

NWX-DOL ESA OFCCP (US)
Moderator: Brenda Stewart
December 17, 2013
2:00pm ET

Coordinator: Good afternoon, and thank you for standing by. At this time all participants are in listen-only mode. After the presentation, we will conduct a question and answer session. At that time if you'd like to ask a question, please press star one and record your name. I would like to inform participants that today's call is being recorded. If anyone has any objections you may disconnect at this time, and I would now like to turn the call over to your conference host, Miss Brenda Stewart. Miss Stewart, you may begin.

Brenda Stewart: Thank you, and good afternoon, everyone, and welcome to the first installment of OFCCP's Moving towards Compliance Training series. My name again is Brenda Stewart and I will be your moderator during today's session. The Moving towards Compliance Training series covers a variety of topics related to the recent changes to the regs that are implementing the Vietnam Era Veterans Readjustment Assistance Act, as amended or VEVRAA, at 41-CSR Part 60-300 as well as section 503 of the rehabilitation act, also known as section 503 at Part 60-741.

During today's training, the presenters will cover the new data collection requirements, and they'll also go over what you need to do to be in compliance with both of these final rules. Now we'll take questions at the

conclusion of the presentation, but those questions can only be submitted through the Webinar chat box, but we will make every attempt to answer as many as time allows.

We have two presenters joining us today. (Lynn White) and (Ebony Ross) are both attorneys in OFCCP's national office here in Washington, DC, and they both work in the Division of Policy and Program Development, so hello (Lynn) and (Ebony). The other members of our production team also include (Lisa Jordan) and (Sherry West) who are also in our Policy Division, and (Naomi Levin) who is the Branch Chief for the Branch of Regulations.

We also have representing us today from the DOL's solicitor's office, (Kier Bickerstaffe) and (Jessica Lynn). Welcome, everyone. I do want to remind everyone that you can maximize your media viewer if you want to see real time closed captioning. Next slide, please. The Moving toward Compliance Training series includes presentations on collecting data, components of section 503-AAP, components of VEVRAA AAP, job listings and contracts, and goals and benchmarks.

You can see the dates for these Webinars on the current slide, and these topics as well as the dates are also posted on our Web site. Now I want to start by describing the setting we'll be using for these training Webinars. During each of the Webinars, we have a fictitious federal contractor going by the name of FCI, better known as Federal Contractor, Inc. FCI has just appointed a new HR director, and that person will be in charge of ensuring SCI's compliance with OFCCP's regulations.

(Ebony Ross) will play the role of the HR director. Now it's (Ebony)'s first day in her new job, and she hits the ground running. She starts by looking at FCI's data collection procedures relating to equal opportunity and affirmative

action. Because (Ebony) has been subscribing to receive these email updates whenever new information is posted on OFCCP's Web site, she suddenly remembers.

Didn't OFCCP just issue new rules for section 503 and VEVRAA? So (Ebony) goes to OFCCP's Web site and reads the new information on the 503 and VEVRAA landing pages, and realizes things have certainly changed. The Moving towards Compliance Training series will walk Ebony through how to comply with VEVRAA and section 503 in light of the new rules. This includes a detailed training on the topics you see on the slide.

So for today, in our Webinar, we'll help Ebony get FCI into compliance with the new data collection requirements of the regulations, when and how should contractors invite applicants and employees to self-identify as individuals with disabilities or protected veterans, what kind of data should contractors now collect regarding applicants, hires, and job openings under 41 CFR to see that 741.44K and 60-300.44K.

How should contractors collect this data? How long should they keep the data, and what are best practices that they should use? All this and more as we discuss Moving towards Compliance, Collecting Data. I will now turn the presentation over to (Lynn White). And next slide.

(Lynn White): Thank you, Brenda, for that introduction, and welcome, everyone. (Ebony), I'm going to start with today's objectives for our Webinar. We're going to cover the relevant dates for implementation of the data collection requirements, the self-identification requirements, what the new data collection requirements are, and what documents you'll need to keep. Next slide.

And these are the key dates that you need to remember. On September 24th, 2013, OFCCP published final rules that changed the regulations implementing VEVRAA and section 503. The rules strengthen the affirmative action provisions of the regulations to aid contractors in their efforts to recruit and hire protected veterans and qualified individuals with disabilities, or IWD presentation and approved job opportunities for these groups.

The changes take effect 180 days after the publication date, which will be March 24th, 2014. Those contractors who have an affirmative action program already in place on March 24th, 2014, and are in the midst of their affirmative action program year, may maintain their current affirmative action programs and then come into compliance with the new sub-part C requirements starting with their next affirmative action program cycle.

On March 24th, 2014, you will have to immediately begin complying with parts of the final rules that are not included in sub-part C. This includes complying with certain definition changes, ensuring your mandatory job listing process is in compliance, and revising your solicitations and advertisement, among other things. We're not going to go into too much detail on those today because those requirements are going to be covered later on in our training period next year.

(Ebony Ross): Excuse me, (Lynn), this is (Ebony) from FCI. I have a question. The final rule's effective date falls in the middle of my company's affirmative action program. Now do we have to have a new AAP in place by the time the final rules become effective?

