

# Office of Federal Contract Compliance Programs (OFCCP)

## Frequently Asked Questions New Section 503 Regulations

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On September 24, 2013, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published a Final Rule that makes changes to the regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended (Section 503) at 41 CFR Part 60-741. These new regulations became effective on March 24, 2014. You can view the new regulations on the OFCCP Web site at [www.dol.gov/ofccp/503Rule](http://www.dol.gov/ofccp/503Rule), either as published in the *Federal Register* or as posted in the *Electronic Code of Federal Regulations* (eCFR). Additional information about the new Section 503 regulations is provided in the Frequently Asked Questions (FAQs), below.

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### General Information

#### 1. Why did OFCCP revise its Section 503 regulations?

OFCCP revised the Section 503 regulations to update and strengthen contractors' affirmative action and nondiscrimination responsibilities. The framework articulating contractors' Section 503 responsibilities has been in place since the 1970's. However, both the unemployment rate of working age individuals with disabilities and the percentage of working age individuals with disabilities that are not in the labor force remain significantly higher than for those without disabilities. A substantial disparity in the employment rate of individuals with disabilities continues to persist despite years of technological advancements that have made it possible for people with disabilities to apply for and successfully perform a broad array of jobs. In addition, we are finding more Section 503 violations during compliance investigations. This seems to indicate that the current compliance framework is not as effective as hoped.

Several factors contribute to limiting the ability of individuals with disabilities to seek, find, keep, and thrive in jobs. The existence of an outdated framework that does not reflect the realities of today's workplace or current disability rights law; the persistent unemployment and underutilization of individuals with disabilities; and certain institutional and process barriers are all limiting factors. It is these factors, and others, that highlight the need for new regulations.

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#### 2. Did OFCCP change all of the Section 503 regulations?

No, several Section 503 requirements remain unchanged in the new regulations. OFCCP republished all of the Section 503 implementing regulations when it published the Final Rule in the Federal Register, whether or not the individual regulation changed, to make the Final Rule easier to read and understand.

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#### 3. Do the new Section 503 regulations differ from the regulations proposed in the Notice of Proposed Rulemaking (NPRM)?

Yes. OFCCP received more than 400 comments on the NPRM from contractors, disability rights organizations, and others during the public comment period. In light of the comments, we made several changes to the proposed regulations. The resulting new regulations increase contractor accountability for compliance with their affirmative action obligations, but provide contractors with greater flexibility than the NPRM originally proposed.

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#### 4. Where can I get a copy of the new regulations?

The new Section 503 regulations are available on the OFCCP Web site at [www.dol.gov/ofccp/503Rule](http://www.dol.gov/ofccp/503Rule), where you can read them as published in the *Federal Register* or as posted in the *Electronic Code of Federal Regulations* (eCFR).

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**5. Will the "EEO is the Law" poster be revised in light of the new regulations? If so, should contractors stop using the current poster now that the new regulations are effective?**

It is likely that the "EEO is the Law" poster will be revised in light of changes in the new regulations; for example, the new poster will reflect the change in the terminology used to describe the veterans protected by VEVRAA. Even though OFCCP is working with the Equal Employment Opportunity Commission (EEOC) to revise the poster, contractors should continue using the existing poster. OFCCP will post a notice on its Web site to let contractors know when the new poster is available for use.

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**Effective Date and Compliance Schedule**

**1. When did the new Section 503 regulations become effective?**

The new regulations became effective on March 24, 2014. Contractors should be in compliance with the nondiscrimination provisions of the new regulations as of this effective date. However, OFCCP is providing contractors with an extended compliance date for the Affirmative Action Program requirements in Subpart C. During this extended period, OFCCP will provide technical assistance to facilitate the transition for contractors.

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**2. March 24, 2014 fell in the middle of my company's AAP year. When are we required to put in place a new AAP that complies with Subpart C of the new regulations?**

Contractors with an AAP in place as of the effective date of the new regulations (March 24, 2014) may maintain that AAP until the end of their AAP year and delay their compliance with the AAP requirements of Subpart C of the new regulations until the start of their next AAP cycle. Contractors are nevertheless encouraged to begin updating their employment practices and IT systems to come into compliance with the revised requirements of Subpart C of the new regulations as soon as possible. In addition, contractors are reminded that they must be in compliance with the other requirements of the new regulations, in subparts A, B, D and E, as of the effective date.

