

Section 503 Community of Practice Forum Topic: Self-Identification

Held April 2, 2014

Questions from Chat - Answered during the Call with supporting references added post-call:

1. Is there a mandate for ENs to have a plan for connecting with Federal contractors and making referrals under Section 503?

Response: No, but it is a good business practice.

2. How do we find a listing of Federal contractors in our area?

Response: Go to the Section 503 webpage in the Information Center on the Your Ticket to Work website (<https://yourtickettowork.com/web/ttw/section-503>) and check out the resources listed under “Finding Federal Contractors”.

3. Could this form be used for beneficiaries who apply for 55a and b certifications?

Response: This form was created solely for Federal contractors to use when asking current employees and applicants to voluntarily self-identify as individuals with disabilities. (Form CC-305, OMB Control Number 1250-0005, http://www.dol.gov/ofccp/regs/compliance/sec503/Voluntary%20Self-Identification%20of%20Disability%20CC-305%20Final_QA_508c.pdf). This is the link to the fillable PDF form. You will also find a word version and two Spanish versions on the Office of Federal Contract Compliance Programs (OFCCP) website.

4. When a contractor gives this form to their current employees to complete, what if someone answers “I prefer not to answer”? I hope that is not included as a “yes” answer and does not go towards their 7% count.

Response: This comment/question will be sent to OFCCP for clarification.

5. So being on SSI or SSDI is not the governing criteria determining a disability for 503?

Response: No. The definition of disability for the purposes of Section 503 comes from the ADA. (*Title 41 CFR Part 60-741.2, SupPart A – Definitions*)

Questions from chat with post-call responses based on OFCCP website research:

6. If this information is collected pre-hire, must it be visible to the hiring manager/the person reviewing the applications? In the past, due to HIPAA regulations, this was protected information?

Response: There is no requirement that the hiring manager must see the disclosure information. The intent appears to be just the opposite. The intent is that the disclosure is kept separate from the application in a “data file” created for this purpose and for statistical reporting purposes only. There are very detailed instructions in the rules related to contractor record keeping. (*Title 41 CFR Part 60-741.80, Subpart E – Recordkeeping*) There is also a lot of training being made available to contractors on how to handle record keeping. Ensuring confidentiality is a big deal in the 503 regulations, just as it is with HIPAA requirements.

7. But isn't this voluntary disclosure? If the candidate chooses to disclose, does that imply that he or she has waived his/her HIPAA protection?

Response: These rules have no relationship to HIPAA and according to an FAQ on the OFCCP website, disability self-identification data cannot be kept with an employee's confidential medical file. See question 8 under Overview of the New Section 503 Regulations in the Frequently Asked Questions on the OFCCP website: http://www.dol.gov/ofccp/regs/compliance/faqs/503_faq.htm.

Think of it this way: HIPAA protects medical information. The ADA definition of disability is a functional one, not a diagnostic one. The type of disability is not disclosed with these rules, only whether a disability meeting the functional definition is referenced.

The Voluntary Self-Identification of Disability form was created solely for Federal contractors to use when asking current employees and applicants to voluntarily self-identify as individuals with disabilities. (Form CC-305, OMB Control Number 1250-0005, http://www.dol.gov/ofccp/regs/compliance/sec503/Voluntary%20Self-Identification%20of%20Disability%20CC-305%20Final_QA_508c.pdf). This is the link to the fillable PDF form. You will also find a word version and two Spanish versions on the OFCCP website.

8. When can ENs expect to get job openings/listing from Federal contractors?

Response: ENs should ask to be put on a contractor's distribution list. The 503 rules note that reaching out to employment service providers such as ENs is an effective practice for contractors to use as part of their outreach strategies. (*Title 41 CFR Part 60-741.44, SubPart C – Affirmative Action Program*). This is not a mandate; it is simply listed as an effective practice. Prior to these new rules there was a requirement for contractors to establish “linkage agreements” specifically with State VR agencies and American Job Centers (One-Stop Career Centers). The new rules delete that requirement. The fact that ENs are now actually listed

as a referral source in the regulations puts ENs on the radar screen for contractors to contact them. If there is a particular contractor in your area(s) that you are hoping to get job postings from, you should outreach to that contractor and ask to be put on their distribution list. There is a requirement that a contractor with \$50,000 or more in awards and 50 or more employees must designate a specific person and provide his or her contact information as a part of implementing their Affirmative Action Program. (*Title 41 CFR Part 60-741.44, SupPart C – Affirmative Action Program*).

9. So all someone has to do is “say” they have a disability and a contractor getting Federal funds has to accept this as true?

Response: Yes. The following guidance on the invitation to self-identify is taken from the OFCCP website.

Link: <http://www.dol.gov/ofccp/regs/compliance/section503.htm>

Invitation to Self-Identify: *The new regulations require that contractors invite applicants to self-identify as individuals with disabilities (IWDs) at both the pre-offer and post-offer phases of the application process, using language prescribed by OFCCP. The new regulations also require that contractors invite their employees to self-identify as IWDs every five years, using the prescribed language. This language is posted in the Self-Identification Form.*

10. Can an employer require proof of disability once the employee chooses to disclose?

Response: The Voluntary Self-Identification Disclosure Form language and use instructions do not allow an employer to ask what type of disability a person has. This seems to imply that an employer may not ask for proof of disability for the purposes of disability disclosure.

