

**A Review of Revisions to:**

**Section 503 of the Rehabilitation Act and Section  
4212 of the Vietnam Era Veteran's Readjustment  
Assistance Act (VEVRAA)**

***BCG Institute for Workforce Development (BCGI)***



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# Overview of Biddle Consulting Group, Inc.



<b>Affirmative Action Plan (AAP) Consulting and Fulfillment</b>	<ul style="list-style-type: none"> <li>• Thousands of AAPs developed each year</li> <li>• Audit and compliance assistance</li> <li>• AutoAAP™ Enterprise software</li> </ul>
<b>HR Assessments</b>	<ul style="list-style-type: none"> <li>• AutoGOJA™ online job analysis system</li> <li>• TVAP™ test validation &amp; analysis program</li> <li>• CritiCall™ pre-employment testing for 911 operators</li> <li>• OPAC™ pre-employment testing for admin professionals</li> <li>• Video Situational Assessments (General and Nursing)</li> </ul>
<b>Custom Test Development &amp; Validation</b>	<ul style="list-style-type: none"> <li>• “High stakes” test development</li> <li>• Validation studies in response/prevention to litigation</li> </ul>
<b>EEO Litigation Consulting /Expert Witness Services</b>	<ul style="list-style-type: none"> <li>• Over 200+ cases in EEO/AA (both plaintiff and defense)</li> <li>• Focus on disparate impact/validation cases</li> </ul>
<b>Compensation Analysis</b>	<ul style="list-style-type: none"> <li>• Proactive and litigation/enforcement pay equity studies</li> <li>• COMPare™ compensation analysis software</li> </ul>
<b>Publications/Books</b>	<ul style="list-style-type: none"> <li>• EEO Insight™: Leading EEO Compliance Journal</li> <li>• Adverse Impact (3<sup>rd</sup> ed.) / Compensation (1<sup>st</sup> ed.)</li> </ul>
<b>BCG Institute for Workforce Development</b>	<ul style="list-style-type: none"> <li>• 4,000+ members</li> <li>• Free webinars, EEO resources/tools</li> </ul>
<b>Speaking and Training</b>	<ul style="list-style-type: none"> <li>• Regular speakers on the national speaking circuit</li> </ul>

# Biddle Consulting Group Institute for Workforce Development (BCGi)



- **BCGi Memberships (free): ~5500+ members / 13,000 HRCI credits to-date**
  - Online community
  - Monthly webinars on EEO compliance topics
  - *EEO Insight* Journal (e-copy)
- **BCGi Platinum Membership (paid)**
  - Includes validation/compensation analysis books
  - EEO Tools including those needed to conduct AI analyses
  - *EEO Insight* Journal (e-copy and hardcopy)
  - Access to the BCGi library of webinars, training materials, and much more ...

[www.bcginstitute.org](http://www.bcginstitute.org)

# Contact Information



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# Agenda



- OFCCP Resources: 503 and VEVRAA
- OFCCP Crosswalks: Current v New Regulations
- 503/VEVRAA: A Comparison
- Miscellaneous Questions
- Summary/Recommendations
- Questions

# OFCCP Resources: Section 503



- Highlights: <http://www.dol.gov/ofccp/regs/compliance/section503.htm>
- Summary and Preamble:  
[http://www.dol.gov/ofccp/regs/compliance/section503/503\\_summary\\_qa\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/section503/503_summary_qa_508c.pdf)
- Regulatory Procedures and Burden:  
[http://www.dol.gov/ofccp/regs/compliance/section503/503\\_regulation\\_procedures\\_qa\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/section503/503_regulation_procedures_qa_508c.pdf)
- Regulatory Text (Final Rule):  
[http://www.dol.gov/ofccp/regs/compliance/section503/503\\_rule\\_qa\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/section503/503_rule_qa_508c.pdf)
- Frequently Asked Questions (FAQs):  
[http://www.dol.gov/ofccp/regs/compliance/faqs/503\\_faq.htm](http://www.dol.gov/ofccp/regs/compliance/faqs/503_faq.htm)
- Fact Sheet: [http://www.dol.gov/ofccp/regs/compliance/factsheets/Sec\\_503\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/factsheets/Sec_503_508c.pdf)
- Side by Side Chart of Changes:  
[http://www.dol.gov/ofccp/regs/compliance/factsheets/Section503\\_Crosswalk\\_QA\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/factsheets/Section503_Crosswalk_QA_508c.pdf)
- EEOC Opinion on Invitation to Self-Identify:  
[http://www.dol.gov/ofccp/regs/compliance/sec503/OLC\\_letter\\_to\\_OFCCP\\_8-8-2013\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/sec503/OLC_letter_to_OFCCP_8-8-2013_508c.pdf)

# OFCCP Resources: VEVRAA



- Highlights: <http://www.dol.gov/ofccp/regs/compliance/vevraa.htm>
- Summary and Preamble:  
[http://www.dol.gov/ofccp/regs/compliance/vevraa/vevraa\\_summary\\_qa\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/vevraa/vevraa_summary_qa_508c.pdf)
- Regulatory Procedures and Burden:  
[http://www.dol.gov/ofccp/regs/compliance/vevraa/vevraa\\_regulatory\\_procedures\\_qa\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/vevraa/vevraa_regulatory_procedures_qa_508c.pdf)
- Regulatory Text (Final Rule):  
[http://www.dol.gov/ofccp/regs/compliance/vevraa/vevraa\\_rule\\_qa\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/vevraa/vevraa_rule_qa_508c.pdf)
- Frequently Asked Questions (FAQs):  
[http://www.dol.gov/ofccp/regs/compliance/faqs/VEVRAA\\_faq.htm](http://www.dol.gov/ofccp/regs/compliance/faqs/VEVRAA_faq.htm)
- Fact Sheet:  
[http://www.dol.gov/ofccp/regs/compliance/factsheets/VEVRAA\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/factsheets/VEVRAA_508c.pdf)
- Side by Side Chart of Changes:  
[http://www.dol.gov/ofccp/regs/compliance/factsheets/VEVRAA\\_Crosswalk\\_QA\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/factsheets/VEVRAA_Crosswalk_QA_508c.pdf)

