

whether the contractor is in compliance with the mandatory listing requirements of the equal opportunity clause.

APPENDIX A TO PART 60-250—GUIDELINES ON A CONTRACTOR'S DUTY TO PROVIDE REASONABLE ACCOMMODATION

The guidelines in this appendix are in large part derived from, and are consistent with, the discussion regarding the duty to provide reasonable accommodation contained in the Interpretive Guidance on Title I of the Americans with Disabilities Act (ADA) set out as an appendix to the regulations issued by the Equal Employment Opportunity Commission (EEOC) implementing the ADA (29 CFR part 1630). Although the following discussion is intended to provide an independent "free-standing" source of guidance with respect to the duty to provide reasonable accommodation under this part, to the extent that the EEOC appendix provides additional guidance which is consistent with the following discussion, it may be relied upon for purposes of this part as well. See §60-250.1(c). Contractors are obligated to provide reasonable accommodation and to take affirmative action. Reasonable accommodation under VEVRAA, like reasonable accommodation required under section 503 and the ADA, is a part of the nondiscrimination obligation. See EEOC appendix cited in this paragraph. Affirmative action is unique to VEVRAA and section 503, and includes actions above and beyond those required as a matter of nondiscrimination. An example of this is the requirement discussed in paragraph 2 of this appendix that a contractor *shall* make an inquiry of a special disabled veteran who is having significant difficulty performing his or her job.

1. A contractor is required to make reasonable accommodations to the known physical or mental limitations of an "otherwise qualified" special disabled veteran, unless the contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business. As stated in §60-250.2(o), a special disabled veteran is qualified if he or she satisfies all the skill, experience, education and other job-related selection criteria, and can perform the essential functions of the position with or without reasonable accommodation. A contractor is required to make a reasonable accommodation with respect to its application process if the special disabled veteran is qualified with respect to that process. One is "otherwise qualified" if he or she is qualified for a job, except that, because of a disability, he or she needs a reasonable accommodation to be able to perform the job's essential functions.

2. Although the contractor would not be expected to accommodate disabilities of which it is unaware, the contractor has an affirmative obligation to provide a reasonable accommodation for applicants and employees who are known to be special disabled veterans. As stated in §60-250.42 (see also Appendix B of this part), the contractor is required to invite applicants who have been provided an offer of employment, before they are placed on the contractor's payroll, to indicate whether they are covered by the Act and wish to benefit under the contractor's affirmative action program. That section further provides that the contractor should seek the advice of special disabled veterans who "self-identify" in this way as to proper placement and appropriate accommodation. Moreover, §60-250.44(d) provides that if an employee who is a known special disabled veteran is having significant difficulty performing his or her job and it is reasonable to conclude that the performance problem may be related to the disability, the contractor is required to confidentially inquire whether the problem is disability related and if the employee is in need of a reasonable accommodation.

3. An accommodation is any change in the work environment or in the way things are customarily done that enables a special disabled veteran to enjoy equal employment opportunities. Equal employment opportunity means an opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges of employment, as are available to the average similarly situated employee without a disability. Thus, for example, an accommodation made to assist an employee who is a special disabled veteran in the performance of his or her job must be adequate to enable the individual to perform the essential functions of the position. The accommodation, however, does not have to be the "best" accommodation possible, so long as it is sufficient to meet the job-related needs of the individual being accommodated. There are three areas in which reasonable accommodations may be necessary: (1) accommodations in the application process; (2) accommodations that enable employees who are special disabled veterans to perform the essential functions of the position held or desired; and (3) accommodations that enable employees who are special disabled veterans to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities.

4. The term "undue hardship" refers to any accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the contractor's business. The contractor's claim that the cost of a particular accommodation will impose an undue hardship requires a determination of which financial resources should be considered—

those of the contractor in its entirety or only those of the facility that will be required to provide the accommodation. This inquiry requires an analysis of the financial relationship between the contractor and the facility in order to determine what resources will be available to the facility in providing the accommodation. If the contractor can show that the cost of the accommodation would impose an undue hardship, it would still be required to provide the accommodation if the funding is available from another source, e.g., the Department of Veterans Affairs or a state vocational rehabilitation agency, or if Federal, state or local tax deductions or tax credits are available to offset the cost of the accommodation. In the absence of such funding, the special disabled veteran should be given the option of providing the accommodation or of paying that portion of the cost which constitutes the undue hardship on the operation of the business.

5. Section 60-250.2(t) lists a number of examples of the most common types of accommodations that the contractor may be required to provide. There are any number of specific accommodations that may be appropriate for particular situations. The discussion in this appendix is not intended to provide an exhaustive list of required accommodations (as no such list would be feasible); rather, it is intended to provide general guidance regarding the nature of the obligation. The decision as to whether a reasonable accommodation is appropriate must be made on a case-by-case basis. The contractor generally should consult with the special disabled veteran in deciding on the appropriate accommodation; frequently, the individual will know exactly what accommodation he or she will need to perform successfully in a particular job, and may suggest an accommodation which is simpler and less expensive than the accommodation the contractor might have devised. Other resources to consult include the appropriate state vocational rehabilitation services agency, the Equal Employment Opportunity Commission (1-800-669-4000 (voice), 1-800-669-6820 (TTY)), the Job Accommodation Network (JAN) operated by the Office of Disability Employment Policy in the U.S. Department of Labor (1-800-JAN-7234 or 1-800-232-9675), private disability organizations (including those that serve veterans), and other employers.