(Lynn White): No.

(Ebony Ross): Okay.

(Lynn White): Contractors with an affirmative action program in place on the final rule's effective date...

(Ebony Ross): Okay.

(Lynn White): March 24th, 2014, may maintain that affirmative action program until the end of their affirmative action program year and delay their compliance with that affirmative action program requirement in the new sub-part C until the start of their next affirmative action program cycle.

(Ebony Ross): Okay. Now, I have another question. So what do contractors with AAPs under the old rules need to do beginning on the effective date of the new rules to ensure that their AAPs are as compliant as possible with the new rules?

(Lynn White): Well, as I mentioned, as the contractor, you can delay compliance with the affirmative action program requirements of sub-part C until your first affirmative action program is due, following the March 24th, 2014, effective date. This includes the newly required pre-offer self-identification in data collection requirements that we're going to discuss today.

(Ebony Ross): Okay.

(Lynn White): While you're allowed to delay compliance with sub-part C until the start of your first post-effective date affirmative action program, we don't really encourage this approach. However, should you choose not to comply with the new sub-part C until your post-effective date affirmative action program, you must ensure that your existing affirmative action program complies with all of the current requirements, including the post-offer self-identification invitation that's required in the existing regulations.

(Ebony Ross): Okay.

(Lynn White): Now we recommend that all contractors begin complying with sub-part C of the new regulations, prior to the issuance of their first affirmative action program under the new rules, and strongly encourage contractors to take these steps as soon as practical after the effective date. To begin coming into compliance, OFCCP recommends to the extent possible that you start on March 24th, 2014, inviting applicants to voluntarily self-identify, pre-offer and post-offer, conduct your initial section 503 self-identification survey of all employees, and conduct your data analysis by calculating data related to applicants and hires that we're going to cover a little bit in part today.

(Ebony Ross): Okay.

(Lynn White): An early start implementing your affirmative action program requirements gives you time to identify issues or challenges, and to seek technical assistance from OFCCP prior to the due date of your first affirmative action program under the new regulations.

(Ebony Ross): Oh, great.

(Lynn White): So this makes for a more robust, first year affirmative action program under the new regulations.

(Ebony Ross): Yes, because this is new to all of us. I would appreciate that.

(Lynn White): And we certainly understand that the first affirmative action program is a transitional one for you, so a contractor is not going to be found in violation of

the new sub-part C so long as you can demonstrate that you acted reasonably in light of your particular circumstances.

(Ebony Ross): Okay.

(Lynn White): Next slide. So just so that we're all on the same page, let's do a quick overview of some of the key changes to the rules. Under VEVRAA, we rescinded the 41 CFR part 60-250 regulations in their entirety. However, veterans that are formally protected under those rules are going to be protected under the new rules. We also established hiring benchmarks for protected veterans, and you can set your benchmarks in one of two ways.

(Ebony Ross): Okay.

(Lynn White): You can choose to establish a benchmark equal to the national percent of veterans in the civilian labor force, which will be posted on the OFCCP Web site and updated annually. Alternatively you can establish your own benchmark using data from the Bureau of Labor Statistics, Veterans' Employment and Training Service, and the Employment and Training Administration that will also be posted on OFCCP's Web site, as well as any other factors that reflect your unique hiring circumstances.

(Ebony Ross): Okay.

(Lynn White): And that data will be posted in the benchmark database on the VEVRAA landing page of OFCCP's Web site that we've added some data collection requirements and modified the invitation to self-identify which we're going to cover today, and the final change that I want to talk about is to the job listings.

And here we've clarified that you must provide your job listings in a manner and format permitted by the appropriate state or local job service so that it can access and use the information to provide priority referral of job seekers to contractors. Next slide.

And here are some of the major changes to the section 503 regulations that we'll discuss briefly. We established a 7% utilization goal for qualified IWDs, and you can apply that goal to each of your executive order 11246 job groups.

Contractors with 100 or fewer employees have the option of applying the utilization goals to their entire work force, and you must conduct an annual utilization analysis as an assessment of any problem areas, and if problem areas are found, establish specific action- oriented programs to address the newly identified problems. And - but just to be clear, there's no penalty for not meeting the goal.

(Ebony Ross): Okay.

(Lynn White): Again, we made similar data collections in the new data collection requirements, some changes to the invitation to self-identify, and finally the rule implements change is necessitated by the passage of the Americans with Disabilities Amendment Act of 2008 by revising the definition of disability and a certain amount of discrimination provisions that they implement in regulations.

Next slide. First we'll discuss the invitation to self-identify.

(Ebony Ross): I've been waiting for this one, okay.

(Lynn White): And it's important to point out, as I'm sure you're aware, that invitation to self-identify is not a completely new process. The existing regulations require contractors to invite applicants to self-identify whether they're covered by VEVRAA or section 503, and will likely benefit from the contractor's affirmative action program. And the new rules make some tweaks to that process.

(Ebony Ross): Okay.