# OFCCP Crosswalk: Current v New 503 Regulations



[http://www.dol.gov/ofccp/regs/compliance/factsheets/Section503\\_Crosswalk\\_QA\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/factsheets/Section503_Crosswalk_QA_508c.pdf)

**SECTION 503 CROSSWALK: Existing Rule vs Final Rule**  
PAGE 6

	Existing Rule	Final Rule
<b>Part 60-741.41 Availability of AAP</b>	Requires that the full AAP be available to any employee or applicant for inspection upon request.	Clarifies that “[t]he full affirmative action program, <i>absent the data metric required by § 60-741.44(k)</i> , shall be made available...” (revision emphasized) Preamble explains that the contractor may make the AAP available to employees electronically, upon request, so long as requester is able to access the electronic version of the AAP.
<b>Part 60-741.42 Invitation to self-identify</b>	<ul style="list-style-type: none"> <li>Requires post-offer invitation to all applicants to voluntarily self-identify as an individual with a disability.</li> <li>Includes proviso that contractors are allowed to invite pre-offer self-identification “for affirmative action purposes only” in limited circumstances.</li> </ul>	<ul style="list-style-type: none"> <li>Adds requirement to invite voluntary self-identification of disability at the pre-offer stage. Permits invitation to be made at the same time race/gender information requested to harmonize with Internet Applicant Rule.</li> <li>Eliminates sample invitation to self-identify in Appendix B.</li> <li>Adds requirement to invite employees to voluntarily self-identify every 5 years, and to remind employees between these invitations that they may change their disability status at any time.</li> <li>Requires that all invitations to self-identify be made using new OFCCP form, posted on the OFCCP Web site.</li> <li>States contractors may not compel or coerce individuals to self-identify. Preamble states contractors may ID IWDs who do not self-identify if disability obvious or known to the contractor, but may not guess.</li> <li>Requires contractors to keep self-id info confidential and maintained in a data analysis file.</li> </ul>
<b>Part 60-741.44(a) Affirmative action policy statement</b>	Requires contractors to include their equal employment opportunity (EEO) policy statement in their AAP; post the statement on the company’s bulletin boards; ensure that applicants and employees with disabilities are informed of its contents (such as reading it to a visually disabled person); and among other things, indicate in the statement the CEO’s attitude on the subject matter.	<ul style="list-style-type: none"> <li>Revises the language of paragraph (a) to clarify that the policy statement shall indicate “the top United States executive’s (such as CEO or President of the U.S. Division of a foreign company)” support for the contractor’s affirmative action program.</li> <li>Updates the accommodation example to refer to alternate formats, such as Braille or large print.</li> </ul>



# OFCCP Crosswalk: Current v New VEVRAA Comparison



[http://www.dol.gov/ofccp/regs/compliance/factsheets/VEVRAA\\_Crosswalk\\_QA\\_508c.pdf](http://www.dol.gov/ofccp/regs/compliance/factsheets/VEVRAA_Crosswalk_QA_508c.pdf)

VEVRAA CROSSWALK: Existing Rule vs Final Rule  
PAGE 7

	Existing Rule	Final Rule
Part 60-300.44(k) Required contents of AAP (cont'd)	N/A	<ul style="list-style-type: none"> <li>Adds new paragraph .44(k) requiring data collection. Contractors must document and update annually: (1) the total number of applicants for employment and the number of applicants who are protected veterans; (2) the total number of job openings and the number of jobs filled; and (3) the total number of applicants hired and the number of applicants hired who are protected veterans.</li> <li>Data must be retained for 3 years</li> </ul>
Part 60-300.45 Benchmarks for hiring	N/A	<ul style="list-style-type: none"> <li>New section requires contractors to set an annual hiring benchmark to use as a yardstick to measure success of outreach and recruitment efforts. Benchmark may be set in either of two ways:               <ol style="list-style-type: none"> <li>Contractors may use as their benchmark the national percentage of veterans in the civilian labor force, as posted on OFCCP's Web site.</li> <li>OR contractor may establish an individual benchmark by considering five specified factors, including State civilian labor force data; ESDS participants (both published in the Benchmark Database on the OFCCP Web site.</li> </ol> </li> <li>Contractors have discretion to apply benchmark to EO 11246 job groups; to EEO-1 categories or to whole workforce. Failure to meet the benchmark is NOT a violation of VEVRAA.</li> <li>Records pertaining to the benchmark must be retained for 3 years.</li> </ul>
Part 60-300.60 Compliance evaluations	Details the form and scope of compliance evaluations conducted by OFCCP. Is silent on the temporal scope of evaluations.	<ul style="list-style-type: none"> <li>Codifies OFCCP's longstanding that it may extend the temporal scope of the desk audit beyond the scheduling letter if necessary in order to carry out our investigation. This position was most recently upheld by the ARB in the <i>Frito-Lay</i> decision.</li> <li>Permits OFCCP to review documents during a compliance check either on-site or off-site, and to allow OFCCP to conduct focused reviews, either on-site or off-site.</li> <li>Adds a pre-award compliance evaluation procedure mirroring the procedure in the EO 11246 regulations.</li> </ul>



