



October 13, 2025

VIA ELECTRONIC UPLOAD
FEDERAL RULEMAKING PORTAL

Ashley Romanias
Director
Office of Federal Contractor Compliance Programs
US Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Proposed Revision of Information Collection Request; US Department of Labor Office of Federal Contract Compliance Programs Recordkeeping Requirements – 29 U.S.C. 793 Section 503 of the Rehabilitation Act of 1973, as Amended (OMB Control No. 1250-0005)

Dear Director Romanias:

The Institute for Workplace Equality (“The Institute”) submits the following comments in response to the invitation of the Office of Federal Contract Compliance Programs, U.S. Department of Labor, (referred to collectively as “DOL”) on their Proposed Revision of Information Collection Request; US Department of Labor Office of Federal Contract Compliance Programs Recordkeeping Requirements—29 USC 793 Section 503 of the Rehabilitation Act of 1973, as Amended (OMB Control No. 1250-0005)(“the proposal”) published in the *Federal Register* on Monday, August 25, 2025.¹

BACKGROUND ON THE INSTITUTE FOR WORKPLACE EQUALITY

The Institute is a national, non-profit employer association based in Washington, D.C. The Institute’s mission includes the education of federal contractors regarding their equal employment opportunity responsibilities. Members of The Institute are senior corporate leaders in EEO compliance, compensation, legal, and staffing functions who represent many of the nation’s largest and most sophisticated federal contractors. The Institute’s faculty members are recognized as leading practitioners in the field.²

INTRODUCTION

¹ See, Office of Federal Contract Compliance Programs, Proposed Revision of Information Collection Request; US Department of Labor Office of Federal Contract Compliance Programs Recordkeeping Requirements—29 USC 793 Section 503 of the Rehabilitation Act of 1973, as Amended (OMB Control No. 1250-0005); available at <https://www.govinfo.gov/content/pkg/FR-2025-08-25/pdf/2025-16258.pdf>.

² The Institute faculty members include the leading subject matter experts on federal contractors’ equal employment opportunity responsibilities.

The Institute previously argued that DOL's proposal³ to eliminate the requirement that federal contractors collect voluntary self-identification from applicants and employees is counter-productive and should be reconsidered. Without that data, federal contractors do not have the means to assess the effectiveness of their outreach and recruitment efforts designed to ensure compliance with Section 503 or by which to determine whether discrimination – including proxy discrimination – may exist in their employment practices.

Likewise, The Institute believes DOL should retain the current form as federal contractors have been using a version of form CC-305 since 2014 and if it is eliminated, contractors will have to develop their own form to collect the information necessary to comply with Section 503.

I. OFCCP Section 503 Regulations Provided Federal Contractors With Clear Compliance Standards

A. OFCCP Revised Section 503 Regulations in 2013

The DOL created the Office of Federal Contract Compliance Programs ("OFCCP") to administer Executive Order 11246, Section 503 and Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA") and to audit the practices of federal contractors and subcontractors. Section 503 regulations provide that federal contractors and subcontractors which have contracts or subcontracts in excess of \$10,000 have both nondiscrimination and general affirmative action requirements.⁴ Section 503 regulations require federal contractors which have a contract or subcontract of \$50,000 or more and 50 or more employees to prepare and maintain an affirmative action program.⁵

In 2013 OFCCP substantially revised⁶ its Section 503 regulations, saying that "strengthening the implementing regulations of section 503...is an important means by which the Government can contribute to reducing the employment disparity between those with and without disabilities." The preamble to the final rule stated that these "measures taken together are designed to bring more qualified individuals with disabilities into Federal contractor workforce and provide them with an equal opportunity to advance in employment."⁷

The final rule established the following new requirements for federal contractors:

- A 7% workforce utilization goal for individuals with disabilities which the regulations specifically state "is not a quota or a ceiling that limits or restricts employment of individuals with disabilities."
- Invitation to applicants to self-identify at the pre-offer stage as well as after receiving

³ 90 *Fed Reg* 28494 (July 1, 2025).

⁴ 41 C.F.R. §60-741.4.

⁵ 41 C.F.R. §60-741.44.

⁶ 78 *Fed. Reg.* 58682 (Sept. 24, 2013).

⁷ 78 *Fed. Reg.* 58682, 58686.

- an offer to provide information about effectiveness of outreach and recruitment efforts *using the language and manner prescribed by the Director*.⁸
- Invitation to employees to voluntarily self-identify at regular intervals.
- Annually to assess the effectiveness of outreach and recruitment based on self-identification data.