(Lynn White): Next slide. The final rule, the VEVRAA rule eliminates the separate inquiry regarding whether an individual is a disabled veteran, instead the rule requires that at the pre-offer stage, the contractor invite applicants to self-identify that he or she is a protected veteran under any category, and that indication may be included with the job application, but the rule only requires that it be made pre-offer. You must invite applicants to voluntarily self-identify for the specific categories protected veterans to which they belong post-offer.

(Ebony Ross): Okay.

(Lynn White): And the final - the rules make clear that the purpose of the post-offer requirement is to enable contractors to get the information they have to report to the federal employment training service on the Vets 100-A form. The rule is phrased in terms of the categories that Vets requires contractors to report. This way should the categories change or the form change; the post-offer will automatically change with it.

(Ebony Ross): Okay.

(Lynn White): And there's a model invitation to self-identify in appendix B of OFCCP's regulations.

(Ebony Ross): Great. Now I have two questions. Where should I put the VEVRAA self-identification form in the personnel file?

(Lynn White): No, that information is confidential, so it should be kept in a data analysis file that's used for demographic purposes only.

(Ebony Ross): Okay, so can I use the self-identification information on the form for EMT or other emergency purposes?

(Lynn White): No, you may not.

(Ebony Ross): Okay.

(Lynn White): That information is just for your data analysis file, and it shouldn't be distributed beyond that particular use.

(Ebony Ross): Okay, otherwise it's confidential. That information is confidential?

(Lynn White): Yes.

(Ebony Ross): Thank you, I understand.

(Lynn White): Okay. Now the section 503 rule also makes several changes to the invitation to self-identify. The rule, as the requirement is to invite applicants to self-identify as an IWD at the pre-offer stage.

(Ebony Ross): Okay, I have to stop you there. Doesn't the invitation to self-identify pre-offer violate the Americans with Disabilities Act?

(Lynn White): No, it does not. It does not violate the ADA or the Equal Employment Opportunity Commission Regulations.

(Ebony Ross): Okay. Thank you.

(Lynn White): (Ebony), thank you for asking.

Adding this requirement is filing for an important date again. Though many people with hidden disabilities may choose not to self-identify at this early stage of the process, many people with obvious disabilities have been involuntarily self-identified for years any time they show up for an interview or to fill out an application, but there's been no record of how these individuals fared in the process, whether they were screened out by any employment barriers or if they were ever there at all, and this requirement is going to change that.

(Ebony Ross): Okay, well do the applicants or contractors need to write on the self-ID form what the exact disability is or the disabilities are?

(Lynn White): No, they just need to keep the form.

(Ebony Ross): Oh, okay, just the form.

(Lynn White): The form, okay?

(Ebony Ross): And should there be any support documentation included with the self-ID form?

(Lynn White): No.

(Ebony Ross): No, okay.

(Lynn White): And the final rule retains a post-offer invitation to self-identify, and just to parallel the point I made regarding individuals with obvious disabilities, possibly feeling more comfortable self-identifying pre-offer, individuals with hidden disabilities may feel more comfortable self-identifying at this stage of the process once they've been offered a position.

And because disability is not an immutable characteristic like race, someone who does not have a disability when they are hired may later become disabled, and because over time someone with a hidden disability may become more comfortable about self-identifying, the rules add an invitation to all employees to self-identify, and that invitation must be issued the first year the contractor is subject to the self-identification requirement, again at the five-year mark, and then every five years thereafter that the employer is a contractor.

(Ebony Ross): Oh, okay.

(Lynn White): Between these five-year invitations, the contractor must also at least once remind employees in some way that they can always update their disability status at any time, and that reminder can be in the form of an email or a conspicuous notice on a Web site or bulletin board or something to that effect.

(Ebony Ross): Okay.

(Lynn White): And just a couple of things to note about this requirement, all 503 self-identification invitations will be made by the contractor using a standardized form that OFCCP will post on its Web site. That form is currently pending approval at the Office of Management and Budget pursuant to the Paperwork Reduction Act, and once it's approved will be hosted on our Web site.

(Ebony Ross): You said once the form is approved, we will post it on our Web site.

(Lynn White): Yes, yes.

(Ebony Ross): Thanks, so I can expect to see that.

(Lynn White): Absolutely, as soon as it's available for use.

(Ebony Ross): Okay.

(Lynn White): Also, just to make clear, the rules have made clear that contractors may identify an individual as having a disability if the person does not self-identify when the disability is obvious or the disability is known to the contractor, and this is analogous to what we permit contractors to do with respect to the identification of race, gender, and ethnicity, under executive order 11246.

(Ebony Ross): Okay, now, (Lynn), I understand that OFCCP will have a self-ID form posted once OMB approves it. If - can contractors recreate the - you know, recreate the form? Can we create our own form?

(Lynn White): That's a great question, (Ebony), and a great segue into our next slide.

(Ebony Ross): Okay.

(Lynn White): And the answer to your question is yes, with certain stipulations.

(Ebony Ross): Okay.

(Lynn White): Now if you're using a paper application process or a paper process to invite individuals to self-identify, you'll want to use OFCCP's forms, but you also have the option to do an electronically fillable form if it meets the specifications.

