

SECTION 503 AFTER OFCCP'S FINAL RULE: WHAT'S GONE, WHAT'S LEFT, AND WHAT'S NEXT

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BRIEFING OBJECTIVES

- By the end of this session, participants will be able to:
 - Understand the changes made by OFCCP's Section 503 Final Rule and the disability compliance requirements that have been eliminated
 - Distinguish between rescinded requirements and the Section 503 obligations that remain in effect for federal contractors
 - Evaluate when disability-related inquiries remain permissible under the Americans with Disabilities Act and EEOC regulations
 - Identify practical steps for updating affirmative action, applicant tracking, accommodation, and recordkeeping practices in response

OFCCP'S FINAL RULES MODIFYING SECTION 503, VEVRAA, AND EO 11246

OFCCP'S THREE FINAL RULES

- OFCCP has finalized its modifications to the nondiscrimination and affirmative action requirements arising under Section 503 of the Rehabilitation Act (Section 503)
- Effective September 21, 2026, federal contractors no longer have an obligation to
 - Solicit disability status from applicants or employees
 - Prepare a disability utilization analysis
 - Track disability applicant and hire data and use them to assess outreach efforts
- All other Section 503 affirmative action and nondiscrimination requirements remain intact



OFCCP'S THREE FINAL RULES

The Section 503 rule was published simultaneously alongside two of OFCCP's other long-awaited rules

Section 503 of the Rehab Act

Eliminating all mandatory disability self-identification practices, goals, and quantitative analyses

[OFCCP has separately asked OMB to formally eliminate Form CC-305](#)

Executive Order (EO) 11246

Rescinding the OFCCP's EO 11246 regulations and related guidance

Note: the EO 11246 regulations were already without legal effect following the issuance of EO 14173, so rescission of these regulations was merely procedural

Section 4212 of VEVRAA

Making administrative changes to agency regulations implementing Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA)

The changes to VEVRAA were simply administrative; all protected veteran affirmative action and nondiscrimination obligations remain intact

WHAT REMAINS OF SECTION 503

SECTION 503 CHANGES – 41 C.F.R. PART 60

Current Section 503 Provisions

- § 60-741.40 General purpose and applicability of the affirmative action program requirement
- § 60-741.41 Availability of affirmative action program
- § 60-741.42 Invitation to self-identify
- § 60-741.43 Affirmative action policy
- § 60-741.44 Required contents of affirmative action programs
- § 60-741.45 Utilization goals
- § 60-741.46 Voluntary affirmative action programs for employees with disabilities
- § 60-741.47 Sheltered workshops

Beginning September 21, 2026

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SECTION 503 CHANGES – 41 C.F.R. PART 60

Current Affirmative Action Provisions

- § 60-741.44(a) Policy statement
- § 60-741.44(b) Review of personnel processes
- § 60-741.44(c) Physical and mental qualifications
- § 60-741.44(d) Reasonable accommodation
- § 60-741.44(e) Harassment
- § 60-741.44(f) External policy dissemination
- § 60-741.44(g) Internal policy dissemination
- § 60-741.44(h) Audit and reporting system
- § 60-741.44(i) Responsibility for implementation
- § 60-741.44(j) Training
- § 60-741.44(k) Data collection and analysis

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OTHER SECTION 503 CHANGES

- OFCCP's Final Rule also includes numerous technical and administrative changes, updating jurisdiction thresholds, web addresses, outreach sources, and cross-references to the now-rescinded self-identification provisions
- The Final Rule also adds a new subparagraph (I) to § 60-741.44, clarifying
 - “Contractors are not required to consider quantitative data on the numbers of individuals with disabilities who were referrals, applicants, or hires when assessing the effectiveness of their outreach efforts and affirmative action program”



