

# FORTNEY SCOTT

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October 25, 2013

**VIA EMAIL: [hshelanski@omb.eop.gov](mailto:hshelanski@omb.eop.gov)**

The Honorable Howard Shelanski  
Administrator, Office of Information and Regulatory Affairs  
Office of Management and Budget  
New Executive Office Building  
725 17th Street, NW  
Washington, DC 20503

**RE: Meeting Request Concerning DOL/OFCCP Form No. cc-305**  
**“Voluntary Self-Identification of Disability”**

Dear Dr. Shelanski:

On behalf of the OFCCP Institute and the highly responsible members of the federal contractor community with whom we work, we request an opportunity to meet with you and your staff to discuss the proposed *Voluntary Self-Identification of Disability* form (the “Form”) that was submitted on September, 24 2013 by the U.S. Department of Labor’s Office of Federal Contract Compliance Program (“OFCCP”) for final approval by the Office of Management and Budget (“OMB”) (ICR Ref. No. 201307-1250-001; OMB Control No. 1250-0005; Form No. cc-305). Under the OFCCP’s newly announced revisions of the regulations issued under Section 503 of the Rehabilitation Act of 1973, as amended (41 C.F.R. § 60-741.42), federal contractors will be required to use the finalized Form, without modification, to collect information regarding employees’ and applicants’ voluntary self-identification as an individual with disabilities.

The OFCCP Institute assists the federal contractor community in responding to rapidly changing compliance challenges, and provides national training programs addressing the latest OFCCP developments and strategies for effective compliance. The OFCCP Institute assists federal contractors in maintaining workplaces free from bias and unlawful discrimination by harnessing the synergies between human resource functions and by promoting affirmative action and equal employment regulatory compliance. As such, the OFCCP Institute strongly supports

the development of effective means to expand employment opportunities for individuals with disabilities, including the development of the appropriate required materials and information for federal contractors to use when communicating with their workforce.

Unfortunately, the Form as proposed contains key deficiencies that will hinder federal contractors' abilities to develop effective compliance programs and conduct meaningful analyses of the collected data as required under 41 C.F.R. § 60-741.42.

Of primary concern is the "readability" of the Form. Using standard readability metrics (e.g. Flesch Reading Ease) the proposed Form is written at a level that requires a post-college reading level. This will present challenges to many applicants and employees in understanding and accurately completing the Form, which requires individuals to respond based on reading and understanding the definitions of "disability" and "reasonable accommodation", as well as information about the purpose of the Form.

Another key concern is the limited selection of responses for individuals. Currently, the Form only allows individuals to identify as either having a disability (or having previously had a disability) or not wishing to identify as an individual with a disability. The latter response assumes that the individual may have a disability but chooses not to self-identify. There is no option on the proposed Form to state that the individual does not have a disability. This clearly presents a problem from a data analytic standpoint.

Finally, the Form contains provisions that do not conform to the applicable statutory and regulatory requirements. For example, the Form contains definitions of statutorily defined words, such as "disability" and "major life activity" that differ from definitions contained in Section 503. In addition, the Form does not have a section to collect information about the applicant/employee who is filling out the form while the regulations mandate that the data be analyzed based on job group and, therefore, identifying information is required to comply with the regulations. These statutory and regulatory inaccuracies will undoubtedly result in confusion to applicants and employees, compliance challenges for contractors, and enforcement issues for the OFCCP.

The issues we have identified run contrary to the OFCCP's stated goals of the newly revised regulations, including providing "contractors with the tools needed to evaluate their own compliance and proactively identify and correct any deficiencies in their employment practices" and contributing, as the Government, "to reducing the employment disparity between those with and without disabilities." It is important to resolve these concerns in order to develop a Form that can be used in a meaningful and practical manner that reflects the realities of the modern American workplace and achieves the goals of the OFCCP's new regulations to promote employment opportunities for individuals with disabilities.

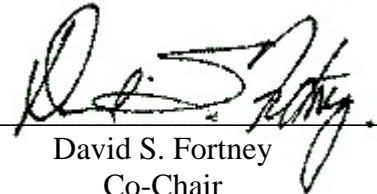
The Honorable Howard Shelanski

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Thank you for your consideration in this matter and we sincerely hope that we can meet with you and your staff to discuss these concerns in greater detail.

Sincerely,



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David S. Fortney  
Co-Chair  
The OFCCP Institute



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David Cohen  
Co-Chair  
The OFCCP Institute