

NWX-DOL ESA OFCCP (US)

Assessing Compliance Series: The Components of a New Section 503 AAP

Moderator: Lisa Jordan
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Coordinator: Welcome and thank you for standing by. At this time, all participants will be in a listen-only mode throughout the duration of the conference.

Today's conference is being recorded. If you have any objections you may disconnect at this time. I will now turn the call over to Miss Lisa Jordan.
You may begin.

Lisa Jordan: Thank you very much. Good day everyone. I'm Lisa Jordan, and I want to welcome everyone to the Office of Federal Contract Compliance Programs Moving Towards Compliance Series, our second installment called the components of a new Section 503 AAP.

Throughout the series we will cover a variety of topics related to the recent changes to the regulations implementing the Vietnam Era Veterans Readjustment Assistance Act as amended VEVRAA at 41 code of federal regulations Part 60-300 and Section 503 of the Rehabilitation Act Section 503 and Part 60-741.

Today's training will cover the new components of the Section 503 AAP. And our goal is to enable contractors to develop 503 AAPs and meet the requirements of these new regulations.

Next slide, but before I introduced the two lovely people that you see on camera than the rest of our panel and the presenters I just want to go over a few housekeeping items.

First on to bring attention to the chat pane that's in WebEx. During the presentation please submit your questions and comments to all panelists using chats where you will or we do have a panel of subject matter experts here in the room who will be reviewing your questions and will be answering those questions at the end of the Webinar.

And then for those of you who need closed captioning services the media viewer in your WebEx you can open that up and there's a closed caption or they're taking transcriptions right now doing captioning.

So now I want to introduce who do you see? First I want to introduce Leo Lestino. He's our Regulatory Analyst here at OFCCP. And he's accompanied by Ebony Ross, our Equal Opportunity Specialist at OFCCP.

Now her role today is a little different because we really want to make this relevant and more for you the audience of contractors.

So she's going to be playing the role as a Human Resource Manager. So her questions she's going to be peppering Leo as if this is a technical assistance interaction meeting with OFCCP just to make sure that, you know, she understands and her company understands what are these new regulations are about and how to do this.

And so the rest of the people who are in this room with Leo and Ebony and myself are the panel of subject matter experts. And some of them you're familiar, know their names by you know them.

First is our Naomi Levin. She's our Branch Chief of Policy at OFCCP and she's accompanied today by Jessica Lyn, the Senior Attorney of our Solicitor's Office here at the Department of Labor.

I want to welcome everyone. And right now I'm going to turn it over to Leo to start us off and next slide.

Leo Lestino: Thank you Lisa and good afternoon everyone. Welcome to our continuing conversation about moving towards compliance. We've been discussing what the new requirements are under Section 503 and VEVRAA in light of the new rules that came out.

And what have we covered so far? So during our last webinar we cover the collecting data portion of the new regulations. And that is now available on the OFCCP Web site.

Please make sure that you visit that Web site. The link will be appearing in your chat box right now. And also if you received a copy of these slides in advance the link, you can click on that link on your - in PDF with the slides that you received.

You please feel free to visit that site and review that recording because there's a lot of good information there.

Today we're going to be covering what the new components of a Section 503 AAP are. On February 6, 2014 we're going to covering components of a VEVRAA AAP.

On February 20 we're going to cover job listings and contracts. Out on March 6 we're going to cover goals and benchmarks.

So and actually I want to also put a plug in for the Section 503 and VEVRAA landing pages on the OFCCP Web site. If you go to dol.gov/OFCCP the links to Section 503 and VEVRAA landing pages are on that site.

There's a lot of great information there -- FAQs, charts. So please feel free to visit that site because we're updating it regularly.

These are frequently visited because a lot of the FAQs that are on that site are coming from you are questions that we received from you and that we're answering so please visit that site frequently.

Next slide please. So what are our objectives for today?

Ebony Ross: Yes.

Leo Lestino: Today we're going to go over what the new sub part C requirements are for Section 503 AAPs.

So to enable you contractors to know what the new requirements are under the new rules what sections of a Section 503 AAP are new or revised or retained without provision so if you can properly draft a Section 503 AAP that is compliant with these new requirements.

And of course practically speaking we're going to cover what is required in that first Section 503 AAP after the effective date.

That AAP is what we're calling the Transitional AAP so we're are going to cover that in great detail later on.

Ebony Ross: Okay.

Leo Lestino: Next slide please, we discussed these extensively in the last Webinar but I think they're important enough to highlight again here.

So on March 24, 2013 OFCCP published two final rules that change the regulations implementing preventing VEVRAA and Section 503.

Those changes take effect 180 days after that publication date which is March 24, 2014. That's the effective date. That's the big date that contractor should be keeping track of.

Contractors now who have an AAP may maintain their current AAP and then come into compliance with the new Subpart C requirements during their next AAP cycle.

Ebony Ross: Okay.

Leo Lestino: Next slide, so let's start with a quick overview of what the required components of an AAP are as laid out in the new Section 503 regulations.

I mean then we'll go back and will do a section by section analysis so that we can see what's new, what's changed, what hasn't changed and what existing obligations continue...

Ebony Ross: Great.

Leo Lestino: ...for recurring regulations.

Ebony Ross: Great, great, great.

Leo Lestino: So what are these components? In Section 503 AAP has to contain a policy statement, a review of personal processes, of review physical mental qualifications, reasonable accommodations, anti-harassment procedures, external dissemination of policy, outreach and positive recruitment -- next slide please -- internal dissemination of policy, audit and reporting system, responsibility for implementation, affirmative action training, data collection and analysis and utilization analysis.

Now a lot of these components should sound familiar to you because they were components that...

Ebony Ross: Right.

Leo Lestino: ...are in the current regs. But there are several that are new. So we'll discuss what's new and what's changed.

Next slide please. All right let's start with the first section which is the policy statement. The policy statement section requires contractors to include their equal employment opportunity policy in the company's AAP.

This is required in the current regulations and that hasn't changed. That is still required under the new regs.

So what is this policy statement required to say? It's required to state that a contractor will recruit, hire, train and promote persons in all job titles and

ensure that all other personnel actions are taken without regard to disability and are based only on valid job requirements.

Also the policy should state that employees and applicants will not be harassed, intimidated, threatened, coerced or discriminated against because they filed a complaint, assisted or participated in an investigation, compliance evaluation, hearing or any other activity related to equal opportunity for individuals with disabilities, opposing practices that are made unlawful by regulations or laws requiring equal opportunity for individuals with disabilities and exercising any right protected by Section 503 and its regulations.

Now I'm sure that that language sounds very familiar to you all because that is still - that's the current language of that's required in the current regulations.

Ebony Ross: Right. That's what I was going to ask. I'm familiar with that requirement but tell us what's new...

Leo Lestino: All right.

Ebony Ross: ...what's new in your policy statement?

Leo Lestino: So what is new in this section? What changed under the new regulations is that the company's top executive leadership is now required to demonstrate their support for their company's AAP in the policy statement.

This ensures that the policy communicates to employees that support for the AAP goes to the very top of the contractor's organization.

So what does this mean? If you're a contractor for with a foreign-based parent company that means at the company's leadership that is based in the United States is required to express that support for the AAP in the policy statement.

Ebony Ross: Got it.

Leo Lestino: So top management support for the AAP must be indicated in the policy statement.

Ebony Ross: Got it.

Leo Lestino: Next slide please. Review of personal processes. So under the current regulations contractors are required to periodically review their personal processes to ensure that they are careful, thorough and systematic, that these processes do not stereotype individuals with disabilities and that contractors design procedures that facilitate this required review.

This requirement for periodic review of personal processes did not change under the new regulations.

Ebony Ross: Okay.

Leo Lestino: So that is still an existing requirement.

Ebony Ross: It's still periodic.

Leo Lestino: It's still periodic review of yes exactly, of personal processes. In the Section 503 AAP contractors should indicate how frequently they conduct this periodic review, when they last did their review and when the next review was expected to occur.

There should be some kind of description of the procedures that the contractor follows during the periodic review in this section of the AAP.