# 503 / VEVRAA: A Side-by-Side Comparison

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
General Overview	AA and non-discrimination against individuals w disabilities	AA and non-discrimination against protected veterans	
Coverage	Applies to any/all government contractors with contract(s) or subcontract(s) of \$10,000 or more	Applies to any/all government contractors with contract(s) or subcontract(s) of \$100,000 or more, entered into or modified on or after December 1, 2003 (>\$25,000 prior to December 1, 2003 if never modified since)	
Timing	<ul style="list-style-type: none"> <li>• Effective March 24, 2014</li> <li>• Contractors with plans in place by the effective date will be allowed to maintain their current AAP cycles (i.e., will <b>not</b> be required to update their current plans)</li> </ul>	Same	<ul style="list-style-type: none"> <li>• “additional time” and “extended compliance date” will be allowed for Subpart C (i.e., the AAP components - note: confusion remains regarding when, exactly, contractors need to begin soliciting veteran/disability status pre-offer...see timelines pgs. 34-37 )</li> <li>• BCG recommends <b>not</b> collecting pre-offer data until March 24, 2014)</li> </ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Burden	<ul style="list-style-type: none"> <li>• Costs associated with this new burden include one-time costs, recurring costs, initial start-up costs, and operations and maintenance costs:</li> <li>• Costs based on a contractor establishment count of 251,300 (2010 VETS)</li> <li>• First-year costs: \$350M - \$660M</li> <li>• Recurring costs (non-survey years): \$162M - \$395M</li> <li>• Recurring costs (survey years): \$242M - \$480M</li> </ul>	<ul style="list-style-type: none"> <li>• Costs associated with this new burden include one-time costs, recurring costs, initial start-up costs, and operations and maintenance costs:</li> <li>• Costs based on a contractor establishment count of: Low) 171,275 (2009 EEDS/EEO-1/FPDS), High) 251,300 (2010 VETS)</li> <li>• First-year costs: \$177M - \$484M</li> <li>• Recurring costs/year: \$120M - \$348M</li> </ul>	<ul style="list-style-type: none"> <li>• Costs likely grossly underestimated</li> <li>• One (1) hour/ea. to familiarize your organization with the final rules</li> <li>• Four (4) hours per organization per rule to review the requirements</li> <li>• Fifteen (15) minutes/ea. to include EO Clause in all contracts</li> <li>• Twenty-one (21) hours/ea. to modify application process and IT systems</li> </ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
EO Clause	<p>Must be included (reference OK) in all contracts/subcontracts/POs in excess of \$10K. Must also include bolded text, <b>“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.”</b></p>	<p>Must be included (reference OK) in all contracts/subcontracts/POs in excess of \$100K. Must also include bolded text, <b>“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.”</b></p>	<p>It’s currently unknown if both citations can be combined in lieu of posting each separately.</p> <p>Note: the EO Clause is included in Subpart A of the Final Rule, and as such, changes to contracts and POs must be completed by effective date of the final rule(s).</p>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Self-ID Pre-Offer	<ul style="list-style-type: none"> <li>• Solicitation required (response is voluntary) – if applicant is disabled, must inquire as to reasonable accommodation</li> <li>• May be solicited <i>after</i> evaluation of BQs; however:               <ul style="list-style-type: none"> <li>– Final regulations reiterate the standard for BQs (i.e., must be “job-related for the position in question and consistent with business necessity”)</li> <li>– BQs cannot be used to screen out applicants if that BQ is related to an <i>essential function that could be satisfied with a reasonable accommodation</i></li> </ul> </li> </ul>	Same	<ul style="list-style-type: none"> <li>• Pre-offer identification is necessary to evaluate the effectiveness of the contractors outreach and recruitment efforts</li> <li>• 503: OFCCP form coming soon (can be used for pre/post-offer and workforce survey)</li> <li>• VEVRAA: OFCCP has already provided content for forms (see Appendix B, Final Rule)</li> <li>• OFCCP will be on the lookout for BQs that are not valid</li> </ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Self-ID Post-Offer	Solicitation required (response is voluntary) – if applicant is disabled, must inquire as to reasonable accommodation - no change	Solicitation required (response is voluntary) – if applicant is disabled veteran, must inquire as to reasonable accommodation - no change	
Survey Workforce	<p>Solicitation required (response is voluntary)</p> <ul style="list-style-type: none"> <li>• Within 12 months of becoming subject to 503</li> <li>• Every five (5) years</li> <li>• Must send a reminder to employees once during five-year period</li> </ul>	Not specifically mentioned; however, information is required for VETS 100/100A – no change	<ul style="list-style-type: none"> <li>• BCG recommends regularly soliciting updates to employee demographics, including disability/veteran status</li> <li>• (Perhaps) include as part of your organization’s yearly performance appraisal process</li> </ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Analyzing Effectiveness	<p>Contractor must measure the effectiveness of its AAP (including outreach and recruitment)</p> <p>* Tracking referrals and referral source(s) not required, but likely to be a “best practice”</p>	Same	Although the required “audit and reporting system” goes beyond numerical metrics, the effectiveness of an AAP will be based largely on evaluation of data for previous three (3) years (specifically: pre/post-offer id of vet/ disabled applicants, and hires).
Utilization Goals	<p>7% “aspirational” goal based on:</p> <ul style="list-style-type: none"> <li>• Pop. w/ disability – 7.4%</li> <li>• CLF w/ disability – 5.7%</li> <li>• OFCCP split the diff.</li> </ul> <p>7% goal may be updated periodically by Director of OFCCP</p> <ul style="list-style-type: none"> <li>• &gt;100 employees: by AAP job group</li> <li>• 100 or fewer employees: by overall workforce (still some confusion here...in the AAP or the entire workforce?)</li> </ul>	N/A	<ul style="list-style-type: none"> <li>• A benchmark for comparison</li> <li>• Uses “any difference rule”</li> <li>• Evaluated annually</li> <li>• Not a quota, failure to meet the goal is <b><i>NOT</i></b> a violation of Section 503</li> <li>• If deficient, contractor must identify whether and where impediments to EO exist</li> <li>• Must develop AOPs/GFEs</li> <li>• “Sheltered Workshop” EEs not included</li> </ul>



# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Hiring Benchmarks	N/A	<ul style="list-style-type: none"> <li>• Contractors must establish annual hiring benchmark</li> <li>• May apply benchmark to job groups, eeo-1 categories, or workforce</li> <li>• May use national percentage of veterans in the CLF (currently 8%) or may calculate own percentage based upon five (5) criteria:               <ol style="list-style-type: none"> <li>1) Avg. % of vets in CLF</li> <li>2) # of vets in state employment service delivery system (ESDS) over past 12 months</li> <li>3) App/hire data over past year</li> <li>4) Contractors own assessment of outreach/recruitment</li> <li>5) Any other factor</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• Applies to overall hires during at-issue time period.</li> <li>• Failure to meet the benchmark is <b><i>NOT</i></b> a violation of VEVRAA</li> <li>• Records pertaining to the benchmark must be retained for three (3) years</li> </ul> <p>Note: it is anticipated that most employers will use OFCCP posted percentage since calculating own percentage triggers requirement(s) for justification and additional recordkeeping.</p>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Postings/ Listings	<ul style="list-style-type: none"> <li>• Must undertake “appropriate outreach and positive recruitment activities”</li> </ul>	<ul style="list-style-type: none"> <li>• Must undertake “appropriate outreach and positive recruitment activities”</li> <li>• Must provide information in a format permitted by employment service delivery system</li> <li>• Must include indication that it is a federal contractor, desire for priority referrals, and contact info for hiring official</li> <li>• A number of suggested resources are provided</li> <li>• It is highly recommended that employers utilize some/several of the suggested resources</li> </ul>	<ul style="list-style-type: none"> <li>• Current/previous posting rules still apply</li> <li>• Although the 503 regs don’t explicitly state the additional requirements outlined in VEVRAA, it is highly recommended that contractors align the requirements across both regulations</li> <li>• Regulations no longer outline an explicit requirement to identify outreach/recruitment organizations near to each location; however, it is highly recommended that contractors do so</li> <li>• It is highly recommended employers <b>document</b> who they talk to, when, contact information, correspondence, etc.</li> </ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Electronic Posting of EEO Rights	Allowed to post notices informing employees of their EEO rights electronically	Same	Contractors must: <ul style="list-style-type: none"><li>• provide employees with computers, or must have actual knowledge (documented) that the electronically posted notice is otherwise accessible</li><li>• post notices in a conspicuous location on their intranet, or must email notices to all employees</li></ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
EO Policy Statement	<ul style="list-style-type: none"> <li>• Must update Affirmative Action/Non-Discrimination/ Anti-Harassment Policies to include individuals with disabilities</li> <li>• Must be included in the AAP and posted on company bulletin boards</li> <li>• Company must ensure that apps and EEs with disabilities are provided policy in a form that is accessible and understandable (i.e., large print, Braille, lower to the ground, etc.)</li> <li>• Policy must indicate the top US executive's support for the program (e.g., CEO or President of US Operations), include an identification of the person with overall responsibility, include affirmative action/anti-harassment language, and indicate that employees and applicants will not be retaliated against for filing a complaint, assisting in an investigation, opposing any act made unlawful by Section 503, or exercising any right protected by Section 503</li> </ul>	Same (with changes to reference protected veterans and VEVRAA)	It is anticipated that most organizations will combine statements

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Review of Personnel Processes	<ul style="list-style-type: none"> <li>• Contractor shall <i>periodically</i> review processes and make necessary modifications</li> <li>• Contractor shall ensure that processes provide careful consideration of the job qualifications of applicants and employees with known disabilities for job vacancies</li> <li>• “It is unlawful for the contractor to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities on the basis of disability, unless the standard, test, or other selection criterion , as used by the contractor, is <i>job-related for the position in question and consistent with business-necessity.</i>”</li> <li>• “Selection criteria that concern an essential function (read: fundamental job duties) may <i>not</i> be used to exclude an individual with a disability if that individual could satisfy the criteria with provision of a reasonable accommodation”</li> <li>• A description of the review and any necessary modifications must be included in the AAP</li> </ul>	<p>Same (with changes to reference protected veterans)</p> <p>Note: Contractors must rely on only that portion of an applicants military record, including discharge papers, relevant to the requirements of the opportunity (i.e., job)</p>	<ul style="list-style-type: none"> <li>• <b>Bottom Line:</b> BCG recommends that all practices, procedures, and tests (PPTs), that serve to screen some applicants out and other applicants in, should be validated in accordance with the Uniform Guidelines and the ADA.</li> <li>• Start with job analyses for high-volume positions; then review any practice, procedure, or test used for selection into high-volume positions; then move on to everything else...</li> </ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Review of Physical and Mental Qualifications	<ul style="list-style-type: none"> <li>• Contractor will be required to “periodically” review all physical and mental qualifications</li> <li>• A schedule of the review must be included within the AAP (BCG recommends using generic language such as, “Review will occur when BQ is established and implemented”...do not use specific dates)</li> <li>• Just like any other practice, procedure, or test, these must be evaluated for disparate impact</li> <li>• To the extent any physical and/or mental qualification tends to screen out individuals with a disability, the contractor must ensure that qualification is “<i>job-related for the position in question and consistent with business necessity</i>” (read: valid)</li> <li>• The contractor has the burden of proof to verify it is in compliance</li> </ul>	Same (with changes to reference protected veterans and VEVRAA)	<ul style="list-style-type: none"> <li>• This requirement, plus the requirement to review personnel processes, is why contractors absolutely need to update their ADA compliant job analyses!</li> <li>• Focus on the high-volume positions with lots of turnover/hiring!</li> </ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Reasonable Accommodation to Physical and Mental Limitations	<ul style="list-style-type: none"> <li>• Employer must make a reasonable accommodation to the known physical/mental limitation of an otherwise qualified individual w/ a disability unless it can demonstrate that the accommodation would pose an “undue hardship on the operation of its business”</li> <li>• If employee known to be an individual w/ a disability is having significant difficulty performing his/her job, and it is reasonable to conclude that the difficulty might be related to the known disability, the contractor <b><i>must</i></b> inquire as to whether the issue is related to the disability, and if so, whether an accommodation is necessary</li> </ul>	Same (with changes to reference disabled veterans)	<ul style="list-style-type: none"> <li>• Recommendation: Make sure your organization has well-defined and consistently-applied written procedures for requesting, evaluating, and documenting, reasonable accommodations</li> </ul>
Harassment	The employer must develop and implement procedures to ensure that its employees are not harassed because of their status as an individual with a disability	Same (with changes to reference protected veterans)	It is anticipated that most organizations will simply include references to veterans and individuals with disabilities in their current anti-harassment policies

