the Department of Defense and many veterans with disabilities will have the requisite security clearances that would make them ideal candidates for positions within such contracts. We do not believe that employment opportunities for these veterans should be cast aside under such blanket exception language.

The Department indicated that it encountered difficulties in finding sufficient data to demonstrate the availability of protected veterans on which stronger benchmarks could be based. The task force continues to believe that the Department of Veterans Affairs should have data sources that would assist OFCCP in identifying, at the very least, percentages of veterans with service-connected disabilities so that contractors could more fully direct recruitment efforts toward these veterans with significant barriers to employment.

Finally, we note that the final rule did not address a concern regarding the complaint process that our task force identified in our comments. In Section 60-300.61, the rule allows complaints to be filed either with OFCCP or the Department of Labor's Veterans' Employment and Training Service or through the LVERs. It is possible that veterans with disabilities may believe that they were subjected to discrimination due to their status as a veteran and as a person with a disability. Because the Equal Employment Opportunity Commission has jurisdiction over discrimination complaints filed on the basis of disability, we believe that connection should have been made to the agency responsible for investigating these violations.

These concerns notwithstanding, we strongly believe that the final VEVRAA regulation will provide a solid foundation for increasing employment opportunities for veterans with disabilities. Our task force is happy to work with you and your colleagues to ensure proper implementation, oversight and enforcement of these rules. If you have any questions, please contact the co-chairs of the CCD Veterans and Military Families Task Force: Heather Ansley (202-556-2076, Ext. 7702; hansley@vetsfirst.org); Maynard Friesz (202-403-8345; mfriesz@easterseals.com); or Susan Prokop (202-416-7707; susanp@pva.org).

Sincerely,

ACCSES
American Association on Health and Disability
Brain Injury Association of America
Easter Seals
Health and Disability Advocates
Mental Health America
National Disability Rights Network
Paralyzed Veterans of America
VetsFirst, a program of United Spinal Association

cc: The Honorable Keith Kelly, Assistant Secretary, Department of Labor, Veterans' Employment and Training Service