Now I would like to point out also that the current regulations did provide an appendix, appendix C under this section...

Ebony Ross: Right.

Leo Lestino: ...which provided a set of procedures the contractors had the option of implementing to comply with the requirements under this part.

Well the new rule deleted Appendix C.

Ebony Ross: Oh.

Leo Lestino: So there's no more Appendix C...

Ebony Ross: So Appendix C is gone?

Leo Lestino: Yes exactly. As always though contractors are free to design their own procedures for doing this periodic review that would best suit them as long as they meet the requirements of this part.

Ebony Ross: Got it.

Leo Lestino: Also the new regulations clearly provides that contractors are required to ensure that applicants and employees with disabilities have equal access to their personal processes including those implemented through information and communication technologies.

Contractors must provide necessary reasonable accommodation to ensure that applicants and employees with disabilities have equal access and receive equal employment opportunity in the operation of their personal processes.

Ebony Ross: Well Leo does this mean that contractors now have to make their IT systems accessible?

Leo Lestino: That's an excellent question Ebony. While OFCCP recognizes in the new regs that accessible IT systems are a best practice and therefore encourages contractors to implement assessable systems it is not required under the new regulations.

Ebony Ross: Okay, it's not required.

Leo Lestino: It is not required. What is required ultimately is equal access including by means of reasonable accommodations and equal employment opportunity.

However if a contractor does want to take that next step of making their IT systems accessible the new regulations provides them some resources...

Ebony Ross: Okay.

Leo Lestino: ...specifically in Section 60-741.44B Footnote 3.

Ebony Ross: Okay.

Leo Lestino: There's a list of resources in the new regs including for example the Web content accessibility guidelines and the accessibility requirements of federal agencies.

Ebony Ross: Okay great.

Leo Lestino: So this could help guide contractors in making those systems accessible if they wish to do so.

Ebony Ross: Got it, great.

Leo Lestino: We actually would encourage and this is why we say this is an encouraged practice because we believe it's going to help contractors become compliant with this particular section of the regulations and it would also reduce individual requests for reasonable accommodation that they would receive.

Ebony Ross: But Leo if someone submits a request we're still required to process it?

Leo Lestino: Exactly. So that doesn't change.

Ebony Ross: Okay.

Leo Lestino: We are still required to process requests for accommodations that you receive. But if you have accessible IT systems that may reduce the requests that you actually receive.

Ebony Ross: Got it.

Leo Lestino: Next slide please. So in this section in the review of physical and mental qualifications the new regulations retain what is required in the current regs.

Ebony Ross: All right.

Leo Lestino: So nothing has changed in this particular portion of the AAP.

Ebony Ross: Right.

Leo Lestino: Contractors as they always have been need to provide and adhere to a schedule for the periodic review of all physical and mental job qualification standards to ensure that any standards that screen out or tend to screen out an individual or class of individuals with disabilities are job-related and consistent with business necessity.

Ebony Ross: Keyword job-related and consistent with business necessity.

Leo Lestino: Yes that's...

Ebony Ross: Got it.

Leo Lestino: ...what's always been required and that requirement is retained.

Ebony Ross: Got it.

Leo Lestino: So what kind the qualifications are we talking about here? These are for example blanket vision and hearing requirements, blanket weightlifting requirements, tests, et cetera.

These are the things that might have a screening effect that contractors would need to show are job related and consistent with business necessity.

This has always been required and it is still required under the new regulations.

Ebony Ross: All right got it. Thank you.

Leo Lestino: Next slide please. Now the obligation to provide reasonable accommodations to employees and applicants for individuals with disabilities absent undue hardship is an obligation that is retained under the current - under the new regulations.

Ebony Ross: Okay.

Leo Lestino: This requirement is retained and that the new regs actually provide clarification that tie in this reasonable accommodation obligation to the obligation the contractors don't discriminate because those two are tied together under the new regs.

It is important to point out that the new regs also require -- and this is important to point out -- the new regs require as a matter of affirmative action that if an employee with a known disability is having performance difficulties that may be related to the disability the contractor is required to confidentially inform the employee of the performance issue, ask whether the issue is related to the disability and inquire whether the employee needs an accommodation. That is an affirmative obligation that they have for this part.

Ebony Ross: Okay Leo. Well to make sure that I understand what you just said ...

Leo Lestino: Sure.

Ebony Ross: ...so let's say for example I have an employee and this employee has a known disability and this employee has also had performance issues.

So are you saying then that I can go to that employee and inform that employee confidentially that that he or she has a performance problem?

Leo Lestino: If that performance issue it may be related to the disability?

Ebony Ross: Their performance problem it may be related to the disability...

Leo Lestino: Yes.

Ebony Ross: ...and then I inquire as to whether or not a reasonable - an accommodation would be necessary...

Leo Lestino: Exactly...

Ebony Ross: ...to help that.

Leo Lestino: ...right so...

Ebony Ross: Okay.

Leo Lestino: ...just to recap if you have an employee with a known disability who is having performance issues that may be related to the disability a contractor has to confidentially go to that employee, inform them of the performance issue, ask whether the issue is related to the disability and then ask if an accommodation is necessary.

Ebony Ross: Got it.

Leo Lestino: Also under the new - under the new regulations this reasonable accommodation obligation extends to the contractor's use of electronic or online job application systems.

Contractors using these systems have to provide necessary reasonable accommodation to ensure that qualified individuals with disabilities who are unable to fully utilize the system are provided equal opportunity to apply for and be considered for jobs.

Also under the new regulations there is an appendix that's provided that afford to help contractors to develop written reasonable accommodation procedures...

Ebony Ross: Okay.

Leo Lestino: ...because that is encouraged as a best practice under the new regs.

Ebony Ross: Okay.

Leo Lestino: It is a best practice. It's not required. The use of written reasonable accommodation procedures is not required but it is encouraged as a best practice. And the Appendix, Appendix B does provide guidance for contractors who want to develop those procedures.

Ebony Ross: Well Leo how can these written reasonable accommodation procedures help contractors with, you know, fulfill their accommodation obligation?

Leo Lestino: That's a great question. And, you know, it is - we encourage it because we recognize that contractors are required to individually address each person's

request for reasonable accommodation and engage in the interactive process with that requestor if necessary.

Having written procedures will help facilitate this process and ensure that the contractor gets proper attention to each request for accommodation that it receives or when the need for an accommodation becomes readily apparent. So it will help you. We encourage, it is a best practice to develop those procedures.

Ebony Ross: Thank you.

Leo Lestino: Next slide please.

The anti-harassment procedures section of the AAP is unchanged. It is the same thing as it always has been. Contractors are still required to develop and implement procedures to ensure employees are not harassed under basis of disability.

These anti-harassment procedures should be included in this particular section of your Section 503 AAP.

Ebony Ross: Got it.

Leo Lestino: Next slide please. So let's take 44F because 44F is external distribution of policy and outreach of positive recruitment. Let's take those two things separately. Let's start with the external distribution of policy.

Under the current regulations it is recommended for contractors to send written notification of the company's affirmative action and equal opportunity

policy to all subcontractors including vendors and suppliers. So what's changed?

Ebony Ross: What's changed?

Leo Lestino: Simple enough, what's changed is that this recommendation is now a requirement. Contractors are now required to send written notification of that policy to all subcontractors and request their cooperation.

Also contractors are required to document that they have satisfied this notification requirement.

Ebony Ross: Got it.

Leo Lestino: So you - they're required to send the notification now to their subcontractors and they have to document that they've actually satisfied that notification requirement.

And the documentation that that entails may involve for example saving a copy of the notice that you sent to your subcontractors or some kind of written acknowledgment from the subcontractor that they actually received that notice.

Ebony Ross: Got it.

Leo Lestino: Next slide please. So now let's discuss the outreach and positive recruitment prong of 44F.

Ebony Ross: Okay.

Leo Lestino: Contractors have always been required to engage in outreach and recruitment efforts to identify and attract individuals with disabilities.

That requirement did not change. Contractors are still required affirmatively to engage in outreach and recruitment.