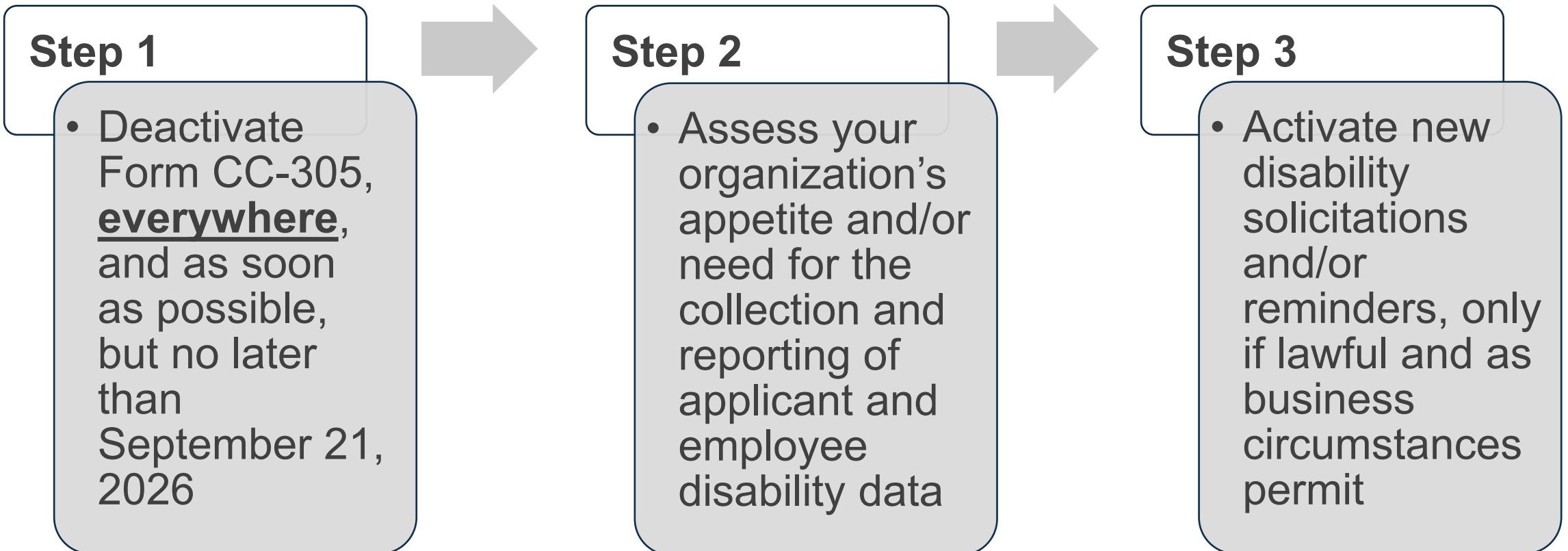
WHAT'S NEXT

IMPLEMENTING OFCCP'S CHANGES

- While significant, very little action is needed from federal contractors to comply with OFCCP's Section 503 changes
 - Any Section 503 plan year that begins on or after September 21, 2026 will no longer include any quantitative analytics
 - There is no obligation to “wind down” otherwise compliant Section 503 analytics that were prepared for 2026
 - In fact, some employers may opt to continue them on a voluntary basis
 - Contractors should, however, prepare to immediately modify their self-identification practices

IMPLEMENTING OFCCP'S CHANGES

The [Center for Workplace Compliance](#) recommends a **three-step process** for managing changes to the disability self-id processes



DISABILITY SELF-ID: THEN AND NOW

DISABILITY SOLICITATIONS: PRE-OFFER

Current Affirmative Action Provisions

- Contractors must invite applicants to self-identify as an individual with a disability when the applicant applies or is considered for employment
- Invitations must utilize OFCCP's Voluntary Self-Identification of Disability (Form CC-305)

Beginning September 21, 2026

- The Americans with Disabilities Act and the EEOC's implementing regulations explicitly **prohibit** pre-offer medical exams and inquiries
- Note: a 1995 EEOC guidance document addresses this prohibition, as it pertains to affirmative action

* May an employer ask applicants to "self-identify" as individuals with disabilities for purposes of the employer's affirmative action program?

Yes. An employer may invite applicants to voluntarily self-identify for purposes of the employer's affirmative action program if:

* the employer is undertaking affirmative action because of a federal, state, or local law (including a veterans' preference law) that requires affirmative action for individuals with disabilities (that is, the law requires some action to be taken on behalf of such individuals); or

* the employer is voluntarily using the information to benefit individuals with disabilities.

Employers should remember that state or local laws sometimes permit or encourage affirmative action. In those cases, an employer may invite voluntary self-identification only if the employer uses the information to benefit individuals with disabilities.

BENCHMARKING FROM CWC'S RECENT ROUNDTABLE

#1: Pre-Offer Applicant Disability Self-Identification

Now that DOL has rescinded the requirement to collect disability self-identification data (effective 9/21/26), what is your organization's current thinking regarding voluntary disability self-identification by applicants before a job offer is made?



