

**EARN Webinar Participant Questions**  
**Federal Government as a Model Employer: Understanding Changes to Section 501 of the Rehabilitation Act**  
**February 16, 2017**

<i>Reporting Requirements/Forms</i>	In terms of reporting requirements, is there any thought of using the MD715 Part J for more comprehensive annual reporting on progress under 501?	The Section 501 (the Rule) reporting requirements will be merged with the Part J reporting requirements of EEOC's Management Directive (MD) 715. EEOC currently is revising the MD-715 instructions to eliminate duplicative reporting and inefficiencies.
	What is a "different" form in a SF256-type context? Can we require a form for requesting a reasonable accommodation or for any other reason? If people won't use 256 then they won't use a "different" form, either.	A different form might, for example, not ask for a Social Security number, or it might not ask you to indicate which specific disability you have.
	Has the Commission determined what penalties, if any, will apply to agencies if they fail to meet the recordkeeping requirements of the regulations?	Agencies that fail to meet any of the requirements, including the recordkeeping requirements, risk having their Affirmative Action Plans disapproved. EEOC will work with agencies to effect compliance with the Rule's requirements; however, where such efforts are not successful, EEOC's Chair may issue a notice to the head of any such noncompliant agency and publicly identify it. See <a href="#">29 CFR § 1614.102 (e)</a> .
	Is EEOC considering asking agencies for this data as part of the MD-715?	See above response re: MD-715.
	When tracking data, do you ask on the application if the person has a disability?	Agencies should use a separate form to track applicant data, such as the <a href="#">Demographic Information on Applicants Form</a> .

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	Will these changes in disability hiring percentages be captured by the EEOC in the MD-715 and Form 462?	EEOC will require agencies to report the percentages in their MD-715 report and related workforce tables.
	What is a financial "undue hardship"?	Many resources explaining the concept of an undue hardship are available on EEOC's website. The term means significant difficulty or expense, and the regulation makes clear that all of an agency's available resources will be considered when determining whether the cost of an accommodation would result in undue hardship. For additional information, see: <a href="#">EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act</a> and <a href="#">EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation.</a>
<i>Veterans Overlap</i>	Please confirm that an agency can count (1) 30% veterans and (2) persons granted reasonable accommodation, even if they don't self-identify on SF256. Can we use the disability for which the accommodation was requested (i.e., a sign language interpreter requested for an employee who is deaf)?	Yes. Agencies are cautioned, however, to take care to avoid double-counting.

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	Our Veteran Hiring Analysis shows high numbers of service-connected disabilities. Any thoughts on best practices to encourage veterans to self-identify their service-connected disabilities?	As noted above, this Rule allows agencies to use veteran hiring records; self-identification is not required. EEOC recommends that agencies conduct an annual resurvey of the workforce to encourage all employees to update their SF-256 or similar form.
	With this new law, how does it differ from veterans with disability that have higher hiring points?	This Rule does not affect the competitive hiring process, or any rules, regulations, executive orders, or policies that require veterans' preference or that encourage the hiring of veterans.
<i>Coverage/Definitions</i>	Are these changes just for the Federal Government as an employer or do they also pertain to federal contractors?	The Rule applies only to the Federal Government and not to contractors. However, federal contractors must comply with regulations issued by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), which include, among other things, utilization goals for individuals with disabilities.
	Define affirmative action as it applies here, please.	Affirmative action includes all of the things that are required under the Rule.
	While the webinar speaks specifically about the Federal Government, are the practices also applicable to federal contractors, e.g., higher education?	No. See above response.
<i>Exemptions/ Considerations for Specific Jobs</i>	Are any jobs exempt from these requirements, e.g., Secret Service Agents, pilots, safety-sensitive jobs?	No.

