

SECTION 503 CROSSWALK: Existing Rule vs Final Rule

	Existing Rule	Final Rule
Phased in Enforcement of Subpart C (AAP)	N/A	-PREAMBLE ONLY- Contractors may come into compliance with new affirmative action requirements of Subpart C during their standard 12-month AAP review and updating cycle.
Part 60.741.1 Purpose, applicability, and construction	States the scope of Section 503 and the purpose of its implementing regulations	<ul style="list-style-type: none"> • Modifies paragraph (a) to include a reference to contractors' nondiscrimination obligations. • Modifies the citation to the ADA of 1990 in paragraph (c) to say "as amended," in light of the passage of the ADA Amendments Act of 2008. • Adds new paragraph (c)(2) to incorporate ADAA's provision stating that eligibility for State/Federal worker's comp & disability benefits is unaffected by Part 60-741.
60-741.2 Definitions	<ul style="list-style-type: none"> • Definitions are listed by subject matter. • Reflects the definition of "disability" and related matters as set forth in the original ADA. • Uses the term "Deputy Assistant Secretary" for the head of OFCCP. 	<ul style="list-style-type: none"> • Alphabetizes definitions. • Revises definitions of "disability" and related terms to conform to changes made by the ADAAA. • Replaces "Deputy Assistant Secretary" with "Director."
Part 60-741.3 Exception to the definition of "disability" and "qualified individual"	Addresses exceptions to "individual with a disability" and "qualified individual with a disability" as defined under the original ADA and Section 503.	Changes terms "individual with a disability" and "qualified individual with a disability," to "disability" and "qualified individual," respectively, for this section in accordance with the ADAAA.
Part 60-741.4 Coverage and waivers	Includes a "contract work only" exception (paragraph (a)(2)) that applied to "employment decisions and practices occurring before October 29, 1992."	<ul style="list-style-type: none"> • Deletes the text of paragraph (a)(2) regarding the "contract work only" exception. • Re-numbers paragraphs (3), (4), and (5) as paragraph (2), (3), and (4).

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<p>Part 60-741.5(a)(1) Equal Opportunity clause</p>	<p>Specifies that the provisions must be included verbatim or incorporated by reference in all contracts. The EO Clause addresses the basic requirements that apply to all covered contractors.</p>	<ul style="list-style-type: none"> For consistency with the language and intent of the ADAAA, modifies the phrase “to employ, advance in employment and other wise treat qualified individuals with disabilities without discrimination based on their physical and mental disability” to read, “to employ and advance in employment individuals with disabilities, and to treat qualified individuals without discrimination on the basis of their physical or mental disability.”
<p>Part 60-741.5(a)(4) Equal Opportunity clause</p>	<ul style="list-style-type: none"> Includes a statement that :the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair.” Refers only to the physical posting of notices, and is silent on whether or under what circumstances the posting obligation could be satisfied by electronic posting. 	<ul style="list-style-type: none"> Updates examples of providing notices of rights in accessible manner to individuals with disabilities to suggest providing copies in Braille, large print, or other accessible formats, rather than having the notice read to a person with a disability. Adds that contractor may use electronic posting for employees who do not work at company’s physical location, if contractor provides computers that can access posting OR has actual knowledge that employees can access posting. Requires contractors using an electronic application process to use an electronic posting and store it with the electronic application.
<p>Part 60-741.5(a)(7) Equal Opportunity clause</p>	<p>N/A</p>	<p>Adds a new provision to the EO clause requiring contractors to state in solicitations and advertisements that they are equal opportunity employers of individuals with disabilities.</p>
<p>Part 60-741.5(d) Inclusion of the equal opportunity clause in the contract</p>	<p>Permits the EO Clause to be included in contracts “by reference” rather than verbatim, but does not specify manner.</p>	<p>Requires that incorporation of the EO clause by reference can only be made by citing to the regulations AND using specific, mandatory language to alert subcontractors to their obligations as federal contractors.</p>