(Ebony Ross): Okay.

(Lynn White): It's got to include the OMB control number and expiration date, which will be issued by OMB once they approve the forms. It must be identical text in identical order as OFCCP's form, and at least 11 point sans serif, category of font, like Arial or Calibri, just so individuals with vision impairments can read the form.

(Ebony Ross): Okay.

(Lynn White): Next slide. Now one concern that many contractors have raised was regarding the timing of the pre-offer invitations to self-identify. There is some concern that the requirement to collect pre-offer self-identification data might not comport with the Internet applicant rule under Executive Order 11246 regulations, and that they would therefore be required under VEVRAA and section 503 to send pre-offer self-identification invitations before inviting self-identification regarding race, gender, or national origin pursuant to Executive Order 11246.

The final rules do not adopt the Internet applicant rule. However, in an effort to simplify and harmonize the regulatory requirements under VEVRAA and section 503 with the Internet application regulations under executive order 11246, the preamble to the final rules explain that OFCCP will permit contractors to invite applicants to self-identify as a protected veteran or

individual with disabilities at the same time they collect demographic data from applicants under Executive Order 11246. Okay?

Next slide. So as a contractor, you're going to want to have your self-identification forms, paper or electronic...

(Ebony Ross): Okay.

(Lynn White): ...included in your application process.

(Ebony Ross): Got it.

(Lynn White): Remember the self-identification forms are confidential, so they should go into a data analysis file.

(Ebony Ross): Not the personnel file.

(Lynn White): Right, exactly.

(Ebony Ross): Okay.

(Lynn White): Not selecting officials, and you should also develop a process to invite all employees to self-identify as an individual with disabilities. You must start complying with this requirement as of the beginning of your first affirmative action program year after the - March 24th, 2014, effective date.

(Ebony Ross): Okay, so we must start complying at the beginning of our first AAP year after March 24th, 2014?

(Lynn White): Yes.

(Ebony Ross): Okay.

(Lynn White): If you are reviewed after the effective date but before your next affirmative action program, you would be reviewed under the old rules.

(Ebony Ross): Okay.

(Lynn White): Compliance officers will not cite you for failure to collect pre-offer self-ID data or inviting applicants or all employees to self-identify as an individual with disability under section 503. Again, while you're not required to comply until the new affirmative action program cycle after March 24th, 2014, we strongly encourage you to start collecting this information as soon as possible after the effective date. This gives you an opportunity to check out your data collection system and to work out any kinks and maybe get some technical assistance from OFCCP if necessary.

(Ebony Ross): Great.

(Lynn White): Next slide. So now we'll cover the data collection requirements. Next slide. Under VEVRAA, the new rules require contractors to document and update annually, several quantitative computations for the number of protected veterans who apply for jobs, and the number of protected veterans you hire. Specifically contractors must track the number of applicants who are protected veterans, the total number of job openings, and the number of jobs filled, the total number of applicants, and the total number of protected veterans hired, and the total number of applicants hired.

(Ebony Ross): Okay. Excuse me I have a question. So how are we collecting the data? Is it by job group, job title, or establishment?

(Lynn White): By establishment.

(Ebony Ross): Okay, and also I understand that contractors are required to document the total number of job openings and total number of jobs filled. Does that total number of job openings refer to the number of requisitions or job vacancy announcements, or to the number of individual open positions referenced in the requisition or announcement?

(Lynn White): The total number of job openings refers to the number of individual positions advertised as open in a job vacancy announcement or requisition.

(Ebony Ross): Okay.

(Lynn White): So for example, if you have one job vacancy announcement or requisition and it includes five open positions and results in four hires, you would document this as five job openings and four jobs filled.

(Ebony Ross): Okay, and I also understand that contractors are required to report the number of jobs filled and the number of people hired, but how does the number of jobs filled and the number of people hired differ? How is that different?

(Lynn White): In the context of this data collection requirement, jobs filled refer to all jobs the company fills by any means.

(Ebony Ross): Okay.

(Lynn White): Be it through a competitive process or a non-competitive process, through reassignment or mere promotion, it therefore should take into account both new hires into the company and those employees who are placed into new

positions via promotions, transfers, and reassessments. 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.

(Ebony Ross): Okay.

(Lynn White): And the purpose of this provision is to fill this data gap that currently exists in VEVRAA, as there's no structured data collection requirement regarding the number of protected veterans who apply for jobs with contractors. This makes it next to impossible for contractors and for OFCCP to perform even rudimentary evaluations of the availability of protected veterans in the work force, or to make any sort of objective assessments about the effectiveness of contractors' outreach and recruitment efforts.

And the computations must be maintained for three years so that it can be used by you to assess trends over time with respect to the effectiveness of your efforts to recruit, hire, and remove barriers to equal employment opportunity for protected veterans.

(Ebony Ross): Okay, (Lynn), so in terms of the record retention requirement, exactly what must be maintained for three years, is it the application?

(Lynn White): No, the record keeping requirements for applications and personnel files under 60-300.80 and 60-741.80 haven't changed.