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	If agencies hire mainly people in certain fields, e.g., biologists, does the participation rate of people with targeted disabilities in these educational fields come into consideration?	No.
<i>Schedule A/Targeted Disabilities</i>	Are people with disabilities and targeted disabilities eligible to apply for any federal position that they are qualified for under Schedule A? Or, does the vacancy announcement have to ask for Schedule A applicants to apply under Schedule A?	People with disabilities and people with targeted disabilities are eligible to apply for any federal position for which they are qualified. The Schedule A hiring authority is a vehicle agencies may use to appoint qualified persons with disabilities without going through the typical competitive hiring processes. One of the advantages of using Schedule A is that agencies can fill a funded vacant position without posting/competing the job. For more information about the Schedule A hiring authority for persons with disabilities, read <a href="#">EEOC ABCs of Schedule A</a> .
	Can't agencies deny employment to qualified people applying under Schedule A when the positions require secret and top secret clearances?	An agency is never required to hire someone under Schedule A, including individuals who are Schedule A eligible, but who lack the necessary security clearance for a job. However, there is no reason to assume that a Schedule A applicant would be unable to obtain a necessary security clearance.

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	The list of targeted disabilities includes "intellectual disability" but Schedule A requires "severe intellectual disability." Do ADHD and dyslexia count as "severe" intellectual disabilities?	No, those are learning disabilities. An intellectual disability is what was formerly called "mental retardation." Schedule A can be used to appoint people with (a) intellectual disabilities, (b) severe physical disabilities, or (c) psychiatric disabilities.
	I have found that being under Schedule A the door is open to opportunity, but after an agency has picked up the employee with a disability there are no measures in place for sustainability, growth, promotion, etc. Will this be changing?	The Rule require agencies to develop advancement programs, and to keep records of Schedule A hires and conversions.
	Why were psychiatric disabilities removed from the list of targeted disabilities?	They were not. However, targeted disabilities now only include significant psychiatric disabilities such as major depression and PTSD.
	With the current hiring freeze, is there any federal initiative being pursued to exempt Schedule A hires so that agency's Affirmative Action Plans are not derailed.	No. Even during hiring freezes, however, agencies are required to meet the requirements related to retention and advancement.
<i>Accommodations (non PAS-related) &amp; Accessibility</i>	Can a person that is blind have a personal assistant that can read hand written notes and forms that are not accessible?	That type of service most likely would be is a reasonable accommodation, not personal assistance services (PAS), as affirmative action under the Rule.

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	<p>If an employee who is visually impaired asks for a scribe, how do we accommodate? Do we hire a scribe?</p>	<p>The agency is required to provide an accommodation that is (a) effective (solves the problem) and (b) does not impose undue hardship, if such an accommodation exists. If more than one exists, the agency may choose which one to provide. You should explore with the employee whether there is another form of accommodation that would be effective; if there is, you can choose to provide it.</p>
	<p>What to do if an employer won't honor a second reasonable accommodation request? If one request was completed but another is needed.</p>	<p>The employee may initiate the federal EEO complaint process set forth in 29 CFR § 1614 by contacting an EEO Counselor within 45 days of the incident alleged to be discriminatory.</p>
	<p>What happens with those individuals who requested these type of reasonable accommodations, prior to January 2017 when the agency was not required to provide them? Should they now be encouraged to request these types of reasonable accommodations?</p>	<p>If this question refers to PAS required under the Rule, please note that they are not properly called reasonable accommodations. EEOC welcomes such encouragement, but does not specifically require it.</p>

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	<p>How can you make an agency pay more attention to compliance on software systems, i.e., a travel program, before they purchase them?</p>	<p>Under Section 508 of the Rehabilitation Act, agencies are required to purchase, maintain, and use electronic and information technology that is readily accessible to and usable by individuals with disabilities. Employee and members of the public may file complaints against an agency for purchases that do not comply with Section 508, using the same procedures available to members of the public filing complaints under Section 504 of the Rehabilitation Act. EEOC affirmative action regulations require agencies to inform employees about their rights under Section 508. For more information on compliance with Section 508 of the Rehabilitation Act, visit <a href="http://www.Section508.gov">www.Section508.gov</a>.</p>
<p><i>PAS (both in context of accommodations and affirmative action)</i></p>	<p>What about personal assistance for employees on telework? Any guidelines?</p>	<p>EEOC intends to provide technical assistance on PAS during telework, and on other issues that may arise under the Rule, in the near future.</p>
	<p>How would the employer ever prove undue hardship with regard to providing PAS?</p>	<p>EEOC has decided numerous cases in which the agency has claimed that provision of a reasonable accommodation would impose undue hardship. The same standard applies here.</p>

