

## Frequently Asked Questions

### Section 503 of the Rehabilitation Act

#### Notice of Proposed Rulemaking (NPRM)

The Office of Federal Contract Compliance Programs (OFCCP) issued a Notice of Proposed Rulemaking (NPRM) to inform the public about proposed changes to the affirmative action requirements of 41 CFR part 60-741. The NPRM also updates the non-discrimination provisions of part 60-741 to include changes to the definition of “disability” required by the passage of the ADA Amendments Act (ADAAA) of 2008. These regulations implement Section 503 of the Rehabilitation Act of 1973, as amended (Section 503). The public is invited to comment on any of the proposals in the NPRM.

The Section 503 NPRM was published in the December 9, 2011, edition of the *Federal Register*. All comments must be received on or before February 7, 2012.

#### GENERAL INFORMATION

##### What is a Notice of Proposed Rulemaking (NPRM)?

An NPRM is the government’s way of providing the public formal notice that it is proposing a new regulation or modifying an existing regulation.

##### How do I submit comments to OFCCP on the Section 503 NPRM?

You may submit comments by any of the following methods:

- Electronically, by accessing the Federal eRulemaking portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments using the RIN number 1250-AA02.
- Mail, hand deliver or courier comments to: Debra A. Carr, Director, Division of Policy, Planning, and Program Development, Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210.
- Facsimile (for comments of 6 pages or less) using telephone number (202) 693-1304 (this is not a toll-free number).

##### How will I know whether OFCCP received my comments?

OFCCP does not generally acknowledge receiving comments. You may, however, request confirmation that a mailed, hand delivered or faxed submission was received by OFCCP by calling (202) 693-0103 (voice) or (202) 693-1337 (TTY) (these are not toll-free numbers). All comments, whether mailed, hand delivered, faxed or submitted through the eRulemaking portal, are posted on the portal’s web site. You may go to [www.regulations.gov](http://www.regulations.gov) to view your

posted comments. Comments OFCCP receives by mail are typically posted on the web portal within 2-3 business days after they are received.

### **What does OFCCP do with the comments it receives?**

OFCCP reviews and analyzes all comments it receives. Your comments assist us as we develop the Final Rule on Section 503. By issuing a Final Rule, which is the last step in the rulemaking process, OFCCP makes permanent changes to its Section 503 regulations.

### **Can I review comments submitted by others?**

Yes. Anyone can review the comments we receive on the NPRM by going to [www.regulations.gov](http://www.regulations.gov). The comments are also available for public inspection during normal business hours at OFCCP's Washington, D.C. office at 200 Constitution Avenue, N.W., Washington, D.C. 20210, Room C-3325. Readers, print magnifiers and other appropriate aids are available to people needing assistance.

### **Is there a deadline for submitting comments?**

Yes. OFCCP must receive your comments on or before February 7, 2012.

### **Who should I contact for additional information?**

For additional information, please call OFCCP's Help Desk at 1-800-397-6251 or go to [www.dol.gov/ofccp](http://www.dol.gov/ofccp).

## **NPRM HIGHLIGHTS**

### **Why does OFCCP want to revise its Section 503 regulations?**

The framework articulating contractors' Section 503 responsibilities has been in place since the 1970s. 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. Strengthening the Section 503 regulations is an important step toward reducing barriers to equal employment opportunity for individuals with disabilities. Furthermore, the regulations must be revised to incorporate changes to the law made by the ADAAA. The ADAAA amends the definition of "disability" in Section 503 to the same extent that it amends the Americans with Disabilities Act (ADA), and became effective on January 1, 2009.

### **How does the NPRM propose to amend the Section 503 regulations?**

The NPRM proposes a variety of changes to the Section 503 regulations. Some of these changes revise the nondiscrimination provisions to incorporate the requirements of the

ADAAA. Others are designed to strengthen the affirmative action provisions by detailing actions contractors must take in the areas of recruitment, training, recordkeeping, and the dissemination of their affirmative action policies. The NPRM proposals:

- introduce a 7-percent utilization goal for individuals with disabilities to assist in measuring the effectiveness of contractors' affirmative action efforts;
- improve data collection pertaining to individuals with disabilities to create greater accountability for contractors;
- require contractors to invite individuals with a disability to voluntarily self-identify at the *pre-offer* and *post-offer* stages;
- require that contractors conduct regular anonymous surveys of their employees to provide an opportunity to self-identify for those who do not wish to do so during the hiring process;
- update how OFCCP compliance officers conduct evaluations of contractors; and
- address the increased use of technology in the workplace by providing for electronic posting of employee rights and contractor obligations.

### **Can OFCCP tell me more about the proposed utilization goal?**

The NPRM proposes to establish a national utilization goal of 7 percent for the employment of individuals with disabilities in each job group of the contractor's workforce. OFCCP invites public comment on this proposed goal, and on the potential use of a utilization range between 4 percent and 10 percent in lieu of a single national utilization goal.

