

Management Alert



OFCCP Posts New FAQs Clarifying Implementation of Section 503 and VEVRAA Regulations

On February 14, 2014, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published additional FAQs that answer questions that have been puzzling contractors seeking to implement the new Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act (Section 503) regulations. The FAQs are available [here](#) and [here](#). There is some good news for contractors buried in these FAQs. The major changes are summarized below.

Equal Opportunity "Incorporation by Reference" Clauses May Be Combined

The new FAQs confirm that federal contractors may combine the Equal Opportunity (EO) "incorporation by reference" clauses required under the new VEVRAA and Section 503 regulations in their subcontracts and purchase orders. Contractors may choose to combine the language set forth at 41 CFR §§ 60-300.5(a) and 60-741.5(a), "provided that the combined clause is set in bold text and the prescribed content of both clauses is preserved." Contractors may alternatively choose to combine all required EO clauses (including the regulations implementing Executive Order 11246) into a single "incorporation by reference" clause, so long as 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.

What should federal contractors do now? Contractors must incorporate the applicable EO clause(s) in their contracts and subcontracts using the prescribed text and bold format by **March 24, 2014**. The OFCCP provides the following example of the combined text in the new FAQs:

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.

However, because different jurisdictional thresholds apply (generally \$100,000 for VEVRAA; \$10,000 for Section 503/ Executive Order 11246), a contractor may choose to keep the clause(s) separate.

Contractors should also note that the FAQ pertains only to the EO language required under Executive Order 11246, Section 503, and VEVRAA. Many contractors will also need to reference other applicable regulations, such as 41 CFR § 61-300.10 (regarding veterans' employment reports), and notification of employee rights under Executive Order 13496. Be sure to consult your legal counsel to ensure your purchase order language is compliant.

Disability Information Can be Stored in an Electronic “Data Analysis File”

The new FAQs also clarify that a contractor *may* use its existing human resources information system (HRIS) or applicant tracking system (ATS) to serve as the “data analysis file” repositories for the disability data collected pursuant to the new regulations, provided that certain criteria are met. This is also good news for contractors who have been struggling with whether they will need to set-up filing systems for hard copies of the forms.

The OFCCP indicated that 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.

What should federal contractors do now? Contractors should review HRIS and/or ATS security settings and create the appropriate confidentiality protections for disability information solicited through the new self-identification forms under VEVRRA and Section 503. The protections must be fully functional by the beginning of the first plan after March 24, 2014.

“EEO is the Law” Poster: Storage with Electronic Application and Accessibility

The FAQs further explain that contractors may provide a web link to the “EEO is the Law” poster, along with a brief explanation of what the link connects to, in order to satisfy the requirement that the poster be “conspicuously stored” with, or as part of, an electronic application. This is also welcome news for contractors. The regulations were unclear as to whether contractors were going to be required to store an actual copy of the EEO is the Law poster with every electronic application, which would be unwieldy.

Moreover, the FAQ also clarifies that contractors are *only* required to provide the “EEO is the Law” poster to individuals with disabilities in an alternate format, such as large print or Braille, upon request or when the contractor knows that an applicant or employee is unable to read the poster because of a disability, as is consistent with the ADA.

What should federal contractors do now? Contractors should update their electronic application systems to display a prominent link to the “EEO is the Law” poster, together with a brief statement explaining the link. Contractors should also consider obtaining copies of the “EEO is the Law” poster in alternate formats to ensure that they are readily available if an applicant or employee requests an alternate form of the poster as a reasonable accommodation.

Effective Implementation

The new FAQs provide much needed guidance to federal contractors searching for clarification on these topics. Yet, much confusion still surrounds how best to implement the far-reaching changes imposed by the new regulations.

Seyfarth’s OFCCP, Affirmative Action & Diversity Consulting Team has a deep understanding of what needs to be done to implement the new regulations and experience advising clients on effective implementation strategies and best practices. We have created templates (e.g., self-identification forms), logs (e.g., reasonable accommodation logs, recruitment outreach logs), and other “user-ready” documents to streamline the process. We now offer *three levels* of implementation assistance on a fixed fee basis, in addition to our traditional hourly advice and counseling.

By: [Annette Tyman](#), [Christine Hendrickson](#) and [Meredith C. Bailey](#)

If we can be of assistance to you, please contact the Seyfarth attorney with whom you work, any member of our [OFCCP, Affirmative Action & Diversity team](#), or Colleen Cox at cjcox@seyfarth.com or (312) 460-6215 who can locate the appropriate attorney to assist you.

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