

One Minute Memo[®]



OFCCP Finalizes Disability Self-Identification Form; Seyfarth Offering Fixed Fee Compliance Packages

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Hot off the presses! The Office of Management and Budget (OMB) approved a revised version of the form that the Office of Federal Contract Compliance Programs (OFCCP) will require be used by all federal contractors and subcontractors to solicit self-identification of disability status from applicants and employees. The final form, which was published on the OFCCP's website today, is available [here](#).

New Disability Self-Identification Form

The new regulations under the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) and Section 503 of the Rehabilitation Act (Section 503) require that contractors invite all applicants to identify as individuals with disabilities and/or protected veterans at both the pre-offer and post-offer phases of the application process. In addition, Section 503 requires that contractors extend to their entire workforce an invitation to self-identify as an individual with a disability within the first year that the contractor is subject to the self-identification requirement under Section 503. Every five years thereafter, employers are required to provide their employees with an interim reminder to self-identify.

Although the OFCCP provided some leeway to contractors to develop their own form to solicit veteran status, the OFCCP *mandated* that contractors use the OFCCP's form verbatim in their invitations to self-identify under Section 503, going so far as indicating the type of font that must be used.

With only two months until the March 24, 2014 effective date of the regulatory changes to Section 503 and VEVRAA, federal contractors and their HRIS and applicant tracking vendors were becoming increasingly anxious because the OFCCP had not published the final disability self-identification form. An earlier version of the form was released but that version was riddled with problems and was removed from the OFCCP's website. Without the final form, federal contractors have been, up to now, unable to begin to make the modifications in their applicant tracking and human resources information systems needed to comply with the OFCCP's regulations.

So what will you find in the final form? Most significantly, the final version allows contractors to solicit the name of the job seeker or employee, which was not permitted in the earlier version. Without this identifying information, it would have been impossible for employers to analyze the percentage of individuals with disabilities in each job group, as required by the OFCCP's workforce goal requirements. Also, the revised form provides employees and applicants the opportunity to decline to disclose, which is critical to ensuring that respondents know that disability self-identification is truly voluntary.

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Did the revised version of the form resolve all of the contractor community's concerns? Unfortunately, no. The form now spans two pages, making it rather unwieldy. In addition, while the proposed form provided examples of "major life activities," the final form instead provides examples of disabilities. The examples provided include blindness, deafness, cancer, and autism. Providing examples of disabilities may discourage many individuals whose disability is not specifically named on the form from self-identifying, which will result in underreporting progress toward the 7% workforce composition goals. The form also appears to be inconsistent with the Americans with Disabilities Amendment Act's case-by-case analysis of disability and its broader definition of who constitutes an individual with a disability. The version published on the OFCCP's website today contains the required OMB number and expiration date. When contractors embed the form into their systems they will need to make sure the OMB number and expiration date is also included. They should also be aware that that date may change from time to time.

In addition, the OFCCP's Frequently Asked Questions on Section 503 (available [here](#)) is overly prescriptive about the electronic format of the form if it is used in an on-line application system or other "self-serve" system. The OFCCP indicated that contractors may create an electronic version of the self-identification form only if: it displays the OMB number and expiration date; contains the text of the form without alteration; uses a sans-serif font, such as Calibri or Arial; and uses 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).

What should you do now? Having the final version of the form finally allows contractors to begin the process of programming their systems to solicit this information. We recommend that you begin the process of updating your systems now. The version published on the OFCCP's website today contains the required OMB number and expiration date that will need to be included on the forms (this was missing on the version made available on the OMB's website late last week). Be aware that the expiration date may change from time to time, so ensure that the date can be modified. Remember that the form must not be made available to applicants and employees until March 24, 2014 at the earliest, and you may wish to delay its use until closer to the beginning of your next affirmative action plan falling after March 24, 2014.

With so many moving pieces, it is easy to get overwhelmed. How do you stay organized and make sure you are implementing the new regulations correctly?

Seyfarth Implementation Assistance

Seyfarth's OFCCP, Affirmative Action & Diversity Consulting Team has been closely involved in the evolution of these regulations, representing contractors' voices to the OFCCP, meeting with OFCCP top officials to address issues with the regulations and counseling contractors on readiness. We have a deep understanding of what needs to be done to implement the new regulations, when it needs to be done, the practical implications of the various requirements, and have the depth to recommend best practices.

Our team has developed a detailed implementation plan for these new regulations as well as a project management approach for the implementation of these regulations. 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 are offering these packages as a fixed fee which we would be happy to discuss with you.

Tier 1: This basic level of support provides a checklist of required and recommended actions as well as 2 hours of attorney consulting time.

Tier 2: At this level we provide standard model documents and templates, in addition to our checklist for the implementation of the regulations as well as 6 hours of attorney consultation.

Tier 3: This level provides a project management approach to the OFCCP regulation implementation, including use of our project management tool, model documents and templates through a customized SeyfarthLink site where these project tools will be available 24/7/365 for all your designated team members. The site is a collaboration platform that includes a Reasonable Accommodation Tracker for use by your team members or other company users, as well as a variety of Outreach Trackers also for use by team members or other company users who may be given access as you direct. In connection with this Tier, we provide 12 hours of attorney time to guide the implementation and provide advice and consultation. This approach helps you achieve compliance in a very efficient manner.

Super- 3: You may ask us to build on Tier 3 with additional customization, tools and dashboards. We are happy to provide this assistance on an hourly basis.

Hourly: In addition to the approaches presented above, our team provides hourly advice and counseling on an as-needed basis

Please reach out to the Seyfarth attorney with whom you work, any member of our OFCCP, Affirmative Action & Diversity team, or contact Colleen Cox at cjcox@seyfarth.com or (312) 460-6215 who can locate the appropriate attorney to assist you.

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