The new regs actually provides contractors with an updated list of outreach and recruitment resources.

Ebony Ross: Oh that's great.

Leo Lestino: Exactly, to help you in your efforts. Because the goal is here is to help you find the best mix of resources that will work best for your particular organization in its particular circumstances.

So please make sure that you look at the list of recommended resources for outreach and recruitment that are in the new regulations.

Ebony Ross: Okay.

Leo Lestino: Now what do we want to highlight right? So what's new ?

Ebony Ross: What's new?

Leo Lestino: What's new with the new regs? So this is a big change. The new regs now require contractors to conduct an annual self-assessment of their outreach and recruitment efforts and document this assessment.

This assessment requirement ensures that the contractor thinks critically about their recruitment and outreach efforts and implements modifications as necessary to meet their obligations.

Ebony Ross: Well can you provide more detail on this assessment obligation? Practically speaking how does this assessment look?

Leo Lestino: That's a great question. And the new regs make it clear that the contractors have to evaluate each outreach and recruitment effort to determine if that effort was effective.

So the contractor needs to set out first of all, the contractor needs to set out and document the criteria that they are using...

Ebony Ross: Okay.

Leo Lestino: ...to conduct that review.

So whatever criteria is you think will help you make the best assessment of the effectiveness of your outreach and recruitment efforts you need to set that criteria and document that criteria.

So one of the criteria that the new regs actually requires contractors to consider are the applicant and hiring metrics required by 741.44K.

Ebony Ross: That 44K data.

Leo Lestino: Forty-four K data. So again this is my plug. Please please, please refer to the archive recording of the data collection Webinar that is on the OFCCP Web site.

We have the link for it and we're putting it up again on the chat box. Please visit that link so that you can brush up on what the data collection, the new data collection requirements are.

So the applicant and hiring metrics that are collected under 44K is one of the criteria...

Ebony Ross: Okay.

Leo Lestino: ...that can help contractors in assessing whether their outreach efforts were effective. So let's take the concrete example.

Ebony Ross: Okay.

Leo Lestino: Say a contractor participated in a disability job fair. One of the criteria that they can use in evaluating whether that effort was effective is this result in attracting qualified applicants with disabilities for any jobs?

Ebony Ross: Okay.

Leo Lestino: If so how many applicants? Did it result in any hires? Did the contractor form relationships with any disability advocacy groups that were present during the fair?

Was the job fair effective in reaching the targeted populations or should the contractor may be consider attending another job fair it would be more effective?

Ebony Ross: Okay.

Leo Lestino: So these are the kinds of questions and criteria the contractor should look at when it's evaluating whether it's conducting the necessary outreach and recruitment.

Ebony Ross: Okay.

Leo Lestino: Also we need to point out that contractors are now required to document all of their outreach and recruitment activities and retain these documentation records for three years.

Ebony Ross: For three years.

Leo Lestino: Three years, so that's also a new requirement...

Ebony Ross: Right.

Leo Lestino: ...in the new regs.

Next slide please. Let's take a look at a sample because the new regs don't provide any specific format. They don't - it doesn't prescribe any set of procedures that a contractor has to follow in conducting that assessment.

Ebony Ross: Right.

Leo Lestino: Contractors are - have the flexibility to design the procedures...

Ebony Ross: Okay.

Leo Lestino: ...and in documenting those procedures. But this is a format of what this assessment might look like in an AAP.

So let's take a look at the first column of this particular table. In that left-hand side of that column you can see that the contractor in this instance listed the outreach and recruitment activities.

Ebony Ross: Right.

Leo Lestino: Right? And then the second column when did the activity take place? And then in the third column it - they provided a description of the activity.

So for example they participated in a disability job fair in the fourth row.

And they said, they described their disability job fair as hosted by the local disability advocacy groups and said that over 30 employees participated.

Ebony Ross: Okay.

Leo Lestino: And then on the fourth column they provided their evaluation of whether the particular activity was effective. So for the disability job fair they actually received 15 applications from qualified individuals with disabilities and one was hired.

Ebony Ross: Okay.

Leo Lestino: Right? So and they said that they retained resumes for consideration in future job openings. So if you look at the evaluation and you compare it the criteria that they provided below you can see that they were applying this, these criteria in determining whether the effort was effective.

What criteria did they identify? Did the activity attract qualified applicants with disabilities? Did the activity result in the hiring of qualified individuals with disabilities? Did the activity expand their outreach to individual disabilities in the community?

Did they increase their capacity to include individuals with disabilities in their workforce?

So these are - and they provided that criteria in this table. So again this is not a required format but this is one way of - that a contractor might document their assessment of their outreach and recruitment.

Ebony Ross: So I have a question Leo. Is the applicant and hiring matrix - metrics from, you know, that 44K the only factors that contractors should consider when performing this assessment and if so why?

Leo Lestino: Well, Section 503 was meant to employ an advance in employment individuals with disabilities. Therefore the number of individuals with disabilities hired and related to that the number of applicants for individuals with disabilities are important factors for consideration.

Ebony Ross: Okay.

Leo Lestino: They are important factors. And that's why the regs specifically requires contractors to include those metrics in their evaluation in their assessment.

However the new regs also specifically allows the contractor to consider any of the reasonable criteria in evaluating the effectiveness as long as they document what that criteria is.

Ebony Ross: Okay.

Leo Lestino: So it's not just the applicant and hiring metrics. There could be other criteria that the contractor uses in its evaluation.

Ebony Ross: Okay.

Leo Lestino: But whatever that criteria entails contractors have to document it and include it in the AAP -- whatever that criteria is.

Ebony Ross: Okay. So could you explain to us what this criteria might be or what it might - what other criteria is there?

Leo Lestino: Sure. When the contractor conducts an assessment of each individual outreach and recruitment activity one criteria can be has - did it result in some kind of breakage agreement?

Did they provide the company with more contacts in the community so that they can have a broader outreach for individuals with disabilities?

Did they provide the contractor with a greater capacity to include individuals with disabilities in the workforce such as introducing new reasonable accommodation technologies?

So these are the other criteria...

Ebony Ross: Okay.

Leo Lestino: ...that are positioned not 44K metrics but they are relevant in assessing whether connectivity was effective.

Ebony Ross: Okay.

Leo Lestino: The data in 44K really is most effective for evaluating the overall effectiveness of their outreach and recruitment efforts because they have multi-year trends.

Ebony Ross: Okay.

Leo Lestino: They can consider the first - the current AAP year and the two years where they conduct their assessment. So provides you with a look as to how effective your efforts were over a period of time.

Ebony Ross: Got it.

Leo Lestino: Next slide please, internal distribution of policy. So in the current regulations contractors are required to develop some procedure to distribute their AA policy to their employees right?

Ebony Ross: Right.

Leo Lestino: Okay the new regulations it makes a more specific requirements for contractors to distribute that affirmative action policy internally by incorporating it in their policy manual or making it otherwise available to employees by other means.

Ebony Ross: But wait, I have a question.

Leo Lestino: Sure.

Ebony Ross: So my company has an Internet site. So will it suffice for us to just put the policy on an Internet site instead of in a policy manual?

Leo Lestino: Posting the policy on the company's Internet site may fulfill this requirement but only and only if all employees would have access to that Internet site.

Ebony Ross: Okay.

Leo Lestino: The AAP has to state if the policy is actually posted in an Internet site as well.

Ebony Ross: Oh.

Leo Lestino: And, you know, contractors may use a combination of (things)...

Ebony Ross: Okay.

Leo Lestino: ...such as email, intranet postings, corporate mail delivery, distribution during training sessions or orientations. A combination of methods is permissible as long as these methods make the policy available to all employees.

Ebony Ross: That's the key.

Leo Lestino: That is the key.

Ebony Ross: All employees.

Leo Lestino: All employees, exactly.

Additionally -- and this is a new requirement under the regulations -- contractors with collective bargaining agreements have to notify union officials of their affirmative action policy and request their cooperation.

Ebony Ross: Okay.