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**Overview of the New Section 503 Regulations**

**1. What changes do the new Section 503 regulations make to the definitions section of the regulations?**

The new Section 503 regulations make several changes to the definitions section of the regulations:

- The title "Director" replaces the term "Deputy Assistant Secretary" to reflect the current title of the head of OFCCP;
  - The word "disability" and its component parts are made consistent with the definitions resulting from the passage of the ADAAA, which became effective on January 1, 2009, and which amends both the ADA and Section 503; and
  - The terms "individual with a disability" and "qualified individual with a disability" are changed to "disability" and "qualified individual," respectively, in accordance with the ADAAA.
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**2. Are there different coverage and waiver provisions in the new Section 503 regulations?**

No, there are no substantive changes but we deleted the "contract work only" exception in 60-741(a)(2), which expired in 1992.

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### **3. Do the new regulations include a national utilization goal? What is a utilization goal?**

Yes, the new regulations include an aspirational utilization goal of 7 percent. OFCCP created this goal to give contractors a yardstick against which they can measure the success of their efforts in outreach to and recruitment of individuals with disabilities. More specifically, contractors should use the goal to measure the change in the representation of individuals with disabilities in their workforce. The utilization goal, with its focus on the entire workforce, differs from the placement goal under the Executive Order 11246 program, which focuses on those employees newly placed into positions. The goal is not a quota.

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### **4. How did OFCCP determine the utilization goal?**

OFCCP established the utilization goal primarily using information taken from the disability data collected as part of the American Community Survey (ACS). We based the goal on the 2009 ACS disability data for the "civilian labor force" and the "civilian population," first averaged by EEO-1 job category, and then averaged across EEO-1 category totals. Specifically, we used the mean across these EEO-1 groups to estimate that 5.7% of the civilian labor force has a disability as defined by the ACS. Due to the fact that ACS uses a narrower definition of disability, this 5.7% does not include all individuals with disabilities as defined under the broader definition in Section 503 and the ADAAA.

This number did not take into account discouraged workers, or the effects of historical discrimination against individuals with disabilities that has suppressed the representation of such individuals in the workforce.<sup>1</sup> Therefore, OFCCP adjusted the 5.7% after estimating the size of the discouraged worker effect. We compared the percent of the civilian population with a disability (7.42 percent per the ACS definition) who identified as having an occupation to the percent of the civilian labor force with a disability (5.7 percent) who identified as having an occupation to arrive at the discouraged worker effect. The result, rounded, is a 7 percent utilization goal for individuals with disabilities.

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### **5. If I am a federal contractor, does my company have to use the utilization goal? How do I apply it to my workforce?**

Yes, you do have to use the national 7 percent utilization goal, and, in most instances, you apply it to the same job groups that you created for your Executive Order 11246 affirmative action program (AAP). If you are a small contractor using the EEO-1 job categories as your job groups in your Executive Order AAP, you apply the goal to your EEO-1 job categories. However, if you are a contractor with a total workforce of 100 or fewer employees, you may apply the goal to your workforce as a whole.

While you will not have to calculate your own goal, you will need to know how many individuals with disabilities are currently in your workforce and in what job groups or EEO-1 job categories, as applicable.

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### **6. What happens if my company does not meet the 7 percent goal? Will we be sanctioned or fined?**

Failure to meet the disability goal is not a violation of the regulations and will not lead to a fine, penalty or sanction. The regulations specifically provide that the disability goal is not to be used as a quota or a ceiling that limits or restricts the employment of individuals with disabilities. It further states that a contractor's determination that it failed to meet the disability goal does not constitute either a finding or admission of discrimination in violation of the regulation.

When the percentage of individuals with disabilities in one or more job groups (or EEO-1 categories, or workforce as a whole, as appropriate, for small contractors) is less than the utilization goal, the contractor must take steps to determine whether and where impediments to equal employment exist. This includes assessing existing personnel processes, the effectiveness of its outreach and recruitment efforts, the results of its affirmative action program audit, and any other areas that might affect the success of the affirmative action program. After conducting this assessment, the contractor must develop and execute action-oriented programs to correct any identified problem areas.

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## **7. What is a sheltered workshop? How does a contractor's use of a sheltered workshop affect its assessment of whether it has met its utilization goal?**

Sheltered workshops are segregated facilities that exclusively or primarily employ persons with disabilities. These workshops were created to provide an environment where individuals with certain disabilities can gain job skills and work experience.

Many sheltered workshops are authorized to pay special minimum wages under an exemption in section 14(c) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 214(c), after receiving a certificate from the U.S. Department of Labor's Wage and Hour Division. The certificate allows the payment of special minimum wages to certain workers with disabilities. Section 60-741.47 of the new regulations (previously section 60-741.45) provides that "[c]ontracts with sheltered workshops do not constitute affirmative action in lieu of employment and advancement of qualified disabled individuals in the contractor's own workforce."

