

ROFFMAN HORVITZ, PLC
LEGAL COUNSELING
FEDERAL CONTRACT COMPLIANCE & EMPLOYMENT DATA ANALYTICS

December 2, 2019

Mr. Harvey D. Fort
Deputy Director, Division of Policy and Program Development
OFCCP
200 Constitution Avenue NW Room C3325
Washington, DC 20210

Re: Control Number 1250-0004 (VEVRAA Recordkeeping) and 1250-0005 (Disability Self-Identification Form)

Dear Mr. Fort:

We are writing on behalf of Roffman Horvitz, PLC, to comment on (1) the OFCCP's request for OMB approval on a revised Section 503 disability self-identification form and (2) the OFCCP's request for OMB re-approval of the VEVRAA recordkeeping and third-party disclosure requirements under 41 CFR 60 part 300.

Roffman Horvitz is a boutique law firm founded by the former shareholders and OFCCP compliance practice group managers at the nation's largest employment law firm. Our team focuses on assisting federal contractor employers to comply with Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA). The firm's client base ranges from Fortune 100 companies to small-business owners.

We are submitting one comment regarding the VEVRAA record keeping requirement and five comments regarding the disability form.

Disability Self-Identification Form

1. We support the OFCCP's efforts to simplify the form by reducing the length to one page, removing the connection between self-identification and reasonable accommodation, soliciting the name and date at the top instead of the bottom of the page, re-ordering the disability examples in alphabetical order, and adding additional examples of disabilities to the body of the form.
2. The tone of the form is still overly legal for the common person to read. It's still too dense. If the form began with the following sentence, it would convey a completely different tone and message:
 - a. We are trying very hard to be an inclusive employer for qualified individuals with disabilities. To help us measure how well we are doing, we invite you to tell us if

you have a disability or if you ever had a disability. We are required as a federal contractor or subcontractor to reach out to, hire and provide equal opportunity to qualified people with disabilities. Identifying yourself as an individual with a disability is voluntary, and we hope that you will choose to answer this survey form. If you are applying for a job, any answer you give will be kept private and separate from the selection process. Completing the form will not affect your job prospects, and if you are a current employee, completing the form will not affect your employment in any way.

- b. The second section that defines disability could be much shorter and still convey all information essential to complete the survey. OFCCP should not need 15 lines and 244 words to explain to the common person why the employer is giving out the form and what they are expected to do with it. Make it simpler.
3. Because the OFCCP expects government contractors to use this form to solicit disability information from applicants, new hires, as well as existing employees every five years, it would be preferable for the OFCCP to obtain OMB approval to permit minor formatting edits at the top of the page to make it easier for employers to manage the information collection and storage. Instead of rigidly requiring only name and date, why not afford contractors the ability to solicit an employee identification number, too? Or, if possible, it would be very much appreciated if the OFCCP would issue an FAQ that said, "Although the OMB approved form requires name and date at a minimum, OMB will allow employers to add up to three more fields at the top to solicit an employee ID or personnel number, job title, and date of hire. No other identifying information may be included on the form. No other edits to the wording of the form are permitted." The problem in a hard copy/paper environment is that some employers have employees with the same first and last name, or employees do not print their name legibly, and without a date of hire or ID number, the employer is unable to match the form with the correct employee record.
4. We propose editing the confidentiality promises to remove any implication that the employer is expected to store paper in a file folder or in place that is separate from other information that employees have access to:

Existing Sentence	Proposed Sentence
It will be maintained in a confidential file and not be seen by selecting officials or anyone else involved in making personnel decisions.	It will be maintained confidentially and not be seen by selecting officials or anyone else involved in making personnel decisions.
Again, the information you provide will be maintained in a separate, confidential file.	Again, the information you provide will be maintained confidentially.

Some client employers afford their employees access to change certain information in their employee profile (mailing address, personal email address, cell phone number, add a beneficiary, change tax withholding), and the self-identification form is accessible any time they wish to self-identify. These employers provide the same level of confidentiality for employee self-identification responses, but the employee's response to the self-id form is not really being maintained separately. In these cases, the self-id information is part of the employee's personnel record, but access to all of the self-id information (race, gender, veteran status, and disability status) is limited to a very select number of employees – typically, the person responsible for querying the database each year for AAP preparation purposes has access to it, as well as that person's supervisor or manager. Recruiters, hiring managers, and employees' supervisors do not have access to that information.

5. For grammatical consistency, perhaps OFCCP would consider the following edit to the first sentence: As a federal contractor or subcontractor, we are required by law to reach out to, hire, and provide equal opportunity to qualified people with disabilities.

VEVRAA

1. Page 11 of the Supporting Statement: The OFCCP has grossly under-estimated the time and cost of having contractors and subcontractors list their job openings with the state or local employment service delivery system pursuant to 41 CFR Section 60-300.5, Paragraph 2. OFCCP states that the typical employer requires only 25 minutes per year to list only 15 annual vacancies. Using OFCCP's hourly wage rate of \$53.68, multiplied by 25 minutes times 15 job openings translates into a per employer yearly cost of \$338.18 to list the jobs with a third-party employment service delivery system. OMB should not approve the OFCCP's renewal request until OFCCP has explained using actual job listing data expenses how it arrived at the hours and cost burden. Some of our multi-state clients are paying tens of thousands of dollars each year for these listing services, not \$338.18.

Thank you for your consideration of our comments.

Sincerely,



Alissa A. Horvitz, Member Attorney

cc: Joshua S. Roffman, Managing Attorney, Roffman Horvitz, PLC