Leo Lestino: So and I want to point out that in the new regulations there's a lot of other means that we're encouraging contractors to use to distribute that affirmative action policy. So publicizing it in company publications print it up in special meetings with executive management and supervisory personnel to explain the policy and like I said distributing it during training and orientation sessions.

All of those are good ways of distributing the policy as long as they make it available to everyone.

Ebony Ross: Okay. That makes sense.

Leo Lestino: Next slide please. So let's talk about the auditor reporting system. Contractors have long been required to design and implement an external audit and reporting system to measure the effectiveness of their AAPs and to take action to bring deficient programs into compliance.

This has always been required. So this is not new and it is still required under the new regulations.

Ebony Ross: Right.

Leo Lestino: They need to have an audit reporting system.

So what does this mean? The AAP should contain some kind of narrative description of what this audit reporting system consists of, specify how frequently they print up reporting and auditing and state that the contractor will take necessary corrective actions as problems are discovered.

Ebony Ross: Okay.

Leo Lestino: So that's not new. That has always been required. What's new?

Ebony Ross: What's new?

Leo Lestino: What is new is that the new regulations actually provide some teeth to this requirement. By requiring the contractors document the actions that they take to comply with these sub audit and reporting requirements.

Ebony Ross: Okay.

Leo Lestino: So this is a new documentation requirement. This will allow contractors and OFCCP to effectively assess whether the contractor is meeting their affirmative action obligations including whether deficiencies have been identified and corrected.

Ebony Ross: Okay. So what is an accepted procedure should be included in this step audit and reporting system and how should this documentation look?

Leo Lestino: And I'm sure that's a question that everyone is asking. The new regs don't specify the exact procedures for the contractor to follow...

Ebony Ross: Okay.

Leo Lestino: ...when conducting a self-audit. Rather what the new regulations provide are a list of requirements that a self-audit and reporting system needs to have.

And you can see those requirements in your slide in front of you right now.

Ebony Ross: Right.

Leo Lestino: What are these requirements? That your audit and reporting system needs to measure the effectiveness of the AAP, indicate any need for remedial action, determine the degree to which the contractor's objectives have been reached, determine whether individuals with disabilities have had the opportunity to participate in company-sponsored educational training, recreational and social activities and measure the contractor's compliance with the AAP's specific obligations.

Ebony Ross: Okay.

Leo Lestino: So those are the requirements that they are required to meet.

Ebony Ross: Right.

Leo Lestino: Now in - within that parameter they can design a sub audit and reporting system that will best help them meet these requirements.

Ebony Ross: Got it.

Leo Lestino: So what possible ways can a contractor document that audit? Let's take a look at a few examples.

Ebony Ross: Okay.

Leo Lestino: Next slide please.

Like we indicated earlier there is no particular format required under the new regulations as to how the contractor should document their self-audit.

But they have to document it. So this is one way that they could self-audit and document it. Again not required, not - this is not something that we're expecting to see in your AAP's but it contains the information that should be present when you're documenting your self-audit.

For example in this particular table in your screen the contractor identified the AAP components on the left-hand column. And, you know, these other components...

Ebony Ross: Right.

Leo Lestino: ...that we're discussing right now. Next to that are they listed out what specific obligations they have under that component. So let's take the first row for instance, the policy statement component.

Under the policy statement component they're required to post the EEO policy statement on bulletin boards that they make it available in a form that is accessible and understandable to individual disabilities and that they indicate top executive management support for AAP right?

Ebony Ross: Right.

Leo Lestino: Those are the individual obligations that they have for that section. And then the table next in the column next to that they indicate when they last expected for compliance on that section and whether they actually complied.

Again this is a way to help you track whether you're complying with your obligations under each part of the AAP.

Ebony Ross: Got it.

Leo Lestino: And, you know, if you conduct the compliance and you find that you need to conduct some kind of remedial or follow-up action in the next column it indicates that.

For - so for example for the last obligation under this section they've got a new CEO starting on a particular date.

Ebony Ross: Right.

Leo Lestino: So they need to publish a new policy statement saying that that CEO supports the policy statement.

Ebony Ross: That's right...

Leo Lestino: Right?

Ebony Ross: ...which is one of the new requirements.

Leo Lestino: One of the new requirements. So, you know, this is again not a requirement but it's a - but a fairly simple way of tracking whether you complied with what you're required to comply with under - for your AAP?

Ebony Ross: Right, great illustration.

Leo Lestino: Thanks. Next slide please. Again this is just a continuation of the same table. And it's enumerating all of the sections that we're describing and all of their obligations and compliance and whether they need to conduct any kind of remedial action.

Next slide please. Again the internal audit and reporting system does not provide a particular format or set of procedures that contractors have to follow.

They provide several requirements. And one of the requirements is that whatever audit system a contractor implements it needs to enable them to identify the need for remedial action.

Ebony Ross: Okay.

Leo Lestino: Right?

Ebony Ross: Right.

Leo Lestino: That's one of the requirements...

Ebony Ross: Right, right, right.

Leo Lestino: ...that we just set out. So while the new regulations don't specifically require contractors to monitor all of their personnel activity...

Ebony Ross: Right.

Leo Lestino: ...for their Section 503 AAPs it is one way.

Ebony Ross: Okay.

Leo Lestino: It's one way for contractors to determine whether there is any kind of problematic trends that are developing.

Ebony Ross: Okay.

Leo Lestino: And what do I mean by problematic trends? For example if individuals with disabilities are being siloed in particular job groups or if individuals with disabilities are being terminated and higher rates on certain jobs then that's - those are the trends that monitoring personal activity will reveal.

Ebony Ross: Got it.

Leo Lestino: So in this particular table in this sample for this particular contractor they listed out all the job groups and then they on the right of that they provided what the personal activity that they're monitoring.

So for example external hires, for external hires they provided the total number of external hires that they had and the total number of external hires for individuals with disabilities.

So again not a requirement, not a requirement for the self-audit but it is one way...

Ebony Ross: Okay.

Leo Lestino: ...one way for them to be able to effectively assess whether there's any remedial action that needs to take place.

Ebony Ross: Now we understand that this is a sample table. So should I develop a table that looks like this or what should I do?

Leo Lestino: Right. Again it's not - this is not a form that's required but and you're - and we're not going to expect, we're not auditing to see that this particular table is present in your AAP.

Ebony Ross: Okay.

Leo Lestino: What we are going to expect is that you have an audit and reporting system that meets the requirements that we set out in the beginning.

Ebony Ross: Got it. Oh yes that's right.

Leo Lestino: Exactly. Next slide please, responsibility for implementation. This particular portion of the AAP is unchanged as contractors have always been required to designate an official responsible for the AAP for implementing the AAP and that official's identity needs to appear in all communications about the AAP.

Ebony Ross: Got it.

Leo Lestino: So that obligation is unchanged. Contractors are still required to designate this official in - under the new regulations.

Ebony Ross: Okay that's what's up ...yes.

Leo Lestino: Next slide please. So in here there are no revisions to the training requirement. The new regs still require contractors to provide an equal employment opportunity and affirmative action training to employees involved in personal processes including recruitment, screening, selection, promotion disciplinary action.

And I'd like to highlight this particular session that although nothing has changed because we encourage that these trainings are happening because we have a lot of new requirements.

Ebony Ross: Right.

Leo Lestino: There's a lot of new requirements under the new regulations and this training should be taking place.

Ebony Ross: Got it.

Leo Lestino: Next slide please. 741.44K.

Ebony Ross: Yes.

Leo Lestino: This is a completely new section. And we discussed this in a lot of detail during our last Webinar. So please again visit the link for the archive for our last Webinar which includes a long discussion on data collection analysis.

It's - that link is now appearing in your chat box. And please review the information. There's a lot of good information in that Webinar.

So we won't discuss this in detail here again. We'll just repeat that what contractors are now required to document under their new Section 503

regulations are the number of applicants who self-identified as individuals with disabilities, the total number of job openings and jobs filled, the total number of applicants for all jobs, the number of applicants with disabilities hired and the total number of applicants hired.

Ebony Ross: Okay good. So is this one of five theories that we should use in assessing our outreach and recruitment attributes?