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<p>Part 60-741.21 Prohibitions</p>	<p>Section 60-741.21 is numbered paragraphs (a) – (i).</p>	<ul style="list-style-type: none"> • Adds a new subsection (b) that prohibits claims based on an individual’s lack of disability. • Original paragraphs (a) – (i) are renumbered as paragraph (a)(1) through (a)(9).
<p>Part 60-741.21(a)(1) Disparate treatment</p>	<p>Paragraph reads, in part, that it is unlawful to, “discriminate against a qualified individual with a disability because of that individual’s disability.”</p>	<p>Revised to read “discriminate against a qualified individual on the basis of disability.”</p>
<p>Part 60-741.21(a)(2) Limiting, segregating and classifying</p>	<p>States, in part, “For example, the contractor may not segregate qualified employees with disabilities...”</p>	<p>Deletes the word “qualified.”</p>
<p>Part 60-741.21(a)(6) Not making reasonable accommodation</p>	<p>States the general reasonable accommodation obligation</p>	<ul style="list-style-type: none"> • Adds new paragraph (iii) stating that the reasonable accommodation obligation extends to the contractor’s use of electronic or online job application systems. If a contractor uses such a system, it must provide necessary reasonable accommodation to ensure that a qualified individual with a disability who is not able to utilize the system is provided with an equal opportunity to apply for and be considered for all jobs. • Notes that it is a best practice (but not required) for the contractor to make its online job application system compatible with assistive technologies used by individuals with disabilities. • Adds new paragraph (v) clarifying that a contractor is not required to provide reasonable accommodation to individuals who satisfy only the “regarded as” prong of the definition of disability. • Adds new paragraph (vi) encouraging contractors to voluntarily develop and implement written reasonable accommodation procedures.

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<p>Part 60-741.21(a)(7) Qualification standards, tests and other selection criteria</p>	<p>Prohibits the use of qualification standards, tests and other selection criteria that screen out or tend to screen out on the basis of disability</p>	<ul style="list-style-type: none"> • Adds a new paragraph (ii) to incorporate ADAAA’s prohibition on the use of qualification standards that are “based on an individual’s uncorrected vision” unless they are “job-related and consistent with business necessity.” • An individual challenging the use of such a qualification standard need not be an individual with a disability, but must be adversely affected by use of the standard.
<p>Part 60-741.21(a)(9) Compensation</p>	<p>Provides that it is unlawful to reduce the compensation offered to a person with a disability because of income from a disability-related pension or other disability-related benefit the individual receives from another source.</p>	<p>Adds sentence stating that a contractor may not reduce the compensation to an individual with a disability because of the cost of the individual’s reasonable accommodation.</p>
<p>Part 60-741.21(b)</p>	<p>N/A</p>	<p>Adds a new subsection (b) prohibiting discrimination claims based on an individual’s lack of disability, or because an individual without a disability was denied a reasonable accommodation granted to an individual with a disability.</p>

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<p>Part 60-741.23(b)(4) Other acceptable examinations and inquiries</p>	<p>Permits contractors to conduct voluntary medical exam activities that are part of an employee health program</p>	<p>Revised to clarify that voluntary medical exams and activities need not be job-related and consistent with business necessity.</p>
<p>Part 60-741.23(b)(5) Medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4)</p>	<p>Reads, in part “Medical examinations conducted in accordance with paragraphs (b)(2) and (b)(4) of this section do not have to be job-related and consistent with business necessity...”</p>	<p>Revised to eliminate the existing paragraph’s reference to (b)(4), since it is no longer needed.</p>
<p>Part 60-741.25(d) Health insurance, life insurance and other benefit plans</p>	<p>Reads, in part, “The contractor may not deny a qualified individual with a disability equal access to insurance or subject a qualified individual with a disability to different terms or conditions of insurance based on disability alone...”</p>	<p>Changes the current rule’s two references to “qualified individual with a disability” to “individual with a disability.”</p>
<p>Part 60-741.40 General purpose and applicability of the AAP requirement</p>	<p>Addresses applicability of the AAP requirement, but contains no general “purpose” discussion.</p>	<ul style="list-style-type: none"> • Restructures section to add a statement of purpose as a new paragraph (a). • Revises language of re-numbered paragraph (b)(3) to require that the AAP be reviewed and updated annually “by the official designated by the contractor pursuant to §60 60-741.44(i).”