DISABILITY SOLICITATIONS: POST-OFFER

Current Affirmative Action Provisions

- Contractors must invite applicants to self-identify as an individual with a disability at any time after the offer of employment, but before the applicant begins his or her job duties
- Invitations must utilize OFCCP's Voluntary Self-Identification of Disability (Form CC-305)

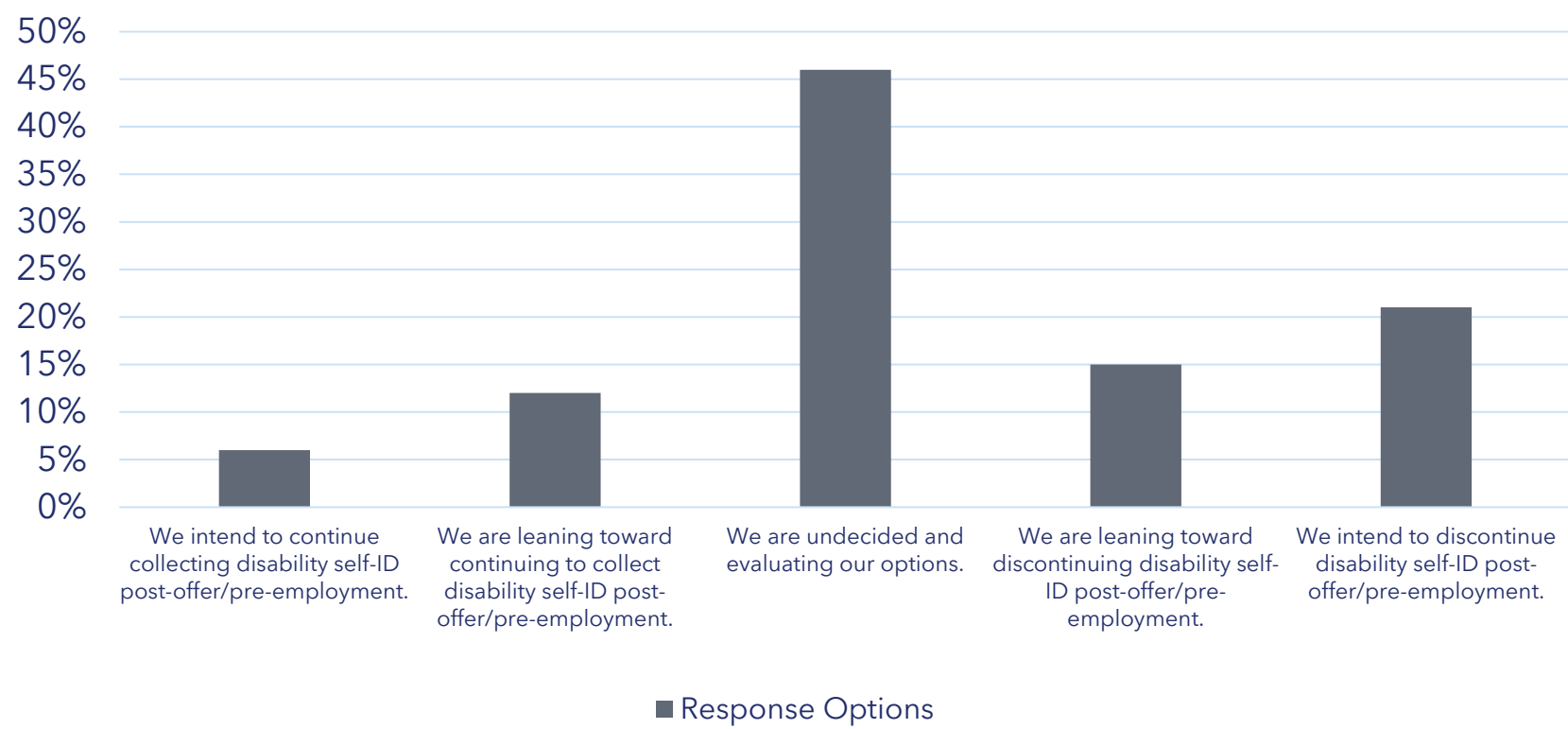
Beginning September 21, 2026

- The Americans with Disabilities Act (ADA) and the EEOC's implementing regulations explicitly permit post-offer medical exams and inquiries, provided:
 - All entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability
 - The information is collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except:
 - Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
 - First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
 - Government officials investigating compliance with this part shall be provided relevant information on request.