Leo Lestino: Good eye - that's good eye, yes. This is one of the criteria from which you draw applicant and hiring metrics that you used to assess the effectiveness of your outreach and recruitment efforts.

That is a - one of the main ways that this data is useful to contractors.

Ebony Ross: Okay.

Leo Lestino: Next slide please. We showed this data tables during the last Webinar. Again we're not requiring a particular format that this data needs to show up in your AAP.

This is one particular format that it may look like and again visit that Webinar and review it because...

Ebony Ross: Okay.

Leo Lestino: ...it's a lot of good information.

Ebony Ross: So I have a question Leo.

Leo Lestino: Sure?

Ebony Ross: I see you have data here for three years -- 2014, 2015 and 2016.

Leo Lestino: Right.

Ebony Ross: What if I don't have all that data? Will my company be cited for noncompliance?

Leo Lestino: Right and, you know, I'm glad you pointed that out because as you stated earlier we don't expect - so we're talking about a transitional AAP.

Ebony Ross: Okay.

Leo Lestino: A transitional AAP is that first AAP that contractors develop after the effective date.

Ebony Ross: March 24, 2014.

Leo Lestino: Right. So for - if you're developing an AAP after March 24, 2014 that is considered a transitional AAP.

Ebony Ross: Okay.

Leo Lestino: And for that AAP we don't expect...

Ebony Ross: Okay.

Leo Lestino: ...you do have complete data.

Ebony Ross: Okay. I was wondering.

Leo Lestino: You may not yes exactly. You're not going to have three years' worth of data.
You may not even have one year's worth of data.

Ebony Ross: Right.

Leo Lestino: So we're - we are not going to cite you for noncompliance for not having the data.

Ebony Ross: Okay.

Leo Lestino: What we well - what we're going to look for is some kind of acknowledgment that you know that you're required to collect this data and that you are either implemented or are implementing procedures...

Ebony Ross: Right.

Leo Lestino: ...to be able to collect this data.

Ebony Ross: Okay.

Leo Lestino: But we're not going to cite you for noncompliance.

Ebony Ross: Okay. But you guys need to see some type of effort from us.

Leo Lestino: Exactly, some type of effort, some type of acknowledgment that you know you're required to start collecting this data.

Ebony Ross: Got it.

Leo Lestino: Next slide please. Again the regulations do not require you to maintain applicant flow logs. The regulations do not explicitly say that you have to keep logs like this.

What the regs are require is that you collect applicant and hiring data...

Ebony Ross: Right.

Leo Lestino: ...up to 44K.

Ebony Ross: Right.

Leo Lestino: So having applicant flow logs which may be many of you already do have that.

Ebony Ross: Yes we do have some.

Leo Lestino: So modifying it by putting a column for individuals with disabilities would be one way of collecting and attracting applicant and hiring data for 44K.

Ebony Ross: Oh okay.

Leo Lestino: Again not required but just another particular format, another method to satisfy the data collection requirement.

Ebony Ross: Okay.

Leo Lestino: Next slide please. Utilization analysis, this is...

Ebony Ross: Yes.

Leo Lestino: ...a completely new section and it deserves extensive discussion from us...

Ebony Ross: Right.

Leo Lestino: ...if it's new. It's - this is a new part of the new regulations. So we actually have a separate Webinar discussion discussing utilization analysis.

And we want you to keep track of the Webinars that are being hosted by OFCCP because we will have one on utilization analysis.

Ebony Ross: Okay.

Leo Lestino: We're just going to cover briefly what this new section requires.

Ebony Ross: Okay.

Leo Lestino: It requires contractors to apply the 7% national utilization goal to each job group that a contractor established for utilization analysis under Executive Order 11246.

So those same job groups those are for you that you establish for Executive Order 11246 utilization those would be the same job groups that you use for this.

Ebony Ross: Okay.

Leo Lestino: Unless you are a contractor with 100 or fewer employees...

Ebony Ross: Okay.

Leo Lestino: ...at which point you have the option of conducting utilization analysis with your entire workforce as a whole...

Ebony Ross: Okay.

Leo Lestino: ...of applying that 7% goal to...

Ebony Ross: Okay.

Leo Lestino: ...your workforce as a whole.

After that, you know, you have to identify problem areas based on your analysis and identify action oriented programs that you're going to implement to correct those problem areas if you find any.

Ebony Ross: So how will I know the representation of individuals with disabilities meets jobs growth?

Leo Lestino: Well contractors would have that data. You would have that data because one you've already been conducting your pre-and post-offer invitations...

Ebony Ross: Right to self-identify.

Leo Lestino: ...to self-identify.

Ebony Ross: Additionally 60-741.42C requires contractors - and this is important. This is a new requirement. Contractors are required to invite each of their employees to voluntarily inform the contractor whether the employee believes that he or she is an individual with a disability.

Ebony Ross: Right.

Leo Lestino: Contractors are required to do this the first year they become subject to the AAP requirements of the new regulations and every five years thereafter.

Ebony Ross: Contractors are also required to remind their employees during this five year period between invitations that they have the ability to voluntarily update their disability status with the contractor at any time.

Ebony Ross: Okay.

Leo Lestino: Because of this every five year invitation, the stuff you sent to all employees you should have an idea of the disability composition of your workforce.

Ebony Ross: Okay. Thank you for explaining that.

Leo Lestino: Yeah, you're welcome.

Ebony Ross: So I have a follow-up question Leo.

Leo Lestino: Sure.

Ebony Ross: So let's say that my company meets the 7% national utilization goal. Does that now mean that I'm done, I don't have to engage in any more outreach and recruitment efforts?

Leo Lestino: Not quite.

Ebony Ross: Not quite?

Leo Lestino: Not quite.

Ebony Ross: Okay. I have to keep going.

((Crosstalk))

Leo Lestino: Yes absolutely because outreach and recruitment is an affirmative obligation. Contractors are required to employ and advance in employment qualified individuals with disabilities.

So you're always required to...

Ebony Ross: Okay.

Leo Lestino: ...outreach and recruitment. And please we'll discuss this much later in the goals and benchmarks Webinar that we will have on March 6. So watch out for when registration for that opens and make sure that you attend that.

Ebony Ross: Okay, thank you Leo.

Leo Lestino: Next slide please. So, now that we discussed all of the new requirements for Section 503 AB...

Ebony Ross: Yes.

Leo Lestino: ...and there are a lot, there's a lot that we discussed so far, let's take a look at what practically contractors are required to do for their first 503 AAP after the March 24, 2014 effective date.

Ebony Ross: Okay.

Leo Lestino: Okay so we turned this - we're calling this first AAP the transitional AAP.

Ebony Ross: Okay.

Leo Lestino: So as we've indicated contractors are able to link compliance with the AAP requirements of Subpart C until that first AAP is due after the March 24, 2014 effective date.

Ebony Ross: Okay.

Leo Lestino: What does that mean?

Ebony Ross: Yeah, what does that mean?

Leo Lestino: Next slide please.

Ebony Ross: Please tell us.

Leo Lestino: So before their AAP cycle contractors are encouraged...

Ebony Ross: Okay.

Leo Lestino: ...you're encouraged to - we recommend that you begin complying with the Subpart C requirements before the issuance of your first AAP because there's things that it's hard to wait until your first AAP before you start coming into compliance.

Ebony Ross: Okay.

Leo Lestino: The goal is to start coming into compliance with this new requirements as soon as possible.

Ebony Ross: So are you guys going to be available to help us provide technical assistance if we need it...

Leo Lestino: Yes.

Ebony Ross: ...if there are questions?

Leo Lestino: Absolutely.

Ebony Ross: Okay.

Leo Lestino: OFCCP is available to provide technical assistance. And we look at this transitional AAP, this first AAP as the opportunity to provide technical assistance.

So please contact us and we will try to assist you to come into compliance with the new requirement.

Ebony Ross: Okay great.

Leo Lestino: So going back to what you are encouraged to do before your next AAP cycle contractors are encouraged to invite applicants to voluntarily self-identify pre- and post-offer using OFCCP form which we will post on our Web site as soon as it is available.

