



One Minute Memo[®]

OFCCP Publishes Advance Notice Of Proposed Rulemaking For Section 503 Regulations

We knew it was coming. Office of Federal Contract Compliance Programs (OFCCP) Director Patricia Shiu announced early this year that the agency planned to revise the regulations under Section 503 of the Rehabilitation Act, as amended. OFCCP held town hall meetings and webinar listening sessions to solicit initial input. And now the time for action is here.

OFCCP published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on July 23, 2010, inviting the public to comment on how OFCCP can strengthen the affirmative action requirements for disabled individuals in the Section 503 regulations. It is available online by clicking [here](#). This will be the first comprehensive review of the Section 503 regulations since May 1996. Based on information provided in the ANPR, the revised regulations may be extremely different from the current regulations and impose heightened and additional burdens on federal contractors and subcontractors.

Utilization Analysis and Goals

As one of the most significant proposed changes to the Section 503 regulations, OFCCP is considering the adoption of measures similar to those required in affirmative action programs under the Executive Order 11246 program for supply and service contractors. Specifically, OFCCP may require contractors and subcontractors to conduct utilization analysis - comparing the percentage of individuals with disabilities in each job group within an establishment with the availability of individuals with disabilities in the relevant recruitment area who are qualified to work in those jobs. While contractors typically rely on Census Bureau data when developing their availability factors for EO 11246 affirmative action programs, it is entirely unclear what data can be used to determine availability of individuals with disabilities. OFCCP seeks comment on this issue, among many others.

Topics for Public Comment

OFCCP seeks public comment addressing the following issues related to affirmative action and employment opportunities for individuals with disabilities:

- How the Section 503 affirmative action requirements can be strengthened to measurably increase employment opportunities for individuals with disabilities;
- Measures contractors have taken to fulfill the current Section 503 affirmative action requirements, and the cost of such measures;
- Barriers to hiring people with disabilities;
- Changes to the existing language on permissible qualifications standards that would better ensure equal employment opportunities for individuals with disabilities;
- Potentially requiring contractors to conduct utilization analysis and establish placement goals for individuals with disabilities, the data that should be used to identify the appropriate availability pool, and whether this approach will

increase employment opportunities for individuals with disabilities;

- Contractors' experience with disability employment goals programs voluntarily undertaken or required by state, local or foreign governments;
- Employment practices that have been verifiably effective in recruiting, hiring, advancing, and retaining individuals with disabilities;
- The extent to which workplace flexibility, including flexibility in work schedules and job-protected leave, impacts recruitment and retention of individuals with disabilities;
- Whether employee and manager training has been effective in the promotion or retention of individuals with disabilities;
- Whether inviting all applicants to voluntarily and confidentially self-identify their disabilities before receiving an offer of employment will enhance contractors' ability to more effectively monitor their hiring practices with respect to applicants with disabilities;
- How linkage agreements between contractors and organizations that focus on employment of individuals with disabilities can be strengthened to increase effectiveness;
- The impact, cost and benefits of requiring federal contractors to make information and communication technology used in the job application process and in connection with subsequent employment accessible and usable by individuals with disabilities;
- Other specific changes to the Section 503 regulations that might improve the recruitment, hiring, retention, and advancement of individuals with disabilities by contractors; and
- The impact of any proposed rule on small entities, including small businesses, small nonprofit organizations, and small governmental jurisdictions with populations under 50,000, which must be considered under the Regulatory Flexibility Act; including the types and number of impacted small entities, potential costs, and possible alternatives to minimize adverse impact to small entities.

Comments must be received by September 21, 2010. Seyfarth Shaw will be providing comments to the proposed regulations. If you would like to submit comments to OFCCP with or without being identified, please share them with us, and we will include them with our submission.

For more information about the ANPR, Section 503 of the Rehabilitation Act and implementing regulations, or providing comments to the proposed regulations, please contact the Seyfarth attorney with whom you work or any [attorney on our OFCCP & Affirmative Action Compliance Team](#).



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