11. I don't think people will “say” that they have a disability if they don't. Why would they do that?

Response: Unknown, unless they think they might get some kind of hiring preference by doing so. The rule addresses this in two ways:

a) An employer is allowed to establish hiring preferences if it chooses, but is not required to do so. (*Title 41 CFR Part 60-741.44, SupPart C – Affirmative Action Program*) If an applicant gets extra “points” in hiring consideration, then it seems logical that he or she might falsely disclose;

b) The employer could conceivably offer some sort of “gift” such as a prepaid gift card for those who disclose. The rule addresses this by specifically saying that an employer may not “compel or coerce” an

applicant or employee to disclose. (*Title 41 CFR Part 60-741.42, SupPart C – Affirmative Action Program*)

12. Wouldn't it be helpful to have these webinars for actual Federal contractors to educate them? It could break down barriers and the stigma often attached to individuals who have mental health issues?

Response: In some cases, employers may be fearful because they are not educated. OFCCP and others are providing multiple opportunities to train contractors on Section 503. However, affirmative action is nothing new to contractors. Section 503 has existed for many years prior to these amendments. A primary difference is that now there is an actual "utilization goal" of having 7% of a contractor's workforce be individuals with disabilities. This goal applies to contractors with \$50,000 or more in Federal contracts and 50 or more employees. It is likely that most employers already understand what constitutes a disability, reasonable accommodation requirements, etc. Perhaps by having ENs and Ticket users more available now as part of their outreach efforts, they will have a greater pool of candidates and realize the breadth of knowledge, skills, abilities, and experience they have not tapped into yet.

13. If an organization is contracting with a State VR agency, would it fall under Section 503 even though VR's funding is formula grant funding. Would Section 503 come into play because the service provider is subcontracting with VR which is a recipient of Federal formula grant funds?

Response: It appears as if you may be considered a subcontractor. The following is excerpted from the Section 503 final rule fact sheet which can be retrieved at: http://www.dol.gov/ofccp/regs/compliance/factsheets/Sec_503_508c.pdf.

Section 503 prohibits employment discrimination against individuals based on disability by Federal contractors and subcontractors. Section 503 also requires that Federal contractors and subcontractors take affirmative action to recruit, employ, train, and promote qualified individuals with disabilities.

If you believe you have a Federal contractor or subcontractor obligation and have questions, you will find information, resources and OFCCP contact numbers at: <http://www.dol.gov/ofccp/>

14. Oregon state law prohibits the state from asking an applicant whether he or she has a disability. There has been some indication that states are considered to be Federal contractors. Presumably Federal law trumps state law. Thus, the question is whether a state that has such a law would be required to change its law to comply with the new Federal 503 requirements.

Response: While not addressing state laws, the DOL Office of Legal Counsel issued an opinion letter in August 2013 that addresses the pre-employment



disability inquiry as it pertains to the ADA prohibition against pre-employment inquiries. You can find that opinion letter at:
http://www.dol.gov/ofccp/regs/compliance/sec503/OLC_letter_to_OFCCP_8-8-2013_508c.pdf.

15. Where does an employer's observation of a disability get recorded?

Response: This comment/question will be sent to OFCCP for clarification.

If you have questions about specific provisions in the Section 503 regulations and how they should be interpreted, contact OFCCP toll-free at 1-800-397-6251 (TTY: 1-877-889-5627) or by email at OFCCP-Public@dol.gov. You may also contact the field office nearest you for assistance. To locate the OFCCP field office nearest you, visit the OFCCP on-line office directory at <http://www.dol.gov/ofccp/contacts/ofnation2.htm>.

16. So as an EN with a Federal contract – We are also required to target for the goal of having 7% of our workforce be individuals with disabilities, right?

Response: The response during the call was that this question might need to be referred to OFCCP. However, after checking the OFCCP website for an answer to your question, we found that the OFCCP Section 503 FAQ has several questions and responses related to the 7% utilization goal. You may want to review questions 3, 5 and 6 under "Overview of the New Section 503 Regulations at: http://www.dol.gov/ofccp/regs/compliance/faqs/503_faq.htm#Q8.

If you are referring to your Employment Network contract with the Social Security Administration, SSA previously issued the following information:

There is a clause in the current Blanket Purchase Agreement (BPA) that covers Affirmative Action – see Federal Acquisition Record (FAR) 52.222-36 Affirmative Action for Workers with Disabilities. Employment Networks are governed by this clause.

If you are still unclear as to the application of the 7% utilization goal to your EN and the need for an Affirmative Action Program, you will want to answer the following questions:

- a. Does the organization where your EN is housed receive Federal contract funding totaling \$50,000 or more in awards? This includes all Federal contract funding, not just funding received under the Ticket program.



- b. Does the organization where your EN is housed have a total of 50 or more employees? This includes employees working under Federal contracts and those that are not.

If the answer to both of these questions is yes, your EN and the organization where your EN is housed fall under the higher level 503 requirements of having an Affirmative Action Plan and striving for the utilization goal of having 7% of your entire workforce be individuals with disabilities. While ENs housed in organizations that do not meet these funding and staffing requirements are not required to meet the 7% utilization goal, we encourage you to strive towards meeting these higher level requirements. Making this commitment clearly demonstrates your organization's dedication to affirmative action. Organizations functioning as an EN under the Ticket program can be employer models for Federal contractors.