(Ebony Ross): Okay.

(Lynn White): What must be maintained for three years are just your computations.

(Ebony Ross): Just the computations.

(Lynn White): Yes. Next slide. And here we have similar requirements for section 503. You must track the number of applicants who are individuals with disabilities, the total number of applicants, the total number of job openings and number of jobs filled, the total number of individuals with disabilities hired and the total number of applicants hired, and also this data must be maintained for three years so that you can use it to assess trends in your affirmative action programs.

(Ebony Ross): Okay, so must this data - how do we maintain this data? Is it by job title, group, establishment?

(Lynn White): Under section 503 it's by establishment as well.

(Ebony Ross): Okay, so it's just like VEVRAA.

(Lynn White): Yes.

(Ebony Ross): Okay.

(Lynn White): Next slide. So now what we're going to go over a sample section 503 data collection table, just so that you can get a sense of what this could look like.

(Ebony Ross): Okay.

(Lynn White): And the chart would be virtually the same for veterans.

Next slide. So here we want to focus on the data on the chart on the screen, so you'll see a sample chart and it shows three years, and there's only data in the

first year, and there may only be partial data in that year, depending on where you are in your affirmative action program cycle, as of March 24th, 2014.

(Ebony Ross): Okay.

(Lynn White): And you know, you can see all of the categories that we just discussed in the left hand column, the number of applicants that self-identify as individuals with disabilities, the total number of job openings, number of jobs filled, number of applicants for all jobs, number of applicants with disabilities hired, and the total number of applicants hired. And after three years we'd expect to see three years' worth of data filled in.

And this is an example of what we're going to want to see in your affirmative action program. Once we get the full three years of data, then you should be able to do an analysis of trends and see how these qualitative measurements interact with some of your outreach and recruitment initiatives, and other affirmative action program efforts.

(Ebony Ross): Okay. Okay, (Lynn) that was a lot of information. Is there any way that you could do a brief recap of when to comply? Thank you.

(Lynn White): Absolutely, next slide. When to comply - so these data collection requirements should be fully implemented at the next affirmative action program update after the March 24th, 2014 effective date. So we'll just go full circle and go back to where we started.

(Ebony Ross): Okay.

(Lynn White): From today through March 24th, 2014, things that we would expect you to do could be updating your human resources information systems, getting familiar

with the requirements, keeping an eye on OFCCP's Web page for updates, participating in these trainings, and planning how you're going to come into compliance. From March 24th, 2014, to your next affirmative action program update, you could voluntarily offer the self-identification form to applicants.

(Ebony Ross): Okay.

(Lynn White): But you're not required to. You could be evaluating your current affirmative action program, identifying where you can make changes, including how to collect the data so that we can begin to come into compliance. And then once you renew your affirmative action program after March 24th, 2014, you have to start offering the self-identification forms pre-offer, conducting the invitation to all employees to self-identify as an individual with disabilities under 503, and collect the .44K data in your affirmative action program.

Again, although you won't be expected to totally comply with sub-part C until that first affirmative action cycle after March 24th, 2014, we strongly encourage you to begin implementing as soon as possible.

(Ebony Ross): Right. Okay.

(Lynn White): And you know, an early start to implementing these requirements gives you time to identify any issues or challenges you have and seek technical assistance from OFCCP prior to your first affirmative action program after March 24th, 2014.

(Ebony Ross): Okay.

(Lynn White): Next slide.

(Ebony Ross): Okay, (Lynn), so to make sure that I understand everything you've just said about when to comply, I want to throw out some examples or some scenarios. So for example, if I have an affirmative action program date of January 1st, 2014, then the existing rules apply. So that means that I as a contractor must provide the opportunity for post-offer self-identification under the existing rules. I must also on January 1st, 2015, begin using the existing rules affirmative action program requirements.

(Lynn White): Correct, except when you - on January 1st, 2015, then you're going to want to start with the new affirmative action program requirements under the rules.

(Ebony Ross): Okay, okay, I got that. So (Lynn), let's say for example that I have an affirmative action program date of April 1st, 2014. Then that means that now I begin using the revised rules?

(Lynn White): Yes. Completely.

(Ebony Ross): Yes, okay, okay. And then I'm required to not only offer the post-offer invitation to self-identify, but the pre-offer invitation to self-identify as well.

(Lynn White): Yes.

(Ebony Ross): And, I have to include all of that.44K data that you talked about in my affirmative action program.

(Lynn White): Yes.

(Ebony Ross): Okay. And does the same thing hold true for example if I had an affirmative action program date of December 1st, 2014?

(Lynn White): Okay, let's see. The revised rules apply, December...

(Ebony Ross): Yes, if I have an affirmative action program date of December 1st, 2014, I would use the newer rules, the new section 503 and VEVRAA rules, which means that I have to offer not only the post-offer invitation to self-identify the individual with disability or veterans, but also the pre-offer invitation to self-identify.

(Lynn White): Yes.

(Ebony Ross): And I have to include all of that .44K data that you mentioned earlier.

(Lynn White): Yes. And don't forget about your annual invitation to all employees to self-identify under section 503.