Contractors may include a contract with a sheltered workshop in its affirmative action program only if the sheltered workshop is training individuals that the contractor is obliged to hire at full compensation when they become qualified individual with disabilities. Such trainees are not included in the contractor's utilization analysis or counted toward the contractor's goal because they are not part of the contractor's workforce. Only after the trainees become employees of the contractor, and are receiving the same compensation as other employees, may the contractor count these employees toward its utilization goal. If a contractor pays some of its own employees under an FLSA section 14(c) certification, the contractor counts those employees toward its goal in the job group in which they are employed. Contractors with more than 100 employees must apply the goal to each of their job groups, not to their workforce as a whole. Therefore, having a sheltered workshop inside the company will only count toward the contractor's goal with respect to the specific job group in which work is performed by the sheltered workshop at that facility.

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## **8. What changes do the new Section 503 regulations make to the contractor's obligation to invite applicants to self-identify as an individual with a disability?**

The new Section 503 regulations require contractors to invite applicants to self-identify at the pre-offer stage, in addition to the already required post-offer self-identification invitation. OFCCP added this requirement so that contractors can track the number of individuals with disabilities who apply for jobs and use this information to assess the effectiveness of their outreach and recruitment efforts. The pre-offer invitation to self-identify may be included in the contractor's application materials for a position, but must be separate from the application.

OFCCP has developed a form for contractors to use to invite self-identification of disability. The form is available on the OFCCP Web site, in English and Spanish, and in both Word and .pdf formats at [www.dol.gov/ofccp/regs/compliance/section503.htm](http://www.dol.gov/ofccp/regs/compliance/section503.htm).

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## **9. When should my company invite pre-offer self-identification from applicants? Is the timing the same for Internet applicants?**

The new Section 503 regulations permit contractors to invite applicants to self-identify as an individual with a disability at the same time that the contractor collects demographic data regarding race, gender, and ethnicity from applicants, as required by Executive Order 11246. Under Executive Order 11246, the Internet Applicant Rule generally allows contractors to screen out individuals whom they believe do not meet the basic qualifications for the position prior to collecting demographic data regarding race, gender, and ethnicity. In order to harmonize Section 503's pre-offer invitation to self-identify requirement with Executive Order 11246's Internet Applicant recordkeeping provisions, OFCCP will permit contractors to invite applicants to self-identify after they meet the Internet Applicant requirements, including the basic qualification screen.

When designing basic qualification screens, contractors should be mindful of the requirements that Section 503 places on the use of qualification standards and selection criteria, including the use of "basic qualification" screens. Section 503 prohibits contractors from using qualification standards and selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the contractor can show that the standards or criteria are job-related for the position in question and consistent with business necessity. Moreover, contractors may not use selection criteria that relate to the performance of an essential function of the job to exclude an individual with a disability if that person could satisfy the criteria with a reasonable accommodation.

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**10. Are there other new provisions related to voluntary employee self-identification, in addition to the requirement that contractors provide applicants a voluntary pre-offer self-identification opportunity?**

Yes. There is now a requirement that contractors also regularly invite all of their employees to voluntarily self-identify as an individual with a disability using the self-identification form provided by OFCCP. Contractors must invite their employees to self-identify every five years, beginning the first year that they become subject to the Section 503 voluntary self-identification requirements. In addition, at least once during the years between these invitations, contractors must remind their employees that they may voluntarily update their disability status at any time.

Through the new invitation and reminder to employees to self-identify, contractors can capture data on employees who become disabled while employed, as well as those with existing disabilities who may feel more comfortable self-identifying once they have been employed for some time. It also allows contractors to monitor and improve their practices regarding placement, retention, and promotion.

We also added new language to the voluntary self-identification requirements emphasizing that contractors may not compel or coerce individuals to self-identify, and that contractors must keep all self-identification information confidential.

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**11. Do the new Section 503 regulations still permit my company to incorporate the Equal Opportunity (EO) Clause into subcontracts by reference?**

Yes. The new regulations permit contractors to incorporate the EO Clause into subcontracts by reference, but only by citing the EO Clause in the regulations **AND** including the following sentences in bold text:

**"This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities."**

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**12. Are there any new provisions in the EO Clause?**

Yes. A new provision is added to be consistent with a comparable EO 11246 requirement regarding race and sex. The paragraph requires that contractors state in solicitations and advertisements that they are equal employment opportunity employers of individuals with disabilities.

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**13. Were any existing EO Clause provisions revised or updated?**

Yes. The new Section 503 regulations update Paragraph 4 of the EO Clause so that it now reflects changes in technology and the business practices of contractors. In addition, OFCCP revised 60-741.5(d) to improve notice to contractors of the nature of their EO obligations.