Ebony Ross: Okay thank you for clearing that...

Leo Lestino: Exactly.

Ebony Ross: ...the question about that.

Leo Lestino: Right, right we will post that as soon as it's available. And if you need more detail or more information on this invitation to self-identify the last Webinar that we conducted has a section in it about the invitation to self-identify. So please access that on our Web site and the link is coming up in your chatbox again now.

Visit it and you can find out more about what that invitation to self-identify entails.

Ebony Ross: Okay.

Leo Lestino: Also we encourage and recommend that you conduct that initial self-ID survey with your employees...

Ebony Ross: Okay.

Leo Lestino: ...the one that you're supposed to do every five years. We recommend that you conduct that self-ID before your next AAP cycle.

Ebony Ross: Right that makes sense.

Leo Lestino: Right. Also we would like to recommend that you implement, start implementing documentation procedures. There is two major documentation procedures that are new under the new regulations and that is that you need to document your outreach and recruitment efforts...

Ebony Ross: Right.

Leo Lestino: And your self-audit and reporting systems right?

Ebony Ross: That's right, you just discussed that.

Leo Lestino: Right and next slide please. Also you should conduct a documented assessment of your outreach and recruitment efforts and implement procedures to conduct that assessment annually.

So you have the documentation for your audit and reporting system documenting your outreach and recruitment activities and documenting your assessment...

Ebony Ross: Okay.

Leo Lestino: ...your annual assessment of your outreach and recruitment efforts right?

Ebony Ross: So, I have an essay question here.

Leo Lestino: Sure.

Ebony Ross: So my company won't have three years of data okay? We may not have one year data. So how are we to assess compliance with this requirement?

Leo Lestino: Good question. We understand that this AAP is going to be a transitional one.

Ebony Ross: Right.

Leo Lestino: So contractors may only be able to do very limited and cursory assessment if any...

Ebony Ross: Right okay.

Leo Lestino: ...at all of their outreach and recruitment efforts. What OFCCP will look for in that first AAP, that traditional AAP is an indication from the contractor that it knows the new assessment requirement and acknowledgment that you acknowledge that - there is this new assessment requirement that you have to comply with and that you have or will implement procedures to be able to conduct this assessment properly in the future and that you're documenting it.

Ebony Ross: Okay.

Leo Lestino: So we need some kind of acknowledgment that you know this is new and that you know that you're - this is a new requirement.

Ebony Ross: Okay.

Leo Lestino: And we expect that this will be in some kind of narrative form in the AAP.

Ebony Ross: Okay, okay.

Leo Lestino: So what else are we recommending? Contractors should also begin the training of their applicants and employees. Go back to the previous slide please.

That you train employees engaged in key personal activities. We recommend that you begin implementing procedures to properly comply with that data

collection and analysis section, that 44K data that you begin to start having procedures to be able to have that data.

Next slide please. Your - you should have an equal opportunity policy statement showing top executives support for your AAP. We recommend that you have that.

Ebony Ross: Okay.

Leo Lestino: We recommend that you ensure employees and applicants have equal access to your personal processes. And we recommend that you conduct an annual workforce assessment where you apply the national utilization goal, identify any problem areas if any and develop action oriented programs.

Ebony Ross: Okay. Sounds good.

Leo Lestino: Next slide please. So and those are all the recommended things.

Ebony Ross: Yes.

Leo Lestino: We recommend, we strongly encourage that you not wait until your next AAP cycle to start coming into compliance with the new requirements of the regulations.

So what does practically speaking your first chance your first AAP, your first, your transitional AAP, what does it need to contain?

First of all your transitional AAP needs to comply with all of the existing obligations that are not new.

So we - and we highlighted during this Webinar all of the obligations under the current regs that carry over and continue into the new regulations.

Contractors need to ensure that they comply with all those existing obligations which includes reviewing personal processes practices, reviewing job qualifications, making reasonable accommodations available, developing harassment policies, engaging in outreach and recruitment, and having procedures for distributing information and equal opportunity and affirmative action efforts.

Ebony Ross: Okay.

Leo Lestino: Also contractors should continue inviting applicants to self-identify post-offer because that is in the current...

Ebony Ross: Right.

Leo Lestino: ...regs and that doesn't change. They are still required as a contractor to conduct that to invite employees post offer to self-identify.

Ebony Ross: Okay.

Leo Lestino: So those are all the existing obligations that continue right?

Ebony Ross: Right.

Leo Lestino: So and for the new obligations the transitional AAP should address everything that a contractor has done so far to come into compliance with the new requirements would take effect on March 24, 2014.

And finally to the extent that they not achieved full compliance yet the AAP should discuss the steps that the contractor has to take or will take to come into compliance.

Ebony Ross: Okay.

Leo Lestino: So those are the three requirements, comply with all existing obligations, address everything that you've done in some kind of narrative form to comply with the new requirements.

And if you haven't complied yet tell us that your - what steps you're going to take to come into compliance.

Ebony Ross: Okay.

Leo Lestino: And, you know, this - there's no particular format the discussion can take. It could be in a section all its own in the AAP.

It could be a narrative discussion in the review of personal processes area or in the identification of problem area section.

What - we're not requiring you to - it's not required to be in any particular place. It just needs to be in your AAP.

Ebony Ross: Got it. Leo.

((Crosstalk))

Ebony Ross: ...okay, to make sure that I understand what OFCCP expects to see in the transitional AAP let me recap.

Leo Lestino: Sure.

Ebony Ross: So you - we're supposed to comply with all of the existing obligations, you know, from the current regs that carry over into the new regulation?

Leo Lestino: Right.

Ebony Ross: Right? And we're supposed to show some type of effort that we are coming into compliance with those new requirements that were effective March 24, 2014.

Leo Lestino: Right.

Ebony Ross: Okay.

Leo Lestino: Right.

Ebony Ross: And finally if we identify, you know, problem areas or we have not come into full compliance with the new requirement that we discuss steps bring us into compliance.

Leo Lestino: Exactly.

Ebony Ross: And you guys are there to help us.

Leo Lestino: Exactly.

Ebony Ross: So I can call any time, email...

Leo Lestino: Exactly.

Ebony Ross: ...and you guys will help me.

Leo Lestino: Right, right.

Ebony Ross: Okay.

Leo Lestino: And, you know, again this first transitional AAP we consider this as an opportunity for technical assistance. We will not be citing you for noncompliance if you have acted reasonably.

Ebony Ross: Okay.

Leo Lestino: And we just - I applied what reasonable looks like.

Ebony Ross: What does reasonable look like?

Leo Lestino: All those C requirements.

Ebony Ross: Got it. Thank you Leo.

Leo Lestino: Next slide please. So we - that was a lot of information. And we discussed a lot in a short period of time. I want to turn it back over to (Lisa) to continue with the next part of our discussion.

Lisa Jordan: Well thank you. Thank you Leo and Ebony for that interactive, discussion, questions and answers in reviewing the new regulations.

So at this point in time we're going to go over some of the questions that have come through. And so I'm just going to get right into it.

So the first question that I'm going to pose to our subject matter experts in our panel here with us trying to determine when and how to ask applicants if disabled were currently asked for race and gender information.

Should we add disability and veteran questions when we receive an application or prior to interview? And then they attend both interviews?
Thank you.

Jessica Lyn: Hi. This is Jessica Lynn. It's a great question. The final rules for both Section 503 and VEVRAA now require that contractors invite applicants to voluntarily self-identify as an individual with a disability and a protected veteran respectively at the pre-offer stage as well as the post-offer stage.

Contractors may do this at any time during the application stage. But in an effort to harmonize these rules with Executive Order 11246 another law as you well know that OFCCP enforces, contractors may invite self-identification at the same time that they collect demographic data regarding race, gender and ethnicity from applicants under Executive Order 11246.

Under Section 503 as you heard from Leo contractors will be required to use a self-identification form that is being developed by OFCCP.

This forms currently under review by OMB. And we will post it as soon as it's been finalized. So we encourage you to check back and look at our Web site.