(Ebony Ross): Okay.

(Lynn White): That's part of the revised rules.

(Ebony Ross): Got it, got it. And also I guess the biggest thing, the thing that I'm most grateful for is that OFCCP is there to help me.

(Lynn White): Absolutely.

(Ebony Ross): So I can call for technical assistance and you guys will help me do what I need to do in order to be in compliance with these new rules.

(Lynn White): Absolutely.

(Ebony Ross): Thank you, I appreciate that.

(Lynn White): Okay, so now that we've concluded our last slide, I'll turn it over to Brenda Stewart.

(Brenda Stewart): Okay, (Lynn) and (Ebony), thank you. That was a lot of information and I hope everyone understood clearly whether to use the existing rules, new rules, and when that applies. Now let's start looking at the questions that have been coming in through the Webinar chat box. We also want to advise those who have not done so, you can submit your questions now.

And we have people, our solicitors and (Naomi) have been furiously working in the background in compiling answers to the questions that have been coming in. So we'll start with Lisa Jordan who will be reading the questions and the solicitors, I'm sorry, (Kier), and (Jessica).

(Lisa Jordan): Actually, I will turn it over to (Naomi). She has a few words to share.

(Naomi Levin): Yes, hi, this is Naomi). I just wanted to say a couple of things. One, many of you probably saw, we posted some new frequently asked questions late yesterday. They coincidentally relate to the very topics we were discussing today, at least most of them do. So if you are not on our email blast list, you may want to visit our 503 VEVRAA update, and that will take you right to those frequently asked questions to take a look at any time you like.

I also want to thank everybody out there for your question. This is the third round of FAQs that we have posted on the new regulations so far, and a lot of these FAQs you see coming at you are in fact responses to questions we have heard from you. So those are all good things as we work through some of these more refined implementation questions.

We'll continue to be posting these FAQs and other materials to assist you. We recently posted resources. When the self-ID form is ready, that too will go up, so please check back with our Web sites regularly and you'll continue to see - we'll only have a limited time today to take questions.

We'll also not be taking questions that are too far afield of today's topic today, but you'll also continue to see FAQs get posted that will resolve some of these questions and provide responses as we continue between now and the effective date and probably even beyond that. So stay tuned, and again thank you all for your questions, and now I'll turn it back to (Lisa) to start throwing some questions from today at us.

(Lisa Jordan): There've been several questions posed today; we're starting off with: are we able to combine the EO statement for vets and 503 on the back of our purchase orders or POs? They are the same, as long as we cite both regs and both protected veterans and individuals with disabilities?

(Naomi Levin): And all three of us opened our mouths and nobody said a word.

(Jessica Lyn): You can combine it into one paragraph, provided that you use the language that is in the regulations.

(Naomi Levin): So you may want to use the incorporation by reference provision, is what we're sort of assuming this question is talking about, and each regulation specifies specific language to use. It's very short, so as long as the language is used for both regulations, both sets apply to you, that's fine, but that language should be retained and kept exactly as prescribed in the regulations for each one.

(Lisa Jordan): Okay, great. Here's another question, and we might even ask this question again differently, but this one is asking since the VETS categories have changed, wouldn't we have to resurvey our work force prior to submission of the September 30th, 2014, set of submissions? Regardless of the date of our AAP and whether we have to abide by the full regs, for example, our plan date is October 1st, so our new plan is written?

(Kier Bickerstaffe): Hi, this is (Kier). Just to respond to - the categories haven't really changed but the title of one of the categories changed, so in the existing rule, there's a category that is called other protected veterans, and we talked about it in the rule making, some people felt that that was confusing and covered, you know, certain types of veterans that it didn't actually cover, and so we wanted to make that category more descriptive. And so we changed the title of other protected veteran to I think - I'm blanking on the name now, but active duty or campaign veterans, that new category, covered exactly all the same veterans, so the categories haven't really changed. It's just whoever fell under other protected veteran before falls into this new category name now, so there wouldn't really need to be any changes to your AAP as a result of that.

(Lisa Jordan): Excellent. That was very good. Here's another question, and we have several. If contractors start soliciting pre-offer self-ID information on March 24 instead of waiting until the start of their next AAP year, what should the contractor do with the partial year data from March through the start of the next AAP year? Don't we need a year's worth of data to do the analysis?

(Naomi Levin): Well, here is the thing. When you change regulations the way we're doing, you're always going to have a transition year, no matter what you do. We told everybody how to start in the middle of the year. We still have partial year data under the new regulations, and we realize that and that's okay. That's what the transition AAP is about.

You can give us what data you have and ask any questions that you have, make sure your systems are all okay. But you heard that said today. If you go to the new FAQs, you'll see it's stated in bold no less that we realize that first AAP under the new rule is going to be a transitional AAP and for that reason the information in it is likely to not be complete, and that's just fine.

(Lisa Jordan): Great. And a comment made, or asked about hoping to get directed to the new IWD self-ID forms, any updates or information about that we could share?