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
External Dissemination of Policy, Outreach, and Positive Recruitment	<ul style="list-style-type: none"> <li>• Must undertake “appropriate outreach and positive recruitment activities”</li> <li>• Regulations include a very large list of recommended (but not required) outreach and recruitment activities</li> <li>• Required annual assessment of outreach/recruitment</li> <li>• Assessment must include evaluation of pre/post-offer data collected pursuant to paragraph (k) for current and previous two (2) years</li> <li>• Must include identification of criteria used to evaluate the effectiveness of the program and conclusion as to whether effort was effective</li> <li>• Evaluations must be retained for three(3) years</li> </ul>	Same (with changes to address protected veterans)	<ul style="list-style-type: none"> <li>• It is anticipated that this will be an active area of enforcement for the OFCCP. It will be up to contractors to show that they take this requirement seriously. Evaluate the pre/post-offer applicant and hires data and create “active” relationships with outreach/recruitment/advocacy group</li> <li>• If contractor determines its efforts were not effective, it must identify and implement an alternative</li> <li>• Although not explicitly required, tracking of referral source would be seen as a best practice</li> </ul>



# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Internal Dissemination of Policy	<ul style="list-style-type: none"> <li>• Contractor must implement and disseminate this policy internally by: 1) Including it in the contractors policy manual, and 2) Notifying the union and requesting their cooperation (if applicable)</li> <li>• The contractor is encouraged to also:               <ul style="list-style-type: none"> <li>– 1) Inform all EEs and apps of its commitment to engage in affirmative action for individuals with disabilities</li> <li>– 2) Schedule periodic meetings with all employees to discuss the policy</li> <li>– 3) Publicize it in company publications and annual report</li> <li>– 4) Conduct special meetings with executives</li> <li>– 5) Discuss in employee orientations and management training programs</li> <li>– 6) Include individuals with disabilities in employee handbooks and/or similar publications</li> </ul> </li> </ul>	Same (with changes to address protected veterans)	It's likely that most organizations already have processes in place for internal dissemination of policies. It will simply be necessary to include these policies within that process.

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Audit and Reporting System	<ul style="list-style-type: none"> <li>• Contractors must design and implement a system that will:                             <ul style="list-style-type: none"> <li>— Measure the effectiveness of the program</li> <li>— Indicate any need for remedial action</li> <li>— Determine the degree to which goals have been met (or not met)</li> <li>— Determine whether individuals with known disabilities have had the opportunity to participate in all company-sponsored educational, training, recreational, and social activities</li> <li>— Measure their compliance with specific obligations</li> <li>— Document the actions taken to be in compliance (and retain these documents)</li> </ul> </li> <li>• Contractors will be expected to review their efforts annually, and make changes where necessary to bring the program into compliance.</li> </ul>	Same (with changes to address protected veterans)	<ul style="list-style-type: none"> <li>• Translation: Cutting-and-pasting efforts from previous years will not likely be acceptable. It is anticipated that this will be an active area of enforcement for the OFCCP. Enforcement of this requirement will focus primarily on the data collected in paragraph (k).</li> <li>• <b>Note:</b> Although tracking of referral source is no longer explicitly required, it is recommended.</li> </ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Responsibility for Implementation	<ul style="list-style-type: none"> <li>An official (read: executive) of the organization must be assigned responsibility for the affirmative action program(s)</li> <li>His/her <b>identity</b> (read: name, not just title) <b>should</b> (not must) appear in all internal and external communications regarding the program</li> <li>“The official shall be given necessary senior management support and staff to manage the implementation of this program”</li> </ul>	Same	<ul style="list-style-type: none"> <li>This person should not be an HR Manager or the person who developed the plan</li> <li>OFCCP is looking for someone in the executive ranks within your organization</li> </ul>
Training	<ul style="list-style-type: none"> <li>All personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes must be trained to ensure the commitments outlined in the program are implemented</li> <li>Recruiters, Managers, Executives, HR/ER personnel, testing/selection personnel, etc.</li> </ul>	Same	<ul style="list-style-type: none"> <li>Document the training: who attended, when, duration, course materials</li> <li>It is anticipated that most organizations will simply include this into their standard training regimen</li> </ul>

# 503/VEVRAA - Comparison



	503	VEVRAA	Comments
Data Collection Analysis	<ol style="list-style-type: none"> <li>1. The number of applicants who identified as an individual with a disability (or known to be an individual with a disability)</li> <li>2. Total number of job openings and total number of jobs filled</li> <li>3. The total number of applicants for all jobs</li> <li>4. The total number of applicants with disabilities hired</li> <li>5. The total number of applicants hired</li> </ol> <ul style="list-style-type: none"> <li>• Data will be used to evaluate effectiveness of outreach and recruitment</li> </ul>	<ol style="list-style-type: none"> <li>1. The number of applicants who self-identified as a protected veteran (or who are otherwise known to be a protected veteran)</li> <li>2. Total number of job openings and total number of jobs filled</li> <li>3. The total number of applicants for all jobs</li> <li>4. The total number of protected veteran applicants hired</li> <li>5. The total number of applicants hired</li> </ol> <ul style="list-style-type: none"> <li>• Data will be used to evaluate effectiveness of outreach and recruitment as well as progress toward hiring benchmark</li> </ul>	<ul style="list-style-type: none"> <li>• Data must be documented, updated annually, and included in your organization's AAP</li> <li>• Data will <b><i>not</i></b> be used to conduct under-utilization or impact ratio analyses and enforcement will <b><i>not</i></b> be brought based on statistical disparities alone</li> </ul>

# Miscellaneous Questions



**Question:** Since we are talking about utilization goals (much like those for women and/or minorities), can a contractor identify for an employee if the employee does not self-identify as an individual with a disability?