To annually evaluate their utilization of individuals with disabilities, the NPRM proposes that contractors use the job groups established for utilization analyses under Executive Order (E.O. 11246). The proposed goal is derived primarily from disability data collected as part of the Census Bureau's American Community Survey (ACS). (Visit <http://www.census.gov/acs/www/> for additional information about the ACS.)

The goal is neither a quota nor a hiring ceiling, and a failure to attain the goal does not constitute a violation of Section 503 or OFCCP's regulations. Rather, the goal will provide contractors and OFCCP with a quantifiable measure for assessing success in recruiting and employing individuals with disabilities. It is a tool to help identify any remaining barriers to equal employment.

### **What changes does the NPRM propose to the contractor's obligation to invite applicants to self-identify as an individual with a disability?**

The NPRM proposes requiring the contractor to invite applicants to voluntarily self-identify as an individual with a disability at both the *pre-offer* and *post-offer* stages of the hiring process. This proposed change allows the contractor to collect enhanced data regarding individuals with disabilities. This, in turn, assists the contractor and OFCCP in

monitoring and tailoring the contractor's employment practices to ensure equal employment opportunity for individuals with disabilities.

**What is the value of the proposed annual survey of employees?**

An employee may become disabled at any time or may feel more comfortable self-identifying once he or she has been employed for some time. An anonymous annual survey will likely increase the employee response rate and, thereby, provide the most accurate data possible to assist contractors and OFCCP to evaluate and refine the contractor's affirmative action efforts.

**Does OFCCP recommend additional data collection responsibilities in its NPRM?**

The NPRM recommends that contractors collect and maintain several measurements and comparisons related to individuals with disabilities, including the:

- number of individuals with disabilities referred to them by One-Stop Career Centers or other appropriate employment delivery system(s);
- number of individuals with disabilities referred to them by other entities, groups or organizations with which the contractor has a linkage agreement;
- number of individuals with disabilities that applied for positions with the contractor; and
- number of individuals with disabilities hired by the contractor.

These data provide contractors and OFCCP with important information that does not currently exist. Such information will enable contractors to assess whether they have met the utilization goal and to evaluate and tailor their recruitment and outreach efforts.

**Does the NPRM propose changes to the way OFCCP conducts compliance evaluations?**

Yes. To improve OFCCP's efficiency in conducting compliance evaluations, the NPRM proposes to permit OFCCP to review contractor records for compliance checks and focused reviews either on-site or off-site, at OFCCP's discretion. The NPRM also proposes a new procedure for the conduct of pre-award compliance evaluations. This proposal will bring section 503 into alignment with the pre-award compliance evaluation procedures contained in the Executive Order (E.O.) 11246 regulations.

**Does the NPRM propose a mandatory job listing requirement?**

Yes. The NPRM proposes a mandatory job listing requirement for Section 503 virtually identical to the requirement in the regulations implementing Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA.) See 41 CFR § 300.5. Under this proposal contractors will list all job openings, with limited exceptions, with the nearest One-Stop Career Center. This will benefit both the contractor and the disability community by improving the contractor's ability to attract qualified applicants with disabilities.

**Does the NPRM suggest changes to the recruitment of individuals with disabilities?**

Current regulations merely suggest a number of outreach and recruitment efforts that contractors can undertake to increase employment opportunities for individuals with disabilities. In contrast, the NPRM suggests requiring contractors to engage in a minimum of three specified types of outreach and recruitment efforts, including enlisting the assistance and support of either the State Vocational Rehabilitation Service Agency (SVRA) or a local Employment Network (EN) organization listed in the Social Security Administration's Ticket to Work EN Directory. The NPRM also suggests requiring contractors to annually review their outreach and recruitment efforts and evaluate their effectiveness. A list of optional outreach and recruitment measures is also included.

**Does the NPRM propose any changes related to reasonable accommodation?**

Yes. The NPRM proposes to require that contractors develop and implement specific written procedures for processing requests for reasonable accommodation, and details the minimum elements the procedures must include. Having these written procedures will assist the contractor in consistently satisfying its reasonable accommodation obligation by serving as a "blueprint" for the prompt handling of reasonable accommodation requests. The maintenance and dissemination of these procedures will also ensure that applicants and employees know how to request a reasonable accommodation, who is responsible for handling accommodation requests, and the maximum amount of time within which the contractor must complete the processing of an accommodation request.

**What revisions does the NPRM propose with respect to the ADAAA of 2008?**

The ADAAA amends both the ADA and the Rehabilitation Act with respect to the definition of "disability" and related issues. The NPRM proposes revisions that are needed to make the Section 503 regulations consistent with the ADAAA, and with the recent revisions to the ADA implementing regulations made by the Equal Employment Opportunity Commission. See 76 FR 16978 (March 25, 2011).