(Naomi Levin): Not any more than what (Lynn) said. It's pending at OMB. We're hoping to have it out in the next few weeks, but we don't know until it actually happens. As soon as that does, we will post it and send out an email blast letting people know it's there. We know people are anxious to have that form as soon as possible so they can integrate it in their systems, and we are also anxious to have that form as soon as possible, and we're doing everything we can to have that process completed as soon as it can possibly take place, so just stay tuned a little longer.

(Lisa Jordan): Great, and a lot of people are biting at the bit for that information and for that form. Here's a question. Are the benchmark programs done by industry?

(Kier Bickerstaff): Just assuming that , when we talk about benchmarks, we're talking about VEVRAA, that's when I jump in, the benchmark program -contractors are supposed to establish their benchmarks by establishment, so it's not by job group as it is under some - for many contractors under 503, and the industry doesn't matter. So the benchmarks work the same for all contractors. You set them annually and under one of the two different ways that we set forth in the rules.

(Lisa Jordan): Great. And so one - here's one, another question. If OFCCP posts hiring benchmarks on your Web site in January, that is significantly low, let's say 5%, but our AAP starts in May, and that time - and at that time the hiring benchmark is 8%, then should we adopt a new benchmark of 5%? How will you view this, this difference?

(Kier Bickerstaff): I guess I would start just by saying that I can't imagine that there would be that drastic a change in the benchmark from year to year. I mean, we've been looking at the data and the percentage of veterans in the work force tend to vary at most by about one or two tenths of a percent per year, so the number really probably will not change very much. Certainly it won't drop in half, for instance, so I think that practically that this hopefully - you know, it's not an issue. I think generally the way that OFCCP seems to be looking at it, is that whenever you go to you know, draft your AAP for a given year, you go to the OFCCP's Web site and the number that is on OFCCP's Web site at that time is what we'll use. So I think that the credit to your question is posing a problem that should not happen.

(Lisa Jordan): Right.

(Naomi Levin): And of course if you want you could be establishing your own benchmark using the other method in the rules, and so then again, your benchmark would be whatever it happened to be applying the methodology that you're applying and would outline for us so we could all see how you got what you got.

(Lisa Jordan): Excellent, very clear, to me anyway. So here's another question. When do we have to ask our current employee population to self-ID?

(Naomi Levin): Okay, this gives me an opportunity to sort of put together some of the pieces from the Webinar today. As (Lynn) and (Ebony) were discussing, if you

already have an AAP and in fact under the old rules on the effective date which is March 24th, 2014, you do not have to come into compliance until the beginning of your next AAP cycle. That would include taking the snapshot.

However, we really encourage people to as soon as March 24th rolls around, as soon as you can, to start doing the things in the new sub-part C, including this snapshot which has to be done the first year you're covered, so that year begins March 24th, and to do that as soon as possible.

Again, this gives you an opportunity to make sure your systems are in place, that they work correctly, to see if you have any questions for OFCCP, if you need any technical assistance. So we encourage you to do it as soon as practicable after March 4th, 2014, but you must do it with the start of your first AAP cycle after the effective date. Okay?

(Lisa Jordan): So here's a question that's pretty interesting. So the VEVRAA regulation 60-300.42 requiring disabled veteran status to be kept in a medical file per 60-300.23 sub-section B, if I have that term down correctly, is incorrect. For example, despite this we should keep all VEVRAA self-ID data in a data analysis file, right?

(Naomi Levin): Yes, you definitely want to have your VEVRAA self-ID information in a data analysis file so you can use that data for the purpose that you needed to use this for. You need to keep that information confidential, and so absolutely you probably want to put that in the data analysis to make it easy for your HR folks to know that that's the data to use for purposes of the AAP and to have that easily available for them.

(Lisa Jordan): Okay, here's another self-ID question. If someone self-IDs as an individual with disability post-offer, but did not do so or self-ID during the applicant

stage, can the contractor change the data or count the individual as a disabled applicant, based on that post-offer self-ID? That's interesting.

(Naomi Levin): That's an interesting question, and the answer is probably yes. It's the person who has indicated a status on you, not the contractor, has not changed this status. This sounds like a person who once they have a job is more comfortable now post-offer saying yes, I have a disability, and that's okay, and we've designed it that way, and realize that there will be a number of people, particularly with hidden disabilities, who will have that increased comfort level post-offer and won't self-identify until that stage. But that still is an applicant.

(Lisa Jordan): Great. And is it permissible to ask veterans to identify their specific protected veteran category and to pre-offer invitations in addition to the post-offer invitations?

(Kier Bickerstaff): Yes, the way I want to answer this is that the regulations don't require that. The regulations were specifically drawn so that at the pre-offer stage, you really only have to ask whether or not the individual is a protected veteran generally, and you don't have to ask whether or not they fall under any of the categories. There's no real reason for collecting the data at that point, that you know, that we could find. The reason for collecting that data at all is because the veteran 100 form requires that the vet 100 form, as long as you know, it's concerned with post-offer information, so yes.