Contractors note your prohibited from creating your own form to collect this data under Section 503. Under VEVRAA however you, contractors may

create their own form and Appendix B of the VEVRAA final rule contains model invitations to self-identify. And we encourage you to look at Appendix B when doing so.

Naomi Levin: And this is Naomi. Let me add a couple things first. Yes you would also use the same form post offer as you are asked to post offer now.

And the reason for that is that there still will be particularly people with hidden disabilities who will not be comfortable self-identifying until they know they have the job in the bag and may be more comfortable self-identifying them. So we ask you to also self-identify them.

Now let me jump a little ahead because hands down the most popular question we had was where is the form? When is it coming?

Jessica Lyn: That's right.

Naomi Levin: Please, so let me go ahead and speak a little to the form. The form really is coming soon on this topic where the process is winding down.

So and the form absolutely will be out for the effective date. There were also several questions about the content of the form.

The form has changed from the one originally posted as we do tell you when we get a chance we do listen to the comments and questions that you and your colleagues ask us.

And as a result of that the form has changed. So for example you will see on there a place for a name and date. So the person filling out has a place to put

their name and their dates and it will be able easily to identify whose information that is.

And yes as soon as that form is good to go because we know how anxious you all are -- we are as well -- as soon as that form is good to go it will be posted on our Web site.

And if you subscribe on our email list you will get an email notice alerting you that that form is now up.

Lisa Jordan: Great, thank you Naomi. Another question...

Jessica Lyn: Actually if I can just jump in there for a second?

Lisa Jordan: Sure, sure.

Jessica Lyn: A question came in on the chat line and I lost it but it was something to the effect of not sure we heard you correctly. Does this mean contractors cannot provide the form electronically?

And you can provide the form electronically. You just can't change the language of the form. And there's a couple other requirements that you have to meet. One of them is you have to clearly indicate that OMB control number.

We have a frequently asked question regarding this

((Crosstalk))

Naomi Levin: We do have an FAQ that speaks directly what (Jessica) is telling you. In general we tell you may re-create the form electronically. And we outline the limited criteria it must meet which basically has to have the OMB number on it so that we know it's the - and everyone getting it knows it's the official form.

And it has to have at minimum font requirement to ensure its readability. And that's pretty much all we require. You cannot change the context, the content, any of the verbiage. Literally you may re-create the form or put it in a bigger font if you would like to.

Lisa Jordan: Great, thank you. So we want to keep moving with some of the questions. And we just noticed a couple of comments came through just now in the chat of about audio.

We just ask you to reconnect either to join the teleconference again or to try to re-stream if you're doing the audio streaming but most people are hearing us.

So the other question we have here are what documentation should we retain with outreach and recruitment in order to satisfy the three year recordkeeping requirements?

Jessica Lyn: The regulations require the contractors perform an annual assessment of their outreach and recruitment activities to evaluate their effectiveness of each of those activities in identifying and recruiting qualified individuals with disabilities.

Contractors must document this assessment which must include a review of the data collected in section 741.44K pertaining to the number of job openings, the total number of jobs filled, the number of applicants who self -

identify as an individual with a disability, the total number of applicants, the number of applicants with a disability who are hired and the total number of hires.

At the very least (then) contractors must identify each of their outreach and recruitment activities that they engaged in during the previous AAP year and analyze the effectiveness of each.

The chart that we presented during today's presentation is an example of how to do this assessment. You don't have to follow this to a T. You can adapt it to your own needs and ways of doing things.

And then the information that you create in your assessment you have to keep that for three years to allow you to allow yourself to better analyze the effectiveness of each of the activities and to identify any trends that you see.

In addition to identifying the outreach and recruitment activities that were undertaken contractors must maintain evidence of these activities for example any job announcements that were posted, the materials prepared for job fairs, any linkages, linkage agreements that were entered into. That needs to be maintained as well.

Lisa Jordan: Great. Another question should the 503 goal be set for the first AAP after the March 24 date or one full year after our next AAP to collect data?

Naomi Levin: Yes as Leo was saying the transitional AAP is when you must start, if you must start. If you may start any time after March 24.

And we encourage that particularly with things like the self-ID so you can make sure there's no bugs in your system, your processes work smoothly, you're comfortable knowing what you're doing.

But yes, you must begin with the transitional AAP. And as Leo mentioned we recognize that you may only have very limited data at that time and that's okay.

Again we want the transitional AAP so we can all together make that transition and see what's working, are there any difficulties, is there any technical assistance needed?

So you would just indicate what data you have when, you know, perhaps when you started, if there's things you're not doing yet, when you plan to be doing them and where you are in your plans.

As Leo as outlined back to the traditional AAP you can't wait that whole extra year just to have a full year of data.

That year will come in due time so that transitional AAP should begin having whatever you have, whatever you can do to come into compliance.

Lisa Jordan: Excellent. And this time I will make sure to slow down with my questions here.

The next question is how does the new rule apply to construction companies, only workforce on federal projects or entire corporate workforce? And if applied to both hourly (craft a) salary meeting management sample self-identification form would be helpful.

Jessica Lyn: I'll answer that one and I'll try to speak more slowly. The coverage requirements of Section 503 has not changed as a result of this final rule.

So if you were subject to Section 503 in the Affirmative Action program requirement before you will continue to be subject to them under this new rule.

Generally speaking to review the Affirmative Action program requirements apply to every government contractor including construction contractors that have 50 or more employees and a contract of \$50,000 or more.

If you are a contractor subject to the AAP requirements, in other words a contractor that meets these threshold requirements than they apply to your entire workforce both hourly and salaried employees alike.

Naomi Levin: And let me just remind everybody that neither VEVRAA or 503 applies to federally assisted construction contracts. So if that's you those rules don't apply to you.

Lisa Jordan: Excellent. Another question, should employers use traditional impact ratio analysis on the individuals with disabilities data?

Jessica Lyn: No. Under Section 503 OFCCP will not be using the applicant and hiring data to conduct underutilization or impact ratio analysis.

We've gotten this question several times and the answer once again is no, we're not going to be using that data in that way.

Enforcement actions will not be brought fully on the basis of statistical disparities between individuals with and without disabilities in the data.

Rather what OFCCP is going to be doing is looking to see whether the contractor has fulfilled its various obligations with respect to Subpart C of the rule including its obligation to critically analyze and assess the effectiveness of an outreach and recruitment efforts using the data and any other reasonable criteria the contractor believes is relevant and its obligation to pursue different or additional recruitment efforts if the contractor concludes that it's efforts have not been effective.

So really OFCCP is going to be looking to see are you following the requirements in the rule, are you analyzing your efforts, are you making changes if any problems have been identified?

Naomi Levin: And let me just take the opportunity to also remind people though of the obligation to periodically review your qualification standards as Leo and Ebony discussed with you.

Under 503 if any of the qualification standards screen out anyone with a disability or are likely to do so they must be job related and consistent with business necessity.

So I want you to be mindful of that as well as what (Jessica) has said.

Lisa Jordan: Right. Another question do all aspects of the changes become effective when you update your AAP or are some effective like immediately like right now?

Jessica Lyn: I'll go ahead and take that. The Section 503 final rule becomes effective on March 24, 2014 as Leo has stated with the caveat that with respect to Subpart C of the rule the part addressing Affirmative Action program requirements a contractor with an AAP in place at the time the rule becomes effective may

delay implementation of Subpart C until the next AAP cycle at which point they must come into compliance with the requirements of Subpart C.

This does not mean the contractors have a free pass with respect to implementing their AAPs, however, contractors must continue to ensure that they are in full compliance with existing requirements under the old regulations including reviewing personal practices, reviewing the job qualifications, making reasonable accommodations available, developing harassment policies, engaging in outreach and having procedures for distributing information on equal opportunity and Affirmative Action efforts.

Lisa Jordan: Well said Jessica.

Naomi Levin: Let me just add one thing to that. Let me remind people today we have only been focused on the Affirmative Action requirements of Subpart C.