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<p>Part 60-741.41 Availability of AAP</p>	<p>Requires that the full AAP be available to any employee or applicant for inspection upon request.</p>	<p>Clarifies that “[t]he full affirmative action program, <i>absent the data metric required by § 60-741.44(k)</i>, shall be made available...” (revision emphasized) Preamble explains that the contractor may make the AAP available to employees electronically, upon request, so long as requester is able to access the electronic version of the AAP.</p>
<p>Part 60-741.42 Invitation to self-identify</p>	<ul style="list-style-type: none"> • Requires post-offer invitation to all applicants to voluntarily self-identify as an individual with a disability. • Includes proviso that contractors are allowed to invite pre-offer self-identification “for affirmative action purposes only” in limited circumstances. 	<ul style="list-style-type: none"> • Adds requirement to invite voluntary self-identification of disability at the pre-offer stage. Permits invitation to be made at the same time race/gender information requested to harmonize with Internet Applicant Rule. • Eliminates sample invitation to self-identify in Appendix B. • Adds requirement to invite employees to voluntarily self-identify every 5 years, and to remind employees between these invitations that they may change their disability status at any time. • Requires that all invitations to self-identify be made using new OFCCP form, posted on the OFCCP Web site. • States contractors may not compel or coerce individuals to self-identify. Preamble states contractors may ID IWDs who do not self-identify if disability obvious or known to the contractor, but may not guess. • Requires contractors to keep self-id info confidential and maintained in a data analysis file.
<p>Part 60-741.44(a) Affirmative action policy statement</p>	<p>Requires contractors to include their equal employment opportunity (EEO) policy statement in their AAP; post the statement on the company’s bulletin boards; ensure that applicants and employees with disabilities are informed of its contents (such as reading it to a visually disabled person); and among other things, indicate in the statement the CEO’s attitude on the subject matter.</p>	<ul style="list-style-type: none"> • Revises the language of paragraph (a) to clarify that the policy statement shall indicate “the top United States executive’s (such as CEO or President of the U.S. Division of a foreign company)” support for the contractor’s affirmative action program. • Updates the accommodation example to refer to alternate formats, such as Braille or large print.

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<p>Part 60-741.44(b) Annual review of personnel processes</p>	<p>Requires that contractors periodically revise their personnel processes and identifies certain steps in Appendix C that the contractor may take to do this.</p>	<ul style="list-style-type: none"> • Eliminates existing Appendix C. • Revises .44(b). to state, with respect to the use of information technology, that the “contractor shall ensure” that applicants and employees with disabilities have “equal access to its personnel processes,” including providing necessary accommodation. Contractors are encouraged (but not required) to make its information and communication technologies generally accessible.
<p>Part 60-741.44(d) Reasonable accommodation to physical & mental limitations</p>	<p>Requires, in part, that contractors must provide reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability, unless it demonstrates that the accommodation would impose an undue hardship on business operation.</p>	<ul style="list-style-type: none"> • Emphasizes that contractors have an obligation to provide reasonable accommodation as a matter of nondiscrimination. As a matter of affirmative action, the contractor also has an obligation to ask if an accommodation is needed if an individual with a disability is having performance problems likely related to the disability. • Adds new subparagraph (2) stating that the development and use of written reasonable accommodation procedures is a best practice, and that guidance to contractors that choose voluntarily to develop and use such accommodation procedures is provided in Appendix B.
<p>Part 60-741.44(f) Outreach & recruitment efforts</p>	<ul style="list-style-type: none"> • Existing .44(1) and .44(f)(2) provide suggestions for recruitment sources including educational institutions. • Existing .44(f)(5) recommends but does not require that contractors send written notification of AA policy to subcontractors. 	<ul style="list-style-type: none"> • New .44(f)(1)(ii) requires that contractors send written notification of company policy related to its AA efforts to all subcontractors and request their cooperation. • New .44(f)(2) provides expanded list of recruitment resources. • Adds language to include as possible recruitment resources “placement or career offices of educational institutions” and “private recruitment sources, such as professional organizations or employment placement services.”