The revised regulations took effect on March 24, 2014.

B. OFCCP Proposes to Eliminate Much of 2013 Revisions

In response to President Donald Trump's Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-based Opportunity*,⁹ which revoked Executive Order 11246, DOL proposed to rescind the requirement that contractors invite applicants and contractors self-identify their disability status¹⁰ and the 7% utilization goal for the employment of qualified individuals with disabilities.¹¹ As a result DOL is now proposing to eliminate the form federal contractors were directed to use to collect self-identification from applicants and employees.¹²

C. The Institute Disagrees with DOL's proposal including eliminating Form CC-305

As outlined in detail in The Institute's letter of comment on the proposed Section 503 revisions, a copy of which is attached as Attachment A, The Institute disagrees with the DOL's proposal to eliminate that the utilization goal and voluntary self-identification requirements. IWE's position on this is consistent with the vast majority of other commentors on this proposed rule.¹³ To meet their obligation to engage in affirmative action for individuals with disabilities, federal contractors cannot measure their compliance without inviting voluntary self-identification from applicants and employees.

As stated in The Institute's letter of comment on Section 503 revisions, the collection of voluntary self-identification information using Form CC-305 is kept confidential and out of view of decision makers, so it is not, and cannot be, used for hiring, promotion or termination decisions.¹⁴ As a result, the data collected is not subject to misuse or used in any way inconsistent with merit-based hiring. Rather, it enables federal contractors to determine whether discrimination is occurring against individuals with disabilities as well as the effectiveness of federal contractors' statutorily required affirmative action outreach and recruitment.¹⁵

⁸ 41 C.F.R. §60-741.41(a)(1).

⁹ 90 *Fed. Reg.* 8633(Jan. 31. 2025).

¹⁰ 41 C.F.R. § 60-741.42.

¹¹ 90 *Fed. Reg.* 28494, 28495.

¹² 41 C.F.R. § 60-741.41(a).

¹³ Public Comments Oppose OFCCP's Proposed Changes to Disability Regs. *DCI Blog*, Oct. 3, 2025; available at <https://blog.dciconsult.com/public-comments-oppose-proposed-ofccp-changes>.

¹⁴ 41 C.F.R. §60-741.42(e).

¹⁵ 29 U.S.C. §701(a).

OFCCP stated in its final rule¹⁶ on the new Section 503 regulations that required federal contractors to use the form it created to collect self-identification that:

OFCCP believes that the use of uniform language is needed to ensure consistency in all self-identification invitations, and to reassure individuals with disabilities that the self-identification request is routine and executed pursuant to obligations created by OFCCP. Standardized language will also minimize any burden to contractors associated with this responsibility, and will facilitate contractor compliance.

The Institute believes DOL should continue to require federal contractors to invite both applicants and employees to self-identify as individuals with disabilities and to continue to use a form with standardized language to do so. It would be premature to eliminate the CC-305 form before any new final regulations implementing Section 503 are promulgated.

II. Response to DOL's Desired Focus of Comments

In DOL's request for public comments,¹⁷ DOL states that it is "soliciting comments concerning the proposed information collection" and that it is especially interested in comments on certain specific areas.

A. Evaluate whether the collection of the information is necessary for the proper performance of the functions of the Agency, including whether the information have practical utility.

Under Section 503, federal contractors are required to "take affirmative action to employ and advance in employment qualified individuals with disabilities."¹⁸ It is the responsibility of the Department of Labor to provide federal contractors with guidance as to how to take affirmative action and engage in nondiscrimination for individuals with disabilities.

B. Evaluate the accuracy of OFCCP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate.

OFCCP's estimate may be high as federal contractors have been complying with this requirement for more than 10 years. Some members report that it would cost more to eliminate this form from the myriad of electronic Applicant Tracking Systems and HRIS systems than it would be to leave the status quo.

¹⁶ 75 Fed. Reg. 58682, 58694.

¹⁷ 90 Fed. Reg. 41415, 41416.

¹⁸ 29 U.S.C. §793(a).

C. Suggest methods to enhance the quality, utility, and clarity of the information to be collected.

None.

D. Minimized the burden of the information collections on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting election submission of responses.

The information collected with the Voluntary Self-Identification of Disability form is mostly collected through electronic means. OFCCP had previously included FAQs related to the electronic implementation of Form CC-305, but those have apparently been removed on or before the July 17, 2025 update.¹⁹ These should be restored to provide clear guidance to employers.