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**14. Can a contractor satisfy its obligation to post a notice informing applicants and employees of their EEO rights by posting the notice electronically?**

When a contractor has employees who do not work at its physical location, the contractor can satisfy its posting obligation by posting the EEO notice in electronic format. To have the ability to use electronic postings to satisfy this obligation, a contractor must either provide these employees with computers that can access the electronic posting or the contractor must have actual knowledge that the electronically posted notice is otherwise accessible to these employees. Contractors must post electronic notices for employees in a conspicuous location and format on their Intranet or send them to employees by electronic mail (i.e., email). If the contractor uses an electronic application process, it must post an electronic notice to inform job applicants of their EEO rights. Electronic notices for applicants must be conspicuously stored with, or as part of, the electronic application. In addition, in individual instances, a contractor may have to provide a notice of EEO rights electronically as a form of reasonable accommodation for a disabled employee, even if the employee works at the contractor's physical location.

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**15. Do the new Section 503 regulations change the contractor's obligation to conduct a review of physical and mental job qualification standards?**

No. Section 60-741.44(c) of the new regulations still requires that these reviews of job qualification standards be conducted "periodically."

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**16. Do the new Section 503 regulations require the use of mandatory job listings?**

No. The new regulations do not mandate that contractors list employment opportunities with the American Job Centers, nor does it require that contractors enter into linkage agreements. Rather, the new regulations require that contractors undertake "appropriate outreach and positive recruitment activities," and provide a number of suggested resources that contractors may use to carry out this general outreach and recruitment obligation.

The approach in the new regulations gives contractors the flexibility to choose the specific resources they believe will be most helpful in identifying and attracting qualified individuals with disabilities, given their particular needs and circumstances.

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**17. What changes do the new Section 503 regulations make to the Section 503 data collection requirements?**

There is a new requirement specific to data collection and analysis. As a contractor, you must document and update annually the following information in 60-741.44(k):

- for applicants: the total number of applicants for employment, and the number of applicants who are known individuals with disabilities;
- for hires: the total number of job openings, the number of jobs filled, and the number of individuals with disabilities hired; and
- the total number of job openings, and the number of jobs that are filled.

This data must be retained for three years.

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**18. Do the new Section 503 regulations change the requirement that contractors document the design and implementation of an audit and reporting system for their affirmative action program?**

OFCCP always intended that contractors document the actions they take to comply with the requirement to design and implement an audit and reporting system. The new regulations make this intention explicit by requiring that contractors document these actions and retain these documents as employment records.

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## **19. Do the new Section 503 regulations change the requirements for conducting outreach and recruitment?**

The new regulations, at 60-741.44(f)(4), require the contractor to document all of its outreach and recruitment activities, and retain these records for three years. This should enable contractors and OFCCP to evaluate the effectiveness of these efforts in identifying and recruiting qualified individuals with disabilities.

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## **20. How do the new regulations change the Section 503 recordkeeping requirements?**

The recordkeeping requirements are modified to incorporate the new three-year record retention timeframe required under 60-741.44(f)(4) and (k).

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## **21. Do the new Section 503 regulations update how compliance officers conduct compliance evaluations?**

Yes. It has long been OFCCP's practice to obtain information pertinent to the evaluation for periods after the date of the scheduling letter. The new regulations codify this position by stating that OFCCP may extend the temporal scope of an evaluation and examine information after the date of the compliance evaluation scheduling letter, if OFCCP deems it necessary to carry out its investigation of potential Section 503 violations. The new regulations also state that, upon request, the contractor must inform OFCCP of the format(s) in which it maintains its records and other information (e.g., Word; pdf; Excel), and provide the records and information to OFCCP in the available format(s) OFCCP selects. In addition, the new regulations state that OFCCP may request that the contractor provide documents either on-site or off-site during compliance checks and that OFCCP may conduct focused reviews both on-site and off-site. Finally, the new regulations add a pre-award compliance evaluation procedure like the one contained in the Executive Order 11246 regulations.

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## **Compliance Assistance and Education**

### **1. How can I contact OFCCP if I have questions about the new Section 503 regulations?**

You may call OFCCP Toll-Free at 1-800-397-6251 (TTY: 1-877-889-5627) or contact us by email at [OFCCP-Public@dol.gov](mailto:OFCCP-Public@dol.gov). You may also contact the field office nearest you for assistance. To locate your nearest office visit our on-line OFCCP office directory at <http://www.dol.gov/ofccp/contacts/ofnation2.htm>.