**Answer:** Yes. The OFCCP believes that it is appropriate, but only under the following circumstances:

- The disability is obvious (e.g., blind or missing a limb), or
- The disability is known to the contractor (e.g., the individual says that he or she is disabled or requests a reasonable accommodation for a disability)

**Note:** Do not guess or speculate when it comes to identifying an individual with a disability (e.g., because someone “looks sickly” or “behaves in an unusual way”)

# Miscellaneous Questions



**Question:** Are compliance officers allowed to ask for data “going forward” from the date of the scheduling letter (i.e., as the audit drags on...and on...and on)?

**Answer:** Yes. The final rule(s) now both stipulate that the OFCCP has the right to obtain information pertinent to the investigation for periods after the date of the scheduling letter.

Note: This stems from the hard fought Frito-Lay case

The OFCCP needs to be careful what they wish for...this can work both ways (maybe 12-24 months of data simply yielded “spurious” results, and by including more data the issue will go away)!!

# Miscellaneous Questions



**Question:** Will the data collection requirements under the definition of internet applicant conflict with the data collection requirements outlined in paragraph (k)?

**OFCCP Answer:** No. Under the final rule(s), contractors will be able to invite applicants to self-identify at the same time they solicit demographic data. This will generally be after the applicant has been screened for basic qualifications and meets the other requirements for being an internet applicant.

**An Alternative Answer:** Yes. There will absolutely be conflict. Contractors often solicit demographic information prior to evaluation of any BQ, and will “filter out” veterans and individuals with disabilities who do not meet all four (4) prongs of the internet applicant definition, resulting in (potentially) lower vets/disabled counts.

# Miscellaneous Questions



**Question:** What if a contractor's desire to meet protected veteran hiring goals results in adverse impact against women/minorities?

**OFCCP Answer:**

- The hiring goal is simply a benchmark
- Failure to meet the hiring goal, alone, is not actionable/enforceable
- Hiring preferences are not required
- “OFCCP sees no reason why a contractor’s VEVRAA obligations would affect its nondiscrimination obligation under EO11246 or Title VII”
- “Because contractors are not required to meet the VEVRAA hiring benchmark, efforts to do so by contractors would *not be a defense* to a charge of employment discrimination, including adverse impact, under another law”

Talk about making employers “thread the needle...”

BCG Recommendation: Avoiding adverse impact takes precedent over meeting a hiring benchmark for veterans...!



# Miscellaneous Questions



## Effective March 24, 2014)

- Subpart A: Preliminary Matters and Equal Opportunity (EO) Clause
- Subpart B: Discrimination Prohibited
- Subpart D: General Enforcement and Complaint Procedures
- Subpart E: Ancillary Matters

## Allowed “additional time” and “extended compliance date”

- Subpart C : Affirmative Action Program

Subpart C includes the components within the 503/VEVRAA AAP, including (amongst other things) the requirements to self-identify pre/post-offer, survey your workforce (503 only), **and** an evaluation of the effectiveness of your affirmative action program(s)

So the question is this...when do employers need to begin collecting pre-offer data?

# Timeline (C/Y Plans) – Early Adopters



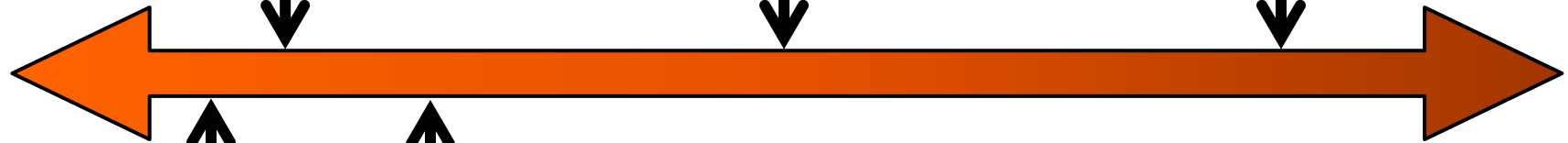
2014 C/Y Plan: No changes necessary in AAP; begin **collecting** paragraph (k) data on March 24, 2014.

2015 C/Y Plan: Include **analysis** of paragraph (k) data in C/Y 2015 AAP

January 1, 2014

January 1, 2015

January 1, 2016



- August 27, 2013: Final Rules Announced
- September 24, 2013: Final Rules Published

March 24, 2014: Final Rules Effective (Except for Subpart C)

**\*Note:** The preamble states that the OFCCP intends for contractors to begin collecting pre/post-offer data and other new metrics within 180 days of publication...this appears to indicate that they expect **analysis** of the data be included in the first AAP cycle after March 24, 2014.