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<p>Part 60-741.44(f)(3)</p>	<p>Describes several 'recommended external outreach and recruitment actions.'</p>	<ul style="list-style-type: none"> • New .44(f)(3) requires that the contractor conduct an annual self-assessment of its outreach and recruitment efforts and document its review. • New .44(f)(3) requires that the contractor's conclusion as to the effectiveness of its outreach efforts "must be reasonable as determined by OFCCP in light of these regulations." If the totality of efforts is not effective, contractor must identify and implement alternative efforts
<p>Part 60-741.44(f)(4)</p>	<p>Describes several 'recommended external outreach and recruitment actions.'</p>	<p>New .44(f)(4) requires the contractor to document all of its outreach and recruitment activities, and retain these record 3 years.</p>
<p>Part 60-741.44(g) Internal dissemination of affirmative action policy</p>	<ul style="list-style-type: none"> • Requires contractors to develop internal procedures to communicate to employees its obligation to engage in affirmative action efforts to employ and advance in employment qualified individuals with disabilities. • Provides list of suggested but not mandatory actions. 	<ul style="list-style-type: none"> • Eliminates, as unnecessary, the sentence in (g)(1) which states that "[t]he scope of the contractor's efforts shall depend upon all the circumstances, including the contractor's size and resources..." • Makes certain previously suggested items mandatory. Specifically, 1) incorporating the policy in its policy manual, or "otherwise making it available to its employees," and 2) if it has a CBA, it must notify union officials of the policy and request their cooperation. Other existing suggested actions are retained as optional.
<p>Part 60-741.44(h) Audit & reporting system for AAP</p>	<p>Outlines the contractor's responsibility to design and implement an audit and reporting system for the company's AAP.</p>	<p>Adds requirement that the contractor document all actions taken to comply with the audit requirement in .44(h) and retain as an employment record.</p>

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Part 60-741.44(k)	N/A	<p>Adds new paragraph requiring specific data collection. Contractor must document and update annually the following information: (1) for applicants, the total number of applicants for employment, the number of applicants who are known individuals with disabilities; (2) the total number of job openings and the number of jobs filled; and (3) the total number of applicants hired and the number of applicants with disabilities hired. This data must be retained for 3 years.</p>
Part 60-741.45 Utilization goals	N/A	<ul style="list-style-type: none"> • Adds a national 7% utilization goal for the employment of qualified IWDs. • States purpose of goal to establish a benchmark against which the contractor must measure the representation of individuals with disabilities in each of its job groups. States that the goal should be attainable by complying with the AA requirements of this part. • States that the Director of OFCCP will periodically review and update the 7% utilization goal requirement as appropriate. • Requires an annual utilization analysis, pursuant to which the contractor compares the representation of individuals with disabilities in each EO 11246 job group in its workforce to the 7% utilization goal. However, contractors with 100 or fewer employees may apply goal to workforce as a whole. • FAILURE TO MEET THE GOAL IS NOT A VIOLATION. If goal not met, contractor must take steps to determine whether and where impediments to equal employment exist. If problem areas are found, contractor must develop and execute action-oriented programs to correct identified problems. The goal may not be used as a quota or ceiling that limits employment of IWDs.

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<p>Part 60-741.46 Voluntary affirmative action programs for employees with disabilities</p>	<p>N/A</p>	<ul style="list-style-type: none"> • Adds new section expressly permitting contractors to develop and implement training and employment for employees with disabilities. Examples include developing a job training program focused on the specific needs of individuals with certain disabilities such as TBI or developmental disabilities, and using linkage agreements to recruit program trainees. • If a contractor adopts such a voluntary affirmative action program, a description of the program and the name of the official responsible for the program must be in the AAP. • An annual report describing the contractor’s activities under the program should also be in the AAP. • The contractor may not use such a program to segregate IWDs, or to limit the employment opportunities of IWDs.
<p>Part 60-741.47 Sheltered workshops</p>	<p>Existing provision 60-741.45 addresses contractors’ use of contracts with sheltered workshops.</p>	<ul style="list-style-type: none"> • Redesignates existing 60-741.45 as 60-741.47. • Replaces the phrase “qualified disabled individuals” in the first sentence with “qualified individuals with disabilities” to be consistent with the terminology used elsewhere in this part.
<p>Part 60-741.60 Compliance evaluations</p>	<p>Details the form and scope of compliance evaluations conducted by OFCCP.</p>	<ul style="list-style-type: none"> • Codifies OFCCP’s longstanding position that it may extend the temporal scope of the desk audit beyond the scheduling letter if necessary to carry out our investigation. This position was most recently upheld by the ARB in the Frito-Lay decision. • Permits OFCCP to review documents during a compliance check either on-site or off-site, and to allow OFCCP to conduct focused reviews, either on-site or off-site. • Adds a pre-award compliance evaluation procedure mirroring the procedure in the EO 11246 regulations.