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### **2. Does OFCCP provide technical assistance for contractors on the new Section 503 requirements?**

Yes. OFCCP conducted a series of training webinars to help federal contractors comply with the new regulations, the recordings of which are available on the OFCCP website at [http://www.dol.gov/ofccp/regs/compliance/final\\_rules\\_webinars.htm](http://www.dol.gov/ofccp/regs/compliance/final_rules_webinars.htm). Future training webinars on the new regulations will also be announced on this webpage.

In addition, OFCCP has compiled resources to support federal contractor compliance with the new regulations, which are available on the OFCCP website at <http://www.dol.gov/ofccp/regs/compliance/Resources.htm>.

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## Implementation Questions

### *In General*

**UPDATED OCT 2014**

#### **1. Does the Scheduling Letter request data and information required in the new Section 503 regulations?**

Yes. Effective October 1, 2014, OMB approved a revised Scheduling Letter and Itemized Listing specifying the documents and data that a contractor must provide to OFCCP when selected for a compliance evaluation. These include the contractor's Section 503 Affirmative Action Program (AAP), and the documentation and information required by Subpart C of the new regulations, including but not limited to the contractor's utilization analysis of the representation of individuals with disabilities, evaluation of outreach and recruitment efforts, and the data described in § 60-741.44(k).

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#### **2. The revised regulations require that the "EEO is the Law" poster be made available in a "form that is accessible and understandable" to individuals with disabilities and disabled veterans, such as Braille or large print. Must contractors maintain Braille and/or large print versions of the poster at all locations?**

Providing the "EEO is the Law" poster in an alternate format, such as large print or Braille, is a form of reasonable accommodation. Therefore, contractors must make the poster available in such an alternate format only when an applicant or employee requests the poster in an alternate format, or when the contractor knows that an applicant or employee is unable to read the poster because of a disability. Contractors may also provide the poster to an applicant or employee with a disability in other alternate formats, such as on disc or in an audio recording, so long as the format provided enables the individual with a disability to access the contents of the poster.

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#### **3. The new regulations require contractors to "conspicuously store" the "EEO is the Law" poster with, or as part of, an electronic application. Does this mean that an actual physical or electronic copy of the poster must be individually stored with each application?**

The purpose of this requirement is to ensure that applicants who apply for jobs electronically are informed of their equal employment opportunity protections as part of the application process. Although including a copy of the poster with every electronic application will satisfy the requirement, the regulations do not require contractors to do this. Rather, a contractor may choose to satisfy this requirement in any way that ensures that every electronic applicant has the opportunity to view the poster during the application process, such as by displaying a prominent link to the poster, along with a brief explanation of what the link connects to, as part of their electronic application.

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#### **4. When will the Federal Acquisition Regulation (FAR) be updated to reflect the new Section 503 and VEVRAA requirements?**

Updating the FAR is a separate process that is currently underway through the FAR Council. OFCCP is being consulted during that process and is working to ensure that updates to the FAR reflect Section 503 and VEVRAA requirements. It is not yet clear when these FAR revisions will be completed and the new FAR will be published. You may want to check with the Federal Acquisition Regulatory Council at <https://acquisition.gov/far/>.

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#### **5. Under the new regulations, must a contractor hire an individual with a disability who is not the best qualified but who meets the minimum requirements of the job for the purposes of affirmative action?**

No. The Section 503 regulations do not require contractors to hire an individual who is not qualified for the position being sought. Nor do they require contractors to hire a less qualified candidate instead of the best qualified candidate for the purposes of affirmative action. However, it would not violate Section 503 for a contractor to select a person with a disability over a candidate without a disability who was equally or better qualified, so long as that selection was not based on a prohibited factor such as race, gender or ethnicity.

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## ***Compliance Schedule***

### **1. What do contractors with AAPs in place under the old regulations need to do as of the effective date of the new Section 503 regulations (March 24, 2014) to ensure that their first AAPs under the new regulations are as compliant as possible?**

As a contractor, you may delay compliance with the AAP requirements of Subpart C until your first AAP is due following the March 24, 2014 effective date. This includes the newly required pre-offer self-identification elements in § 60-741.42. While you are allowed to delay compliance with Subpart C until the start of your first post-effective date AAP, OFCCP does not encourage this approach. However, should you choose not to comply with Subpart C until your first post-effective date AAP, you must ensure that your existing AAP complies with all the current requirements, including using the post-offer self-identification invitation required by the current regulations in § 60-741.42.