# Timeline (C/Y Plans) – Late(r) Adopters



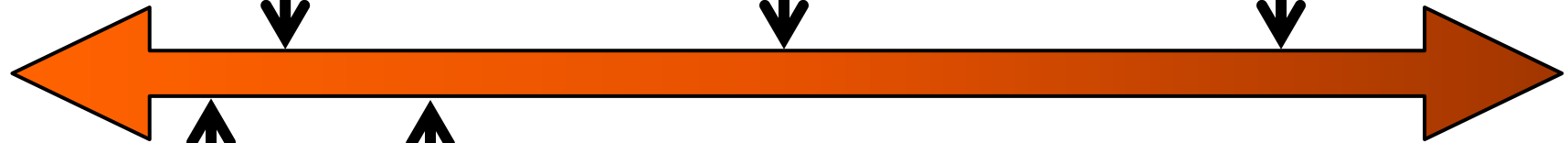
2014 C/Y Plan: No changes necessary in AAP; do not begin collecting paragraph (k) data at all during 2014

2015 C/Y Plan: Begin *collecting* data for paragraph (k) on January 1, 2015; include *analysis* of data in C/Y 2016 AAP

January 1, 2014

January 1, 2015

January 1, 2016



- August 27, 2013: Final Rules Announced
- September 24, 2013: Final Rules Published

March 24, 2014: Final Rules Effective (Except for Subpart C)

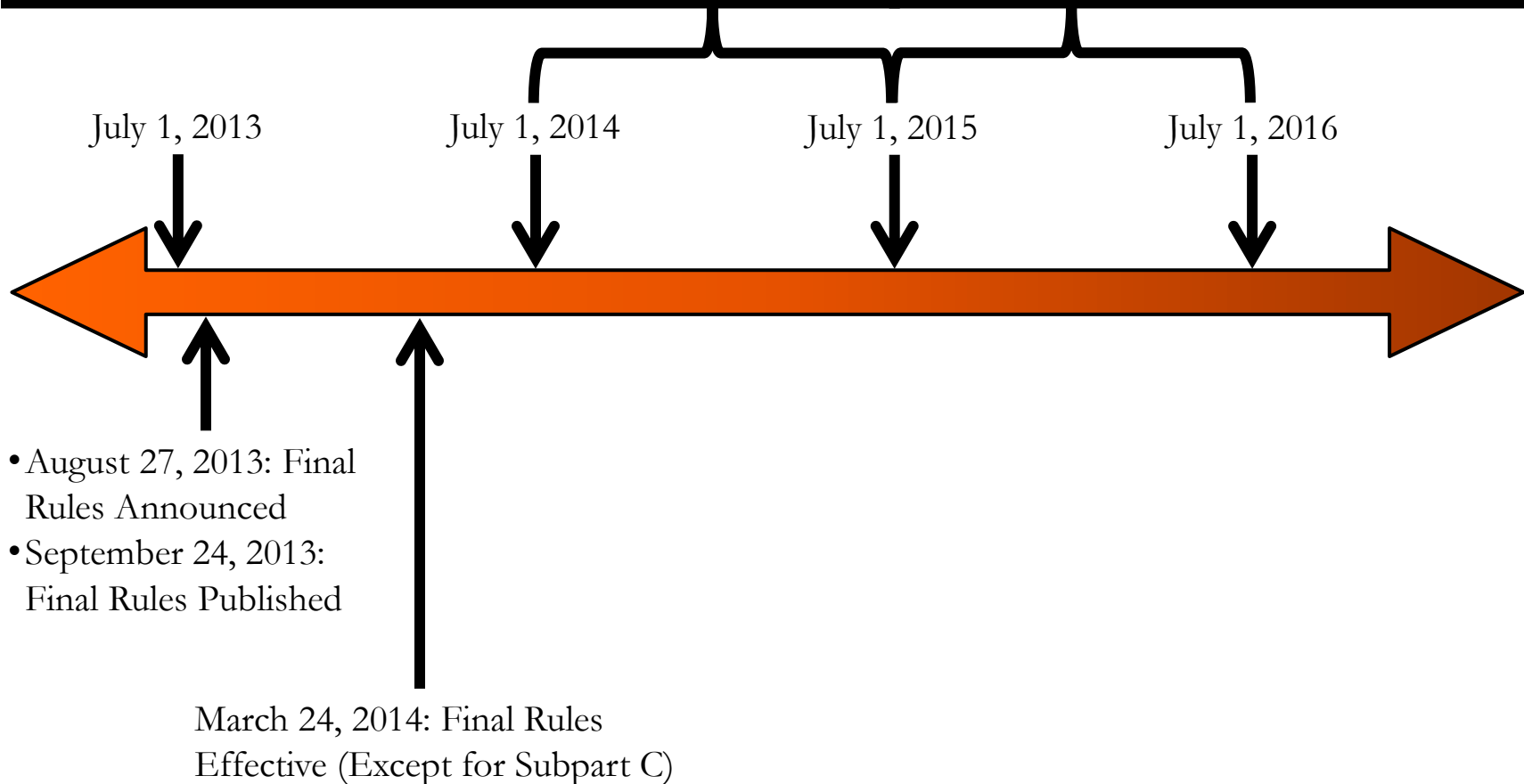
**\*Note:** Subpart C includes *both collection, and analysis*, of pre/post-offer data. Technically, a strict read of the finale rule seems to allow *collection* of the data as late as January 1, 2015, with *analysis* as late as January 1, 2016 AAP.

# Timeline (Non-C/Y Plans) – Early Adopters



July 2014 – June 2015 Plan: Begin *collecting* paragraph (k) data on March 24, 2014; include (partial) *analysis* of paragraph (k) data in next AAP

July 2015 – June 2016 Plan: Include *collection* and *analysis* of paragraph (k) data in July 2015 – June 2016 Plan