CONCLUSION

Thank you in advance for your consideration of the comments by The Institute. We are happy to provide any additional information you may need or to answer any questions you may have.

Respectfully,



Barbara L. Moskowitz
Director
The Institute for Workplace Equality

¹⁹ See, Section 503 Regulations Frequently Asked Questions, *OFCCP Website*, available at <https://www.dol.gov/agencies/ofccp/faqs/section-503> (Last Viewed October 9, 2025.)

APPENDIX A



September 5, 2025

VIA ELECTRONIC UPLOAD
FEDERAL RULEMAKING PORTAL

Catherine L. Eschbach
Director
Office of Federal Contractor Compliance Programs
US Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: RIN 1250-AA18 - Letter of Comment by The Institute for Workplace Equality on Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended

Dear Director Eschbach:

The Institute for Workplace Equality (“The Institute”) submits the following comments in response to the invitation of the Office of Federal Contract Compliance Programs, U.S. Department of Labor, (referred to collectively as “DOL”) on the proposed Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended (“the proposal”) published in the *Federal Register* on Tuesday, July 1, 2025.¹

BACKGROUND ON THE INSTITUTE FOR WORKPLACE EQUALITY

The Institute is a national, non-profit employer association based in Washington, D.C. The Institute’s mission includes the education of federal contractors regarding their equal employment opportunity (“EEO”) responsibilities. Members of The Institute are senior corporate leaders in EEO compliance, compensation, legal, and staffing functions who represent many of the nation’s largest and most sophisticated federal contractors. The Institute’s faculty members are recognized as leading practitioners in the field.²

¹ See, Federal Contract Compliance Program Office, Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended, 90 *Fed. Reg.* 28494 (July 1, 2025); available at <https://www.govinfo.gov/content/pkg/FR-2025-07-01/pdf/2025-12233.pdf>.

² The Institute faculty members include the leading subject matter experts on federal contractors’ equal employment opportunity responsibilities. Our experts’ bios are available at https://www.theinstitute4workplaceequality.org/our_bios/faculty.

INTRODUCTION

The Institute believes DOL's proposal to eliminate the ability of federal contractors to collect voluntary self-identification from applicants and employees is counter-productive and should be reconsidered. Without that data, federal contractors do not have the means to assess the effectiveness of their outreach and recruitment efforts designed to ensure EEO, or by which to determine whether discrimination – including proxy discrimination – may exist in their employment practices.

The Institute also believes DOL should retain the utilization goal – or replace it with a hiring benchmark similar to the required hiring benchmark for veterans – so contractors have a mechanism to evaluate the effectiveness of their required outreach and recruitment.

I. DOL Proposal to Revise Section 503 Regulations³

On January 21, 2025 President Donald Trump issued Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-based Opportunity*, which revoked the sixty-year old Executive Order 11246.⁴ In response, DOL filed a separate proposal to rescind all of EO 11246's regulations.⁵ In addition, in both this proposal,⁶ and the current proposal regarding VEVRAA,⁷ DOL is proposing to remove Section 503 regulations that adopt and cross-reference the EO 11246 regulations.

In addition to addressing the impact of the revocation of EO 11246, DOL also proposes to rescind both the requirement that contractors invite applicants and employees to self-identify their disability status,⁸ as well as establishment of the 7% utilization goal for the employment of qualified individuals with disabilities,⁹ as well as the corresponding utilization analysis.¹⁰

As support for its proposal, DOL states that, although Section 503 regulations explicitly prohibit the use of quotas, DOL believes “contractors may, in practice, be induced to using quotas to meet the utilization goal.”¹¹ In addition, DOL argues that the self-identification and utilization goal regulations are inconsistent with the Americans with Disabilities Act of 1990 (“ADA”).¹² According to DOL, the utilization goal and the self-identification regulations for both applicants and employees violate the ADA prohibition on pre-employment inquiries.¹³

³ Despite the DOL's views in this proposal, DOL itself continues to emphasize the importance of reaching out to both veterans and individuals with disabilities in its most recent apprenticeships proposal; see news release at <https://www.dol.gov/newsroom/releases/ilab/ilab20250904>.

⁴ 90 *Fed. Reg.* 8633 (Jan. 31, 2025).

⁵ 90 *Fed. Reg.* 28472 (July 1, 2025).

⁶ *Id.*

⁷ 90 *Fed. Reg.* 28485 (July 1, 2025).

⁸ 41 C.F.R. § 60-741.42.

⁹ 41 C.F.R. § 60-741.45(a).