(Naomi Levin): Right. Let me just add, the VEVRAA law does not treat differently different categories of protected veterans. The categories are there solely to identify which veterans are in the protected group, but there is no reason to distinguish between them. The only reason was so that the vets 100 report, and vets 100-A report and so the rules allow for you to follow and comply with whatever

the vets report requires you to ask. But there's really no legal reason, no distinction made between how people are treated, so there's no reason to have that information until it's required.

(Lisa Jordan): And if we are a small business and do not have an AAP yet, do we need to comply and give self-ID forms prior to having an AAP in place?

(Naomi Levin): Let me answer that this way. If you are a small business and will be developing an AAP under the new rules, then you would be using the self-ID form. If you're developing an AAP that will be in place say in January, then you do not need to have the self-ID form, because you will be having an AAP developed under what we're calling the old rules, which are actually the covered roles.

So that kicks in, in the development of an AAP after the effective date of the new rules. Then you would be using that form, but as we've been discussing, the form is not available just yet, so in that sense the question is a little ahead of itself, but hopefully that clarifies what a newer contractor should be doing right now.

(Lisa Jordan): And will the section 503 invitation to self-identify include details such as type of protected veteran and percentage of disability?

(Naomi Levin): Absolutely not. There is no reason again, 503 just like ADA does not distinguish between disabilities, not between how they work, not how severe they are, not what their origin is, whether they're service connected or not, so there is no reason to have that information. The self-ID form will not ask more than whether or not somebody has a disability. That is the maximum amount that will be requested on the self-ID form, and you really don't need to have

any more unless and until somebody asks for reasonable accommodation, and that's a different issue.

(Lisa Jordan): Okay, and then the section 503 individuals with disabilities refers to anyone with a disability, not just vets with disabilities, correct? So essentially it could be the same individual with disabilities covered under ADA?

(Naomi Levin): Sure. 503 and the ADA use exactly the same definition of disability, and of course many disabled vets, or I should say pretty much if you're a disabled veteran, you probably will also have a disability as defined under 503. So yes, the person would be covered all the way around.

(Lisa Jordan): Great. Will OFCCP conduct adverse impact analyses comparing the hiring rate of disabled workers to non-disabled workers, (Jessica)?

(Jessica Lyn): Sorry. I didn't know you were going to ask another question. Can you repeat the question, please?

(Lisa Jordan): Sure. Will OFCCP conduct average impact analyses comparing the hiring rate of disabled workers to non-disabled workers?

(Jessica Lyn): OFCCP will not be using the application hiring data to conduct under-utilization or in depth ratio analyses for these individuals concerned about the information. The information is going to be used solely to - OFCCP's going to be looking to see whether the contractor has fulfilled its various obligations under the regulations regarding data collection, whether it's critically analyzed about the effectiveness of its recruitment efforts, using the data in paragraph K of the section 741.44, and in the other reasonable criteria that contractor believes is relevant. So the answer is no.

(Lisa Jordan): And our last question that we're going to cover because we're running out of time, and it's been really fruitful, isn't data analysis for 503 supposed to be conducted by job group, not by establishments?

(Naomi Levin): In general, yes. The general thrust of the 503 goal requirement is to use - conduct your goal the same way you would under 11246, under the executive order for race and gender, so that would be easier to do because you don't have to set up a new set of categories and program new systems. There is an exception in 503 for contractors with 100 or fewer employees total.

Those contractors may choose instead to apply the goal to their work force as a whole if they wish to. But in general you're basically using the same job groups that you used for Executive Order 11246 so that you don't have to have, you know, different sets of job groups and get confused as to which spaces goes with which job group and just make it more complex for everybody.

(Lisa Jordan): Okay, well, thank you, (Naomi), (Kier), and (Jessica). I'm going to turn it back over to Brenda.

(Brenda Stewart): And (Lisa) has thanked everyone, but I want to thank everyone as well. I know you had a lot of question that came in. People are very interested in ensuring that they're on top of compliance with these new regs, so we've come to the end of our time for today's Webinar. If you could go to the next slide - our contact information is displayed on this slide.

If you're not able - if you weren't able to get an answer to your question or you need further clarification regarding a particular issue, please use the email address or the phone number to contact us, and we will attempt to answer your

question. Next slide. And as mentioned earlier, our Web site contains a wealth of information.

We have resources for section 503 as well as VEVRAA where you can access information on fact sheets, the FAQs, the contractor resources, as well as a slide by slide chart of the changes in the regulations, and you'll also be able to obtain a copy of the slide that we used for today's presentation, and we should be posting the recording from today's event on there as well.

Please give us a couple of weeks to get that posted. And our last slide, I want to thank (Ebony) and (Lynn) so much for an excellent presentation, and to the entire Webinar team who were instrumental in putting this together, and we want to extend our thanks to all of you for taking the time out of your schedule to participate in this Webinar.

We hope you have a great day, and please don't forget to subscribe to the DOL updates to get information on upcoming OFCCP Webinars, and we should be also hosting the registration link for our next Webinar on creating section 503 AAPs and that is January 16th, so the link should be posted by the end of the week where you can register for that. Thanks, everyone, and have a good day.

Coordinator: Thank you. Today's conference has ended. All participants may disconnect at this time.

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