There are also changes in the regs that are not in Subpart C. For example I think the EEO tagline is a requirement that's a new requirement for example to add disability and that is not in Subpart C. So that does become effective on March 24 for everyone.

So you need to be aware today's program only focused on the AAP. But the new regulations encompass more than that.

Lisa Jordan: Great points here, and great questions coming from you our participants.

If our plan year begins in January 2015 do we still have to begin the pre-offer inquiry for VEVRAA in Section 503 before then?

Jessica Lyn: No. As a contractor you may delay compliance with the AAP requirements of Subpart C but like I said until your first AAP is due following the March 24, 2014 effective date.

This includes the newly required pre-offer self-identification elements in the VEVRAA and Section 503 final rules.

While you're allowed to delay compliance of Subpart C until the start of your first post effective date AAP in this case January of 2015 I believe, OFCCP does not encourage this approach. Rather we really recommend and strongly encourage that all contractors begin complying with Subpart C of the new regulations including the self-identification requirement as soon as practical after the March 24 effective date.

This really will allow you to benefit from the technical assistance that OFCCP is providing to the extent that you're having any difficulties implementing this requirement.

Again you're not required to do so but we are encouraging you to do that.

Lisa Jordan: Great. Another question do the 503 regulations require a listing of available jobs with the public employment services in the same manner as a job listing requirements established by the new VEVRAA regulation?

Naomi Levin: No, that's a good question. It's not exactly about the AAPs. But no you may - many of you may recall in the NPRM we proposed that there be a job listing requirement added to 503.

We did not include that in the final regulation. So no there is no job listing requirement in 503.

Lisa Jordan: Great. And when you said if the known disability may be related to the performance problem. Does that mean that the first manager or supervisor, first line manager or supervisor must assume that it is?

This seems like this puts the manager or supervisor in an awkward position to focus on the disability.

Naomi Levin: We thought - there was several questions around this particular issue.

Lisa Jordan: Right, right.

Naomi Levin: I think Jessica and I may both have something to say about it. So clearly a lot of people are very anxious about this particular provision.

So let's be clear, no. You're not supposed to assume that it is. I mean this provision is really based on a sort of general notion that if one of your employees is having performance problems in general you would probably bring it to their attention and ask what can we do to help you, what can we do to make sure this problem stops or there - is there something going on?

If he's been a good employee in the past you suddenly having problems you might say is something going on with you? Can I help you with something?

And this is basically the same kind of thing. No you're not required to know. You're not required to ask if you don't know.

There may be times when you certainly cannot tell somebody may have a learning disability. Or there may be other times for example if somebody has a

developmental disability or has a disability that causes concentration problems.

We're given what the performance issues are it looks like there is a direct link. So really if you're talking to people about the performance and asking them do they need assistance or what can we do to assist you and if you know they have a disability ask if there is an accommodation needed you probably have done what you're supposed to do.

Jessica Lyn: Yes this is an affirmative. This is really as a matter of Affirmative Action that for people that you know have a disability when you are addressing the performance problem you then inquire whether a reasonable accommodation is needed.

Lisa Jordan: Okay. Where can a person find or people find the list of recommended outreach organizations?

Naomi Levin: I guess we can find everything right now. You go to the OFCCP Web page www.dol.gov/ofccp. And if you go to our landing pages for each lot has a landing page. You'll find easy links to them.

And we have recently posted the beginnings of some resources. Now again our Web sites, our landing pages in particular are works in progress. So you will see more being added.

But you see the beginnings of resources sections that will clearly labeled as such as well as in our Web page generally there's also some more generalized resources. And again that will be - that will grow in time. We'll be adding to those lists.

Lisa Jordan: Sure. Here's a question about that three year record keeping.

It is the three year record keeping requirement three years from when the record is created or three years from the AAP effective dates or three years from the expiration date of the AAP?

Jessica Lyn: Well, the three year requirement is three years from the making of the record and so and that three year record retention requirement kicks in once this final rule becomes effective which is March 24, 2014.

Lisa Jordan: Right.

Naomi Levin: Again if you're in the middle of a compliance evaluation you can continue to hold those records till you're done.

Lisa Jordan: Right, right. When will the model self-identification form - this got addressed.

((Crosstalk))

Jessica Lyn: it was hands down...

Lisa Jordan: That's right.

Naomi Levin: ...the single most popular question...

Lisa Jordan: That's right, that's right. Do the collection of data need to be done by job groups?

Naomi Levin: I think here we want to distinguish between a couple of different things. Today you heard a fair amount about 44K which is the data collection about

how many job applicants total, how many job applicants with disabilities how many jobs did you have, how many jobs were filled, how many people with disabilities were hired versus how many people total were hired.

That is per establishment that data. That set of data is not by job group.

That's for and it serves a different purpose. It lets you see general trends, generally how are you doing, where are you generally, what's going on in your personnel system?

Where you do have data by job group is the goal just like you do for the executive order.

And you heard Leo say that in general you're using your executive order job groups. Those of you 150 or fewer can use your EEO one categories as job groups just like you do under the executive order.

What's special I guess for 503 is if you have 100 or fewer you can just apply the goal to the work force generally. So hopefully that clears up the confusion about what data uses what population.

Lisa Jordan: Sure. And it seems like we're down to our last question for our time live today.

Can we conduct survey by race and gender at the same time that you conduct for disability and veteran status?

Jessica Lyn: Yes.

Naomi Levin: Yes. We think of it as the other way.

Lisa Jordan: Okay.

Naomi Levin: Is what we said in the rule is you may collect demographic data regarding disability at the same time that you're accustomed to collecting that data, that demographic data for race and gender already.

Again we're trying to make the regs sort of simple and fitting in with what you already do as we possibly can. And so that's part of that period and we're pretty clear in the regulations on that.

Jessica Lyn: I just want to jump in this is tangentially related to this issue. I just saw a question come up on the chat line and I'll go ahead and answer that which is the individual indicates that they conduct yearly surveys of their employees for race, ethnicity and veteran status.

And they wanted to know whether they can add disability to that and do it yearly rather than five years as stated in our regs?

And I just want to be clear that for the survey of employees you still have to use the form that's required that's written and produced by OFCCP that will be published on the Web site.

So you can't just add disability to the survey you're already doing. And the regulation requires that you do it every five years and that remind people that they can update their status at least once during the five year interval period. But if you wish to do it every year you're free to do so.

Lisa Jordan: Right. And with that we - for those who are still with us on the slide deck here we have contact information and we have a toll free number and also a direct

line to our policy office division here at our national office at OFCCP and plus our email.

And you can email these questions or other questions if you have follow-up questions to some of the discussions and answer questions now. You can always feel free to contact us.

And then on our final slide here we just want to kind of highlight these are the items that are available to you.

And this list is continually growing - we've been putting a lot of information onto our web site.

So you can find frequently asked questions, FAQs so we update them. And you'll see which ones are new because we kind of make that highlight on our Web site and the final rules and fact sheets and other things in press releases.

So stay tuned. And for the upcoming webinars Leo if you can just highlight when the next series or sections of our webinars that are coming up?

Leo Lestino: Yes absolutely. So February 6, 2014 will be our webinar in creating a VEVRAA AAP. On February 20th 2014 we'll have our job listing webinar.

And on March 6, 2014 we will have our Goals and Benchmarks Webinar which includes a discussion on utilization analysis and benchmarks under VEVRAA.

Naomi Levin: And one last reminder a lot of people are anxious to get their hands on the slides who may not already have them they will be posted along with this Webinar all together.

So if you missed something or wanted to focus on something again you will be able to do so within just a few days.

Lisa Jordan: Exactly. And it will be posted online. And again return to our Web site frequently. We will have registrations opening for the Webinars, upcoming training Webinars. They're not open yet. But they will be so return to our Web site to see when we will.

But we want to conclude. At this point in time I want to thank all of our team here including our presenters today, Ebony and Leo for providing that really interactive dialogue and discussion and our subject matter experts here entertaining and addressing your questions.

So with this we'll say good day for now and will see you again on February...

Naomi Levin: Sixth.

Lisa Jordan: ...Sixth. Have a great day.

END