¹⁰ 90 *Fed. Reg.* 28494, 28495.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

We will address each of DOL's stated concerns below.

II. Section 503 of the Rehabilitation Act of 1973 – The First Major Disability Law

The Rehabilitation Act of 1973¹⁴ (“the Act”) was the United States’ first major federal disability rights law. Passed on September 26, 1973, the law opened doors for many qualified individuals with disabilities to enter, for the first time, the federal and federal contractor workforce. Among its impacts, the Rehabilitation Act served as the model for the ADA,¹⁵ which prohibits, among other things, employment discrimination against qualified individuals with disabilities in the private sector.

Section 503 of the Rehabilitation Act requires federal contractors which have government contracts in excess of \$10,000 to “take affirmative action to employ and advance in employment qualified individuals with disabilities.”¹⁶ The Act also allows individuals with disabilities to file complaints with the Department of Labor if they believe “any contractor has failed or refused to comply with the provisions in a contract with the United States relating to employment of individuals with disabilities.”¹⁷

A. Congress Intended the Act to Increase the Employment of Individuals with Disabilities

In its findings, Congress identified numerous reasons the Act was necessary, including that millions of Americans have one or more physical or mental disabilities and the number of Americans with such disabilities is increasing; individuals with disabilities constitute one of the most disadvantaged groups in society; disability is a natural part of the human experience and in no way diminishes the right of individuals to live independently; enjoy self-determination; make choices; contribute to society; pursue meaningful careers; and enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of American society.¹⁸ The goals of the Act included providing individuals with disabilities with the tools necessary to achieve equality of opportunity, full inclusion and integration in society, employment, independent living, and economic and social self-sufficiency.¹⁹

B. Unemployment for Individuals with Disabilities Continues to Be Extremely High

As discussed above, Congress made it clear in its findings that the goal of increasing employment for qualified individuals with disabilities was a major reason for passage of the Act.²⁰ Since then, while the number of individuals with disabilities employed has increased as a result of the Act and the ADA, only 22.7% of individuals with disabilities are employed as

¹⁴ 29 U.S.C. §701 et seq.

¹⁵ 42 U.S.C. §12101 et seq.

¹⁶ 29 U.S.C. §793(a).

¹⁷ 29 U.S.C. §793(b).

¹⁸ 29 U.S.C. §701(a).

¹⁹ 29 U.S.C. §701(b).

²⁰ 29 U.S.C. §701(a).

compared to 65.5% of individuals without disabilities.²¹

C. OFCCP Revised Section 503 Regulations in 2013

The DOL created the Office of Federal Contract Compliance in 1965 and consolidated the separate agency offices in 1978 into Office of Federal Contract Compliance Programs (“OFCCP”) to administer Executive Order 11246 (“EO 11246”), Section 503 and Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (“VEVRAA”) and to audit the implicated practices of federal contractors and subcontractors.²²

Section 503 provides that federal contractors and subcontractors which have contracts or subcontracts in excess of \$10,000 have both nondiscrimination and general affirmative action requirements.²³ Section 503 regulations require federal contractors which have a contract or subcontract of \$50,000 or more and 50 or more employees to prepare and maintain an affirmative action program.²⁴

In 2013, OFCCP substantially revised²⁵ its Section 503 regulations, stating that “strengthening the implementing regulations of section 503...is an important means by which the Government can contribute to reducing the employment disparity between those with and without disabilities.”²⁶ The preamble to the final rule stated that these “measures taken together are designed to bring more qualified individuals with disabilities into Federal contractor workforce and provide them with an equal opportunity to advance in employment.”²⁷

The final rule established the following new requirements for federal contractors:

- A 7% workforce utilization goal for individuals with disabilities which the regulations specifically state “is not a quota or a ceiling that limits or restricts employment of individuals with disabilities.”
- Invitation to applicants to self-identify at the pre-offer stage as well as after receiving an offer to provide information about effectiveness of outreach and recruitment efforts.
- Invitation to employees to voluntarily self-identify at regular intervals.
- Annually to assess the effectiveness of outreach and recruitment based on self-identification data.

²¹ BLS Persons With A Disability: Labor Force Characteristics — 2024, February 25, 2025; available at <https://www.bls.gov/news.release/pdf/disabl.pdf>.