OFCCP recommends that all contractors begin complying with Subpart C of the new regulations **prior** to the issuance of their first AAP under the new rules, and strongly encourages contractors to take these steps as soon as practicable. To begin coming into compliance, OFCCP recommends that, to the extent practicable, contractors:

- Invite applicants to voluntarily self-identify as a person with a disability, at the pre- and post-offer stages, using the OFCCP form (60-741.42(a));
- Conduct an initial self-identification survey of employees (60-741.42(c));
- Include an EO policy statement in the AAP that shows top executive support for their AAPs (60-741.44(a));
- Ensure that applicants and employees with disabilities have equal access to the contractors' personnel processes, including those implemented using electronic means (60-741.44(b));
- Assess and document the effectiveness of their outreach and recruitment efforts annually (60-741.44(f)(3));
- Ensure that outreach and recruitment efforts are documented and retained (60-741.44(f)(4));
- Document actions taken to comply with the audit and reporting system obligations (60-741.44(h));
- Train employees engaged in key personnel activities (60-741.44(j));
- Conduct data analysis by calculating data related to applicants and hires (60-741.44(k));
- Conduct an annual workforce assessment and apply the 7 percent goal to each job group or to the workforce as a whole for smaller contractors with 100 or fewer employees (60-741.45(a); 741.45(c); 741-45(i)); and
- Develop action plans for resolving any problems identified in the contractor's utilization of individuals with disabilities (60-741.45(f)).

In addition, contractors must ensure **full compliance** with the requirements under the old regulations, including reviewing personnel practices (60-741.44(b)), reviewing job qualifications (60-741.44(c)), making reasonable accommodations available (60-741.44(d)), developing harassment policies (60-741.44(e)), engaging in outreach (60-741.44(f)), and having procedures for distributing information on EO and affirmative action efforts (60-741.44(g)). An early start implementing the new regulations' Subpart C affirmative action program requirements gives contractors time to identify issues or challenges, and to seek technical assistance from OFCCP prior to the due date of their first AAP under the new regulations. This makes for a more robust first year AAP plan under the new regulations.

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### **2. What new elements should be included in the first AAP under the new Section 503 regulations, that is, after the effective date (March 24, 2014)?**

Your first AAP under the new regulations should address all elements of Subpart C. Ideally, a contractor's first AAP under the new rules should include, as best as possible, all of the elements of Subpart C, including:

- Evidence that the contractor is complying with the requirements to invite voluntary self-identification per 60-741.42;
- The inclusion of an equal opportunity policy statement per 60-741.44(a);
- A review of the contractor's personnel processes per 60-741.44(b);
- A schedule for the review of all physical and mental job qualification standards and evidence that it adheres to that schedule per 60-741.44(c);

- Information relating to the procedures developed and implemented ensuring that employees are not harassed on the basis of disability per 60-741.44(e);
- A review and assessment of the contractor's outreach and recruitment efforts per 60-741.44(f);
- Documentation of all activities taken to comply with the obligations of 60-741.44 per 60-741.44(f)(4);
- Documentation that the contractor has implemented and disseminated its commitment to affirmative action to employ and advance in employment qualified individuals with disabilities per 60-741.44(g);
- Evidence that the contractor has designed and implemented an audit and reporting system per 60-741.44(h);
- Identification of the individual assigned responsibility for the implementation of the contractor's AAP and evidence of compliance with 60-741.44(i);
- Data collection pursuant to 60-741.44(k);
- The snapshot of the disability composition of the workforce, results of the utilization analysis and application of the goal; and a discussion of any problem areas identified and the actions planned to address any identified problems per 60-741.45.

**For each element required by Subpart C, the contractor's first AAP should:**

- Address everything that the contractor has done to comply with the elements of Subpart C that are not new;
- Address everything that the contractor has done to come into compliance with the new provisions of Subpart C that became effective on March 24, 2014; and
- To the extent that the contractor is not yet in full compliance with the new provisions of Subpart C, discuss the steps that it plans to take to come into compliance.

**OFCCP understands that the first AAP is a transitional one for contractors.**

Therefore, a contractor will **NOT** be found in violation of the new Subpart C, so long as it can demonstrate that it has acted reasonably, in light of its particular circumstances.

***Data Collection Analysis***

**1. The data collection requirements in section 60-741.44(k)(2) of the new Section 503 regulations require contractors to document "the total number of job openings and total number of jobs filled." Does the "total number of openings" refer to the number of requisitions or job vacancy announcements, or to the number of individual open positions referenced in the requisitions or announcements?**

The total number of job openings refers to the number of individual positions advertised as open in a job vacancy announcement or requisition. For example, if one job vacancy announcement or requisition includes 5 open positions and results in 4 hires, the contractor would document this as 5 job openings and 4 jobs filled.

