

October 25, 2013

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: Comments on the Self-Identification Form in the DOL/OFCCP Final Rule on Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities (ICR Reference Number: 201307-1250-001)

Dear Dr. Shelanski:

On September 24, 2013, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) sent to OMB for review and approval the form that federal contractors will be required to use to solicit disability information from job applicants and employees. I am writing to point out significant and troubling inconsistencies between the "Voluntary Self-Identification of Disability" form ("the form") that was submitted to OMB and the language in the final rule and preamble to the final rule. The following issues must be addressed and corrected before the form is approved for public use.

First, there is no place on the form for a job applicant or employee to provide their name and other information to specifically identify who is filling out the form. As you know, the preamble to the final rule states that "OFCCP agrees that identifying information is needed in order for contractors to assess their utilization of individuals with disabilities by job group. We have, accordingly, revised paragraph (c) to remove the word 'anonymous.'"¹ Since the final rule requires federal contractors to use a form that is prescribed by OFCCP and cannot be changed,² the form that was submitted to OMB must be revised to enable job applicants and employees to provide their name and other information to uniquely identify themselves (as some employees may have the same, or very similar names) before the form is approved.

Second, the form states that "we are required to invite our employees to self-identify each year"³ when the final rule states federal contractors shall invite each of its employees to voluntarily inform the contractor whether the employee believes that he or she is an individual with a disability "the first year the contractor becomes subject to the requirements of this section and at five year intervals, thereafter, [and] At least once during the intervening years between these invitations, the contractor must remind their employees that they may voluntarily update their disability status."⁴ The form must be revised to be consistent with the language in the final rule before it is approved by OMB.

¹ 78 Fed. Reg. 58694.

² 78 Fed. Reg. 58694 and 58742, and 41 CFR 60-741.42.

³ See draft form at: <http://www.reginfo.gov/public/do/DownloadDocument?documentID=423600&version=0>.

⁴ 78 Fed. Reg. 58742 and 41 CFR 60-741.42(c).

Third, the second paragraph on the form states that “Employees may self-identify ...”⁵ which may be confusing to job applicants who must also be provided with the form both pre- and post-offer of employment. We strongly recommend changing the language to “Employees and job applicants ...”

Fourth, we strongly believe that given the comments and public record on the issue of individuals self-identifying from both disability and employer groups, that job applicants and employees should have three possible responses on the form, similar to the potential responses that federal employees and job applicants have on the form the federal government uses for self-identification of disability status (*i.e.*, SF-256, response codes 01 and 05):

YES, I HAVE A DISABILITY (or have previously had a disability)

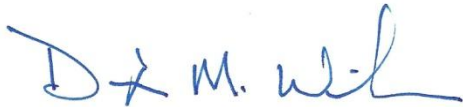
NO, I DO NOT HAVE A DISABILITY

I DO NOT WISH TO IDENTIFY MY DISABILITY STATUS

Finally, it is troubling that OFCCP submitted the form to OMB with these obvious errors and inconsistencies with the final rule. It strongly suggests that future OFCCP regulatory and paperwork submissions should be carefully scrutinized and subject to lengthy public comment periods before they are approved.

Thank you for your consideration in this matter and we urge you to address these problems with the OFCCP form before it is approved for public use.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. M. Wilson".

Mark Wilson
Vice President, Health and Employment Policy
HR Policy Association

cc: Michel Smyth by email at DOL_PRA_PUBLIC@dol.gov.

⁵ See draft form at: <http://www.reginfo.gov/public/do/DownloadDocument?documentID=423600&version=0>.