²² The History and Status of the Office of Federal Contract Compliance Programs (OFCCP), *Congress.gov*, available at [https://www.congress.gov/crs-product/IF12941#:~:text=The%20Office%20of%20Federal%20Contract%20Compliance%20Programs%20\(OFCCP\)%20is%20an,an,d%20continued%20functioning%20of%20OFCCP](https://www.congress.gov/crs-product/IF12941#:~:text=The%20Office%20of%20Federal%20Contract%20Compliance%20Programs%20(OFCCP)%20is%20an,an,d%20continued%20functioning%20of%20OFCCP).

²³ 29 U.S.C. §793(a) and (b).

²⁴ 41 C.F.R. §60-741.40(b).

²⁵ 78 *Fed. Reg.* 58682 (Sept. 24, 2013).

²⁶ *Id.*

²⁷ 78 *Fed. Reg.* 58682, 58686.

The revised regulations took effect on March 24, 2014.²⁸ The D.C. Circuit of Appeals upheld the regulations, rejecting arguments they were arbitrary and capricious.²⁹

III. Intersection of Rehabilitation Act and ADA

A. *The Rehabilitation Act and ADA Should Be Read Together*

The Institute respectfully disagrees with the DOL that the utilization goal and voluntary self-identification violate the ADA. Unlike EO 11246, the Rehabilitation Act as a statute must be given equal effect with the ADA. In interpreting the varying requirements of the statutes, each statute must be read in relation to the other, and effect must be given to both. Section 503 requires first and foremost that federal contractors engage in affirmative action “to employ and advance in employment qualified individuals with disabilities.”³⁰ The ADA prohibits discrimination against qualified individuals with disabilities and requires employers to provide reasonable accommodation to such individuals.³¹

The findings and purposes of the ADA³² are similar to those of the Rehabilitation Act³³. The ADA opens with the finding that “the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis”³⁴ and has as its purpose “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”³⁵

Since the Rehabilitation Act and the ADA both address discrimination against individuals with disabilities, the two statutes are *in pari materia* and should be construed “as if they were one law.”³⁶

[I]t is...the most rudimentary rule of statutory construction...that courts do not interpret statutes in isolation, but in the context of the *corpus juris* of which they are a part, including later-enacted statutes.³⁷

B. *Self-identification, Utilization Goal Do Not Violate the ADA*

In its proposal, DOL stated that it “has concerns that the self-identification and utilization goal regulations are inconsistent with the ADA,” stating:

²⁸ 78 Fed. Reg. 58682.

²⁹ *Associated Builders & Contractors, Inc. v. Shiu*, 773 F. 3d 257 (D.C. Cir. 2014).

³⁰ 29 U.S.C. §793(a).

³¹ 42 U.S.C. § 12101 et seq.

³² 42 U.S.C. §12101(a) and (b).

³³ 29 U.S.C. §701(a) and (b).

³⁴ 42 U.S.C. §12101(a).

³⁵ 42 U.S.C. §12101(b).

³⁶ *Medical Imaging & Technology Alliance v. Library of Congress*, 103 F. 4th 830, 837 (D.C. Cir. 2024), quoting *United States v. Freeman*, 44 U.S. (3 How.) 556, 11 L. Ed. 724 (1845).

³⁷ *Branch v. Smith*, 538 U.S. 254, 281, 123 S.Ct. 1429, 155 L. Ed.2d 407(2003)(plurality opinion).

ADA is clear; an employer may not prior to an offer of employment make any disability-related inquiries even if the inquiry is related to the job... and that even after an employee starts a job, an employer may make disability-related inquiries only if such inquiries are job-related and consistent with business necessity.³⁸

As previously mentioned, Section 503 requires federal contractors to “take affirmative action to employ and advance in employment qualified individuals with disabilities.”³⁹ The requirement to take affirmative action requires federal contractors to engage in outreach and recruitment to qualified individuals with disabilities and to measure the effectiveness of such outreach and recruitment.

Under the *in pari materia* doctrine, Section 503 and ADA should be construed as one law. The goal of the prohibition in 42 U.S.C. §12112(d) is to protect applicants and employees from disability discrimination prior to and after employment. Since both ADA and Section 503 prohibit discrimination against individuals with disabilities, the self-identification and 7% utilization goals cannot violate ADA without also violating Section 503’s provision against nondiscrimination in employment.⁴⁰ The goal of the self-identification requirement and 7% utilization goal is only to assist federal contractors in their affirmative action obligations under Section 503.⁴¹

Since the collection of voluntary self-identification information is kept confidential and out of view of decision makers,⁴² it is not, and cannot be, used for hiring or promotion decisions. Rather, the data collected enables federal contractors to determine whether discrimination is occurring against individuals with disabilities as well as the