**2. The data collection requirements in section 60-741.44(k) also ask contractors to report the number of jobs "filled" (60-741.44(k)(2)) and those "hired" (60-741.44(k)(4) and (5)). How does the number of "jobs filled" differ from the number of people "hired?"**

In the context of the data collection requirements of 60-741.44(k), jobs "filled" refers to all jobs the company filled by any means, be it through a competitive process or non-competitively, e.g., through reassignment or merit promotion. It, therefore, should take into account both new hires into the company and those employees who were placed into new positions via promotions, transfers, and reassignments. In contrast, the number of those "hired" refers solely to those applicants (both internal and external to the contractor) who are hired through a competitive process, including promotions.

**3. Does the number of "jobs filled" include step or ladder movements that are automatically attained upon completion of a stated event, such as time in the job or attainment of a particular certification?**

Both competitive and non-competitive movements may qualify as "jobs filled," so long as the movement is one into a different position, rather than simply a movement within the same position. This will necessarily be a fact-based determination. So, for example, a time-driven salary increase from one "step" to the next within the same position would not be a "job filled," since there was not any movement into a new position. By contrast, if an apprentice completes a certification program and moves into a journeyman position, then such movement would be a "job filled," since it is a movement from one position to another.

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**4. Can a contractor's existing human resources information system (HRIS) and/or applicant tracking system (ATS) serve as the "data analysis file" in which disability self-identification must be stored?**

Contractors may use their existing human resources information systems or applicant tracking systems as the data analysis file repositories for the disability data collected pursuant to the new regulations, provided that certain criteria are met. Specifically, the disability-related data must be stored securely, apart from other personnel information, so that confidentiality is maintained, and access to this data must be limited solely to contractor personnel who have a need to know the information for the purpose of complying with OFCCP's regulations. Disability self-identification data must not be kept with the employee's confidential medical file.

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***Self-Identification***

**1. May contractors create an electronically fillable copy of the form used to invite voluntary self-identification of disability?**

Yes, contractors may create an electronically fillable version of the form used to invite self-identification **provided** that form meets certain requirements. The e-form must:

- Display the OMB number and expiration date;
- Contain the text of the form without alteration;
- Use a sans-serif font, such as Calibri or Arial; and
- Use at least 11-pitch for font size (with the exception of the footnote and burden statement, which must be at least 10-pitch in size).

Though it may seem that specifying the size and type of font is unnecessary, OFCCP is doing so to ensure the consistency of appearance, ease of reading, and accessibility of the form. By using the OMB number and date, job applicants and employees know that the form is an officially approved government form.

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**2. May contractors provide applicants and employees with a name and other contact information, at the same time they invite voluntary self-identification of disability status, so that the applicants and employees can obtain additional information about reasonable accommodation?**

Yes. Contractors are encouraged to provide additional information about reasonable accommodation at the same time they invite voluntary self-identification of disability. This may include the name and contact information of the official(s) responsible for processing requests for reasonable accommodation from applicants and employees with disabilities, and information about the contractor's reasonable accommodation procedures. The self-identification form contains a statement that contractors are required to provide reasonable accommodation to qualified individuals with disabilities to ensure equal employment opportunity and encourages applicants and employees to inform the contractor if a reasonable accommodation is needed. Although contractors may not alter the content of the OFCCP's voluntary self-identification form, they are encouraged to provide additional reasonable accommodation information with the form.

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### **3. May a contractor fulfill its obligation to invite its current employees to self-identify as having a disability by asking them to sign into an employee portal on the company Intranet?**

The Section 503 regulations do not prescribe a particular method that contractors must use to invite its employees to self-identify. Contractors therefore have the flexibility to choose any method or methods that are reasonable and likely to be effective, given its particular circumstances. For example, contractors may choose to inform employees that it is inviting their self-identification in the same manner it uses to disseminate other important workplace notices to its employees. This might be emailing the notice of the survey and the self-identification form, or an Intranet link to the form, to all employees, or it might be prominently posting a notice with a link to the self-identification form on the company Intranet, prominently posting a notice and copies of the form in the employee lounge, or distributing a notice and copies of the form where employees go to sign in or pick up their paycheck.

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### **4. What information must a contractor store in order to demonstrate its compliance with the requirement to invite voluntary self-identification of disability from applicants and employees?**

#### **NEW**

Recognizing that contractors may have different practices and information technology capabilities, OFCCP is providing a range of options for documenting compliance with the voluntary invitation to self-disclose disability requirement.