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	Does the requirement to provide a PAS for activities of daily living apply only to activities performed at the workplace or while on TDY? For example, does an agency have to provide a PAS to assist the employee in the home while dressing for work?	PAS are required only during work hours and work related travel.
	How does the personal assistant service work? How do we access that service?	The process for requesting PAS is determined by each individual agency.
	If the PAS is not required under the reasonable accommodation program, who would be responsible for providing the services (procuring the services)?	Each agency is responsible for making that decision.
	Is there any requirement that an agency be consistent in its provision of PAS? For example, must all people with a certain disability always be provided the SAME type of PAS? Or can people with the same disability have different types of PAS, based on their individual preferences?	The individual is entitled to whichever PAS he or she needs, and no more. EEOC anticipates that only a fraction of individuals with disabilities will require PAS.
	What is the standard for receiving personal assistant services in the workplace? Does one need to be totally incapable of performing certain tasks, or can the person with a disability request such for somewhat difficult/fatiguing tasks?	First, PAS are only available to persons with targeted disabilities. Second, similar to a request for an accommodation, a person with a targeted disability must explain why he or she needs PAS. In general, when determining whether to provide PAS the agency should focus its analysis on why such services are needed.
<i>Timelines</i>	When exactly will guidance be issued?	EEOC is actively working on technical assistance and will issue it as soon as possible.
	Compliance to goals is due by January 3, 2018? Or is it that a plan must be in place by January 2018?	The Affirmative Action Plan must be in place by January 2018. MD-715 reports for FY18 will be due in January 2019.

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<i>Manager/Supervisor/ DPM/RAC Training &amp; Education</i>	Are you requesting that ALL managers attend a webinar of this nature? Managers are discriminating against people with disabilities and leaving them at the GS-4 level.	We encourage everyone to become familiar with the new regulations. Individuals who experience discrimination may file complaints of discrimination with their agency's EEO office.
	How do you get your agency to follow the regulations? What do you do if the HR specialist for people with disabilities acts as if you are pestering or disturbing them with your questions or they are non-responsive overall?	EEOC will monitor compliance through the annual Affirmative Action Plan submission process, and by its other oversight activities.
	What defines "qualified" for staff? Will this help agencies to move beyond "dual-hatted" disability program managers (DPMs) and reasonable accommodation coordinators (RACs) and ensure the effort has appropriate numbers of individuals with proper training to do this work? –(Not submitted by USDA employee). :-)	The regulations require agencies to have staff that can handle reasonable accommodation requests, Schedule A applications, and other disability-related issues quickly and accurately. If current staff are unable to accomplish this, the agency may consider increasing the number of dedicated disability program staff.
<i>Complaint Process</i>	What's the enforcement mechanism if a PAS is not provided? Is it considered a discrimination claim?	As set forth in its preamble, the Rule takes no position on the availability of a private remedy for affirmative action obligations. EEOC believes that its procedural regulations governing complaints of discrimination in the federal sector, found at 29 CFR §1614, subpart A, are the most appropriate place to address this question.

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<i>Recruiting/Retention/ Advancement Strategies</i>	Are you all going to provide companies with an agency list for those that work with people with disabilities? Will these agencies partner with employers through referrals from EEOC?	Technical assistance related to the Rule is still under development. EEOC will not make referrals.
	How does the freeze affect our recruitment (overall) in this case for people with disabilities? Can you tell us which disability organizations we can partner with?	Hiring freezes reduce the need to recruit candidates, because fewer positions are available. See response below regarding disability organizations.
	When it comes to recruitment, can you tell us which organizations we can partner with?	<p>Agencies are encouraged to establish and maintain contacts with disability employment organizations. There is no limitation on the number of organizations with which agencies can partner. For more information, see 29 CFR §1614.203(d)(1)(i)(B).</p> <p>EARN offers additional resources for finding qualified applicants with disabilities. Visit <a href="http://www.askearn.org/topics/recruitment-hiring/finding-candidates-with-disabilities/">http://www.askearn.org/topics/recruitment-hiring/finding-candidates-with-disabilities/</a> for more information.</p>
	Will some job descriptions need to be modified to provide opportunities for people with disabilities?	If an agency needs to increase the percentage of people with disabilities in its workforce, it may consider modifying job descriptions as one way to accomplish that goal.