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Part 60-741.62 Conciliation agreements	Provides that where conciliation agreements are required, the agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies noted and includes of make whole remedies.	Re-numbers the existing provision as paragraph (a) and adds new paragraph (b), permitting the establishment of benchmarks in conciliation agreements as one possible form of remedial action. These benchmarks may be used for outreach, recruitment, hiring or other employment activities. This will create a quantifiable method by which a contractor’s progress in correcting deficiencies can be measured.
Part 60-741.68 Reinstatement of ineligible contractors	Provides that OFCCP may conduct a compliance evaluation of a contractor requesting reinstatement following its debarment for an indefinite period.	Adds a sentence at the end of paragraph clarifying that the Director shall issue a written decision on a contractor’s request for reinstatement.
Part 60-741.80 Recordkeeping	Requires that any personnel or employment record made by the contractor shall be kept for 2 years from the date of the record’s making or the personnel action, whichever occurs later; however, except that contractors that have fewer than 150 employees or that do not have a Government contract of at least \$150,000 shall keep such records for a period of one year.	Adds a paragraph stating that the following provisions are subject to a new 3-year recordkeeping requirement: §60-741.44(f)(4) – documentation and assessment of external outreach and recruitment efforts; and §60-741.44(k) – the new data collection requirement.
Part 60-741.81 Access to records	Addresses contractor requirement to permit OFCCP “access during normal business hours to its places of business for the purpose of conducting on-site compliance evaluations and complaint investigations and inspecting and copying such books and accounts and records, including computerized records...”	<ul style="list-style-type: none"> • Adds requirement that contractors provide off-site access to materials if requested by OFCCP. • Requires contractors to specify to OFCCP all formats in which its records are available, including electronic formats, and provide records to OFCCP in the format(s) it selects. • Adds OFCCP will treat contractors’ records as confidential to the extent permitted by FOIA.

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<p>Appendix A Guidelines on a Contractor’s Duty to Provide Reasonable Accommodation</p>	<p>Provides guidance on the obligation to provide reasonable accommodation.</p>	<ul style="list-style-type: none"> • Changes the term “otherwise qualified” to “qualified,” in paragraph 1, to conform more closely to the terminology used in the ADA. • Changes definition references to correctly reflect the revised alphabetical structure of the rule’s definitions. • Incorporates revisions to the self-id requirements in §60-741.42 and the accommodation requirements in §60-741.21. • Adds “totality of the circumstances” for establishing what is a reasonable amount of time in which to make a reassignment that is needed as a reasonable accommodation. • Provides that, if a reasonable accommodation would constitute an undue hardship because of its cost, the individual with a disability must be given the option of providing the accommodation themselves or paying the portion of the cost that constitutes undue hardship. • The reference to “TDD” is updated to refer to “TTY.”
<p>Appendix B Developing Reasonable Accommodation Procedures.</p>	<p>Provides a sample invitation to self-identify as an individual with a disability to assist the contractor in developing its own pre-employment self-identification invitation.</p>	<ul style="list-style-type: none"> • Eliminates original Appendix B. • Provides specific guidance and sets forth recommended elements that contractors may use when voluntarily establishing written reasonable accommodation procedures.
<p>Appendix C</p>	<p>Provided recommendations for contractor actions under “Review of Personnel Processes” related to .44(b).</p>	<p>Deleted in Final Rule.</p>