- Paper Invitations. A contractor that invites voluntary self-identification of disability by using paper copies of the OFCCP self-identification form must retain either the hard copies of the completed self-identification forms, or electronic copies (e.g., pdf, scanned, etc.) of the completed paper forms. The contractor must also retain any log, spreadsheet, or database that it may have developed to record the data from the self-identification forms.
  - Electronic Invitations. A contractor that electronically invites voluntary self-identification of disability must either:
    - Retain electronic copies (e.g., pdf, scanned, etc.) of the electronically completed self-identification forms, as well as any log, spreadsheet or database it may have developed to record the data from the self-identification forms;
    - Retain hard copies of the electronically completed self-identification forms, as well as any log, spreadsheet or database it may have developed to record the data from the self-identification forms; or
    - Retain a detailed log, spreadsheet or database of the data collected from each electronically completed form, without copies of each individually completed form, if the electronic system does not store completed forms. However, the contractor must also be able to demonstrate how they delivered and/or displayed the voluntary invitation to self-identify. This allows compliance officers to verify that contractors met their obligation to use the OMB-approved form.
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#### ***Vacancy Announcement Tagline***

### **1. May contractors satisfy the EEO tagline requirement by abbreviating "disability" and "protected veteran status" as "D" and "V," respectively?**

Contractors may refer to those protected by Section 503 or VEVRAA by abbreviation, but such abbreviations must be commonly understood by those seeking employment. Simply using "D" and "V" are not adequate abbreviations for this reason. For those protected by Section 503 or VEVRAA, the tagline should at a minimum state "disability" and "vet" so that the tagline will be clearly understood by jobseekers.

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### ***Equal Opportunity Clause***

**1. For those contractors that elect to incorporate the required Equal Opportunity (EO) clauses by reference, may the "incorporation by reference" clause required by 41 CFR 60-300.5(a) be combined with the "incorporation by reference" clause required by 41 CFR 60-741.5(a)?**

Yes, contractors may combine these two EO "incorporation by reference" clauses provided that the combined clause is set in bold text and the prescribed content of both clauses is preserved. The following example provides one illustration of how this might be done:

**This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

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**2. Are federal contractors permitted to combine all of the Equal Opportunity (EO) clauses required by 41 CFR 60-300.5(a), 41 CFR 60-741.5(a), and 41 CFR 60-1.4(a) (or for construction contractors, 41 CFR 60-4.3(a)) into a single, consolidated "incorporation by reference" clause?**

Yes, contractors may combine all of their required EO clauses into a single "incorporation by reference" clause, provided that the entire combined clause is set in bold text and the prescribed content of the veteran and disability EO "incorporation by reference" clauses is preserved. The following example provides one illustration of how this might be done for a supply and service contractor:

**This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

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### ***Reasonable Accommodation***

**1. Section 503, Appendix B, Developing Reasonable Accommodation Procedures, provides examples of "best practices" for these procedures. During an OFCCP audit, how many of these "best practices" will contractors be held accountable for adopting and implementing?**

Contractors are not obligated to adopt and implement any of the practices found in Appendix B, unless they are required elsewhere in the regulations. Contractors are required to provide needed reasonable accommodations but they are not required to adopt the procedures as discussed in Appendix B. While not required to adopt written procedures, OFCCP certainly encourages contractors to do so. Such procedures would assist contractors in meeting their reasonable accommodation obligations.

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### ***Utilization Goals***

**1. Is there a minimum job group size for the 7% goal in Section 503?**

No, there is no minimum job group size. However, OFCCP recognizes that small contractors may have difficulty applying the goal to their job groups based solely on their size. Therefore, the regulations allow contractors with 100 or fewer employees the option of applying the goal to their entire workforce instead of to their EO 11246 job groups.

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## **2. How should non-responses to the invitation to self-identify as an individual with a disability be treated when conducting the utilization analysis?**

The regulations require contractors to conduct an annual utilization analysis to determine the representation of people with disabilities in each job group, or if it has 100 or fewer employees, in its workforce as a whole. To calculate the percentage of a job group (or workforce) that is comprised of people with disabilities contractors should use the same methodology used to calculate the percentage of a job group (or workforce) that is comprised of any other specific demographic group. Specifically, contractors should compare the number of individuals identified as having a disability to the total number of employees in the job group. Non-responses should be counted solely in the job group (or workforce) total, unless the contractor has actual knowledge that a particular non-responsive individual(s) has a disability. The contractor may count as an individual with a disability any individual who it actually knows to have a disability, whether or not the individual chose to self-identify.

### Footnotes:

<sup>1</sup> Discouraged workers are defined as workers who are no longer seeking employment, but who might do so in the absence of discrimination or other employment barriers. This is similar to the BLS definition of discouraged workers: persons not currently looking for work because they believe no jobs are available for them.