BENCHMARKING FROM CWC'S RECENT ROUNDTABLE

#2: Post-Offer / Pre-Employment Disability Self-Identification

What is your organization's current thinking regarding voluntary disability self-identification during the onboarding process after an offer has been extended but before employment begins?



DISABILITY SOLICITATIONS: CURRENT EMPLOYEES

Current Affirmative Action Provisions

- Contractors must invite employees to self-identify as an individual with a disability every five years and send a “reminder” at least once in between these five-year intervals
- Invitations must utilize OFCCP’s Voluntary Self-Identification of Disability (Form CC-305)

Beginning September 21, 2026

- The Americans with Disabilities Act and the EEOC’s implementing regulations explicitly **prohibit** medical exams and inquiries of current employees unless they are job-related and consistent with business necessity
- Note: a 2000 EEOC guidance document addresses this prohibition, as it pertains to affirmative action

23. May an employer ask employees to **voluntarily self-identify as persons with disabilities for affirmative action purposes?**

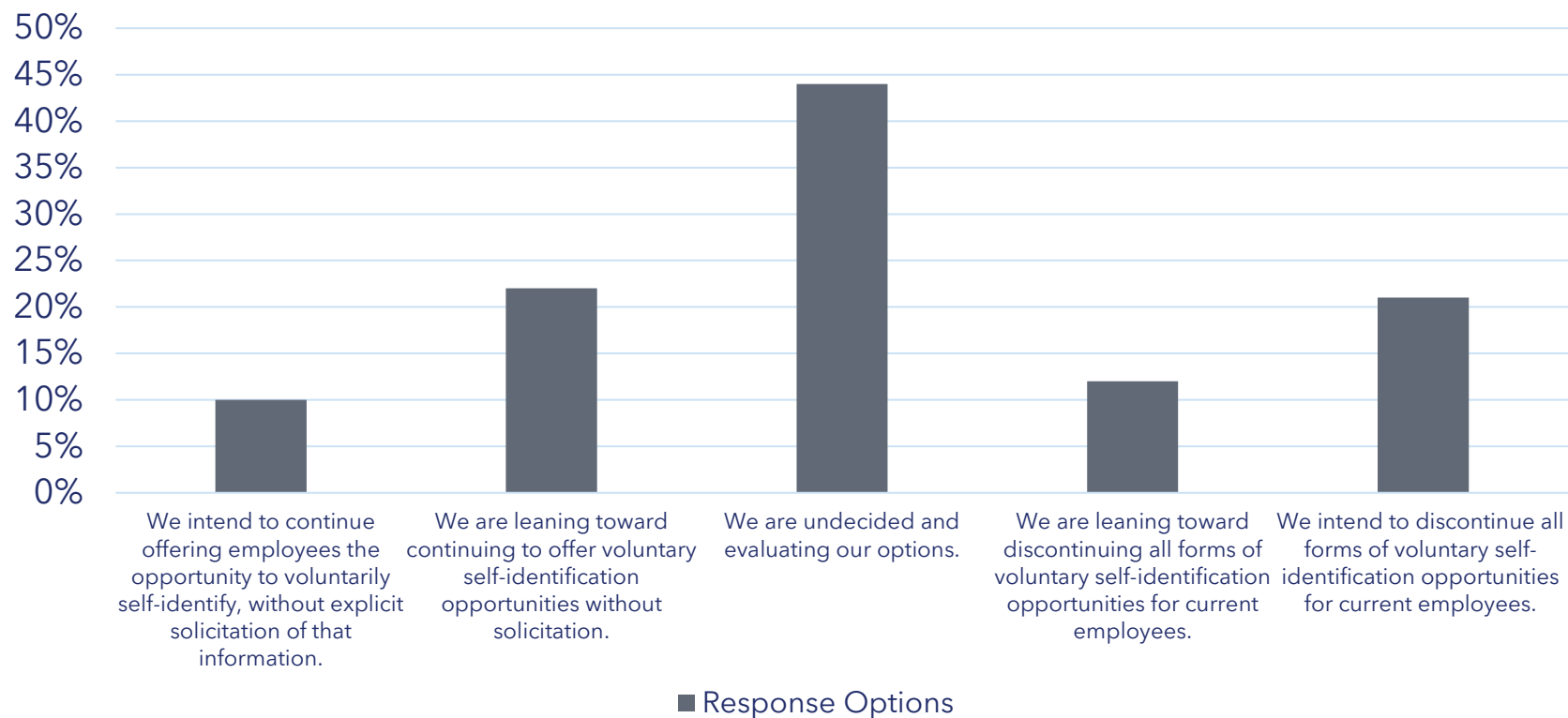
Yes. An employer may ask employees to voluntarily self-identify as individuals with disabilities when the employer is:

- undertaking affirmative action because of a federal, state, or local law (including a veterans’ preference law) that requires affirmative action for individuals with disabilities (i.e., the law requires some action to be taken on behalf of such individuals); or,
- *voluntarily* using the information to benefit individuals with disabilities.⁽⁷⁹⁾

BENCHMARKING FROM CWC'S RECENT ROUNDTABLE

#3: Current Employee Disability Self-Identification

What is your organization's current thinking regarding voluntary disability self-identification by current employees, including allowing employees to voluntarily update disability status through an HRIS or employee self-service portal?



DISABILITY SELF-ID: KEY TAKEAWAYS

DISABILITY SOLICITATIONS: KEY TAKEAWAYS

Further, for the reasons described above, DOL declines to retain the CC-305 form in any manner since the final rule eliminates the requirement that contractors ask applicants and employees about their disability status. As detailed in the ADA discussion at section III(A)(2) above, DOL believes that Congress made a policy determination to protect privacy with the enactment of the ADA. DOL chooses to enforce Section 503 consistent with the privacy protections of the ADA. DOL enforced, and contractors were able to comply with Section 503's statutory requirements prior to the CC-305 form, and DOL will continue to enforce, and contractors will continue to be able to comply with Section 503's statutory requirements after the discontinuation of this form. If a contractor, in exercising its own legal and business judgment, believes there is a legal basis on which it is permitted to collect certain information under the ADA and its implementing regulations, then this final rule does not prohibit the contractor from doing so. However, given DOL's view that this inquiry process contravenes the ADA, it would not be appropriate for DOL to provide a form for contractors to make potentially unlawful inquiries as to the disability status of applicants and employees.

DISABILITY SOLICITATIONS: KEY TAKEAWAYS

- **Bottom line:** EEOC regulations permit post-offer, pre-employment inquiries, and nothing prohibits employers from *reminding* employees that they can self-identify as an individual with disability or request an accommodation at any time
 - In other words, nothing in OFCCP's Final Rule, the ADA, or EEOC regulations should be interpreted to interfere with or silence employees who engage employers on disability matters or the ADA interactive process
 - Per OFCCP: "A truly voluntary disclosure occurs when an applicant or employee volunteers his or her disability self-identification without being asked. When an employer hands the employee a form, that is clearly a request for information."

STATE AND LOCAL LAWS

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- States and localities continue to impose affirmative action obligations on contractors relating to individuals with disabilities
- These requirements may include:
 - 1) collecting disability status;
 - 2) reporting disability data as part of aggregate workforce demographic reporting; and/or
 - 3) conducting disability utilization analyses

EXAMPLES OF STATE AND LOCAL REQUIREMENTS

- **Minnesota:** Annual compliance reports require contractors to provide disability data for applicants and employees
- **Wisconsin:** Contractors must invite employees to self-identify disability status and report disability workforce data (though federal EEO-1 report accepted instead)
- **Cincinnati, OH:** Contractors must report total number of employees with disabilities by job category
- **Louisville-Jefferson County Metro, KY:** Contractors must analyze workforce data to identify potential underutilization of individuals with disabilities
- **Madison, WI:** Contractors must submit disability workforce data and conduct a disability utilization analysis
- **Saint Paul, MN:** Contractors must conduct a utilization analysis to identify potential underrepresentation of individuals with disabilities
- **San Diego, CA:** Contractors must submit aggregate workforce data for individuals with disabilities

FREQUENTLY ASKED QUESTIONS

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- We haven't finished this year's Section 503 compliance plans. Should we?
- Can Section 503 compliance serve as a reason to solicit disability information?
- What's the difference between an "invitation" and a "reminder?"
- Is it possible to comply with our state/local contract compliance requirements (for example, Minnesota) without running afoul of the ADA?
- Should we delete the disability data we've collected and maintained under the outgoing rules?
- How can we meaningfully take affirmative action for persons with disabilities without inviting those individuals to voluntarily self-identify?
- Are we still required to conduct 44(j) training? Do we need to update current content?
- Is there any practical downside to shutting down all disability-related self-identification opportunities?

DISCUSSION AND Q&A

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