6. With respect to accommodations that can permit an employee who is a special disabled veteran to perform essential functions successfully, a reasonable accommodation may require the contractor to, for instance, modify or acquire equipment. For the visually-impaired such accommodations may include providing adaptive hardware and software for computers, electronic visual aids, braille devices, talking calculators, magnifiers, audio recordings and braille or

large-print materials. For persons with hearing impairments, reasonable accommodations may include providing telephone handset amplifiers, telephones compatible with hearing aids and telecommunications devices for the deaf (TDDs). For persons with limited physical dexterity, the obligation may require the provision of goose neck telephone headsets, mechanical page turners and raised or lowered furniture.

7. Other reasonable accommodations of this type may include providing personal assistants such as a reader, interpreter or travel attendant, permitting the use of accrued paid leave or providing additional unpaid leave for necessary treatment. The contractor may also be required to make existing facilities readily accessible to and usable by special disabled veterans—including areas used by employees for purposes other than the performance of essential job functions such as restrooms, break rooms, cafeterias, lounges, auditoriums, libraries, parking lots and credit unions. This type of accommodation will enable employees to enjoy equal benefits and privileges of employment as are enjoyed by employees who do not have disabilities.

8. Another of the potential accommodations listed in §60-250.2(t) is job restructuring. This may involve reallocating or redistributing those nonessential, marginal job functions which a qualified special disabled veteran cannot perform to another position. Accordingly, if a clerical employee who is a special disabled veteran is occasionally required to lift heavy boxes containing files, but cannot do so because of a disability, this task may be reassigned to another employee. The contractor, however, is not required to reallocate essential functions, *i.e.*, those functions that the individual who holds the job would have to perform, with or without reasonable accommodation, in order to be considered qualified for the position. For instance, the contractor which has a security guard position which requires the incumbent to inspect identity cards would not have to provide a blind special disabled veteran with an assistant to perform that duty; in such a case, the assistant would be performing an essential function of the job for the special disabled veteran. Job restructuring may also involve allowing part-time or modified work schedules. For instance, flexible or adjusted work schedules could benefit special disabled veterans who cannot work a standard schedule because of the need to obtain medical treatment, or special disabled veterans with mobility impairments who depend on a public transportation system that is not accessible during the hours of a standard schedule.

9. Reasonable accommodation may also include reassignment to a vacant position. In general, reassignment should be considered only when accommodation within the special

disabled veteran's current position would pose an undue hardship. Reassignment is not required for applicants. However, in making hiring decisions, contractors are encouraged to consider applicants who are known special disabled veterans for all available positions for which they may be qualified when the position(s) applied for is unavailable. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees who are special disabled veterans by forcing reassignments to undesirable positions or to designated offices or facilities. Employers should reassign the individual to an equivalent position in terms of pay, status, etc., if the individual is qualified, and if the position is vacant within a reasonable amount of time. A "reasonable amount of time" should be determined in light of the totality of the circumstances.

10. The contractor may reassign an individual to a lower graded position if there are no accommodations that would enable the employee to remain in the current position and there are no vacant equivalent positions for which the individual is qualified with or without reasonable accommodation. The contractor may maintain the reassigned special disabled veteran at the salary of the higher graded position, and must do so if it maintains the salary of reassigned employees who are not special disabled veterans. It should also be noted that the contractor is not required to promote a special disabled veteran as an accommodation.

11. With respect to the application process, appropriate accommodations may include the following: (1) Providing information regarding job vacancies in a form accessible to special disabled veterans who are vision or hearing impaired, e.g., by making an announcement available in braille, in large print, or on audio tape, or by responding to job inquiries via TDDs; (2) providing readers, interpreters and other similar assistance during the application, testing and interview process; (3) appropriately adjusting or modifying employment-related examinations, e.g., extending regular time deadlines, allowing a special disabled veteran who is blind or has a learning disorder such as dyslexia to provide oral answers for a written test, and permitting an applicant, regardless of the nature of his or her ability, to demonstrate skills through alternative techniques and utilization of adapted tools, aids and devices; and (4) ensuring a special disabled veteran with a mobility impairment full access to testing locations such that the applicant's test scores accurately reflect the applicant's skills or aptitude rather than the applicant's mobility impairment.

#### APPENDIX B TO PART 60-250—SAMPLE INVITATION TO SELF-IDENTIFY

NOTE: When the invitation to self-identify is being extended to special disabled veterans prior to an offer of employment, as is permitted in limited circumstances under §§60-250.42(a)(1) and (2), paragraph 7(ii) of this appendix, relating to identification of reasonable accommodations, should be omitted. This will avoid a conflict with the EEOC's ADA Guidance, which in most cases precludes asking a job applicant (prior to a job offer being made) about potential reasonable accommodations.

##### [Sample Invitation To Self-Identify]

1. This employer is a Government contractor subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, which requires Government contractors to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, and other protected veterans.

2. [The following text should be used when extending an invitation to veterans of the Vietnam era, recently separated veterans, and other protected veterans only.] If you are a veteran of the Vietnam era, recently separated veteran, or other protected veteran, we would like to include you under our affirmative action program. If you would like to be included under the affirmative action program, please tell us. The term "veteran of the Vietnam era" refers to a person who served on active duty for a period of more than 180 days, and was discharged or released therefrom with other than a dishonorable discharge, if any part of such active duty occurred in the Republic of Vietnam between February 28, 1961, and May 7, 1975 or between August 5, 1964, and May 7, 1975, in all other cases. The term also refers to a person who was discharged or released from active duty for a service-connected disability if any part of such active duty was performed in the Republic of Vietnam between February 28, 1961, and May 7, 1975, or between August 5, 1964, and May 7, 1975, in all other cases. The term "recently separated veteran" refers to any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty. The term "other protected veteran" refers to a person who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, under laws administered by the Department of Defense.

[The following text should be used when extending an invitation to special disabled veterans only.] If you are a special disabled veteran, we would like to include you in our affirmative action program. If you would like