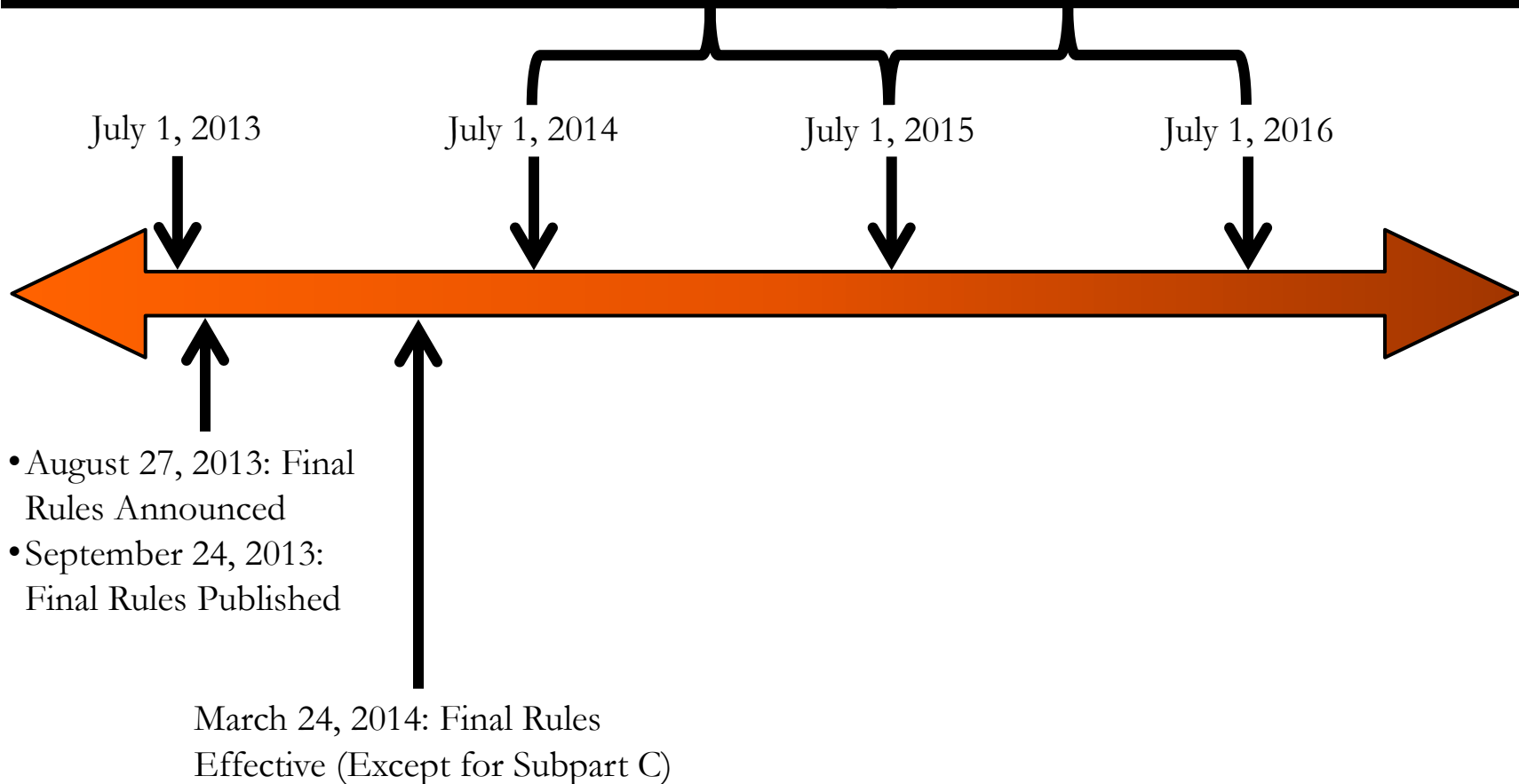


# Timeline (Non-C/Y Plans) – Late(r) Adopters



July 2014 – June 2015 Plan: Begin *collecting* data for paragraph (k) on first day of first plan cycle after March 24 (July 1, 2014 in ex. below); do not include *analysis* of paragraph (k) data

July 2015 – June 2016 Plan: Full compliance; include *analysis* of data in July 2015 – June 2016 AAP



# Appendix A: VEVRAA – Self-Identification (Pre-Offer)



## General Overview

The pre-offer form must include:

- Citation of regulations requiring this solicitation, statement that the employer is a federal contractor required to take affirmative action to employ and advance protected veterans, and that the information is voluntary and will be kept confidential
- Overview of the definitions of all categories of “protected veterans”
  - Disabled Veteran
  - Recently Separated Veteran
  - Active Duty Wartime or Campaign Badge Veteran
  - Armed Forces Service Medal Veteran
- “If you believe you belong to any of the categories of protected veterans listed above, please indicate by checking the appropriate box below:
  - I identify as one or more of the classifications of protected veterans listed above
  - I am NOT a protected veteran”
- BCG recommends including an option for “I choose not to identify”

# Appendix B: VEVRAA – Self-Identification (Post-Offer)



## General Overview

The post-offer form must include:

- Citation of regulations requiring this solicitation, statement that the employer is a federal contractor required to take affirmative action to employ and advance protected veterans, and that the information is voluntary and will be kept confidential
- Overview of the definitions of all categories of “protected veterans:” Disabled Veteran; Recently Separated Veteran; Active Duty Wartime or Campaign Badge Veteran; Armed Forces Service Medal Veteran
- “If you believe you belong to any of the categories of protected veterans listed above, please indicate by checking the appropriate box below:
  - Disabled Veteran
  - Recently Separated Veteran
  - Active Wartime or Campaign Badge Veteran
  - Armed Forces Service Medal Veteran
  - I am a protected veteran, but I choose not to self-identify the classification to which I belong
  - I am NOT a protected veteran
- Solicitation of need for reasonable accommodation(s)
- BCG recommends including an option for “I choose not to identify”

# Summary/Conclusion



1. Although the new regulations appear ominous, contractors have time
2. Contractors (somewhat) dodged some very big bullets...the burden outlined in the NPRMs would have been much worse!
3. Your organization's AAPs will include new metrics/analyses which will require new data collection/retention.
4. The OFCCP has posted some very good supporting documentation to clarify the final regulations
5. Begin preparations (if you haven't already) to address the new regulations
  - Read/understand the final regulations
  - Review your organization's reasonable accommodations policy/process
  - Prepare all necessary decision-makers (IT, budget, ER/HR, hiring mgrs, etc.)
  - Use this PPT as a starting point (but by no means the only resource), create an itemized plan, and start now (they're not just "proposed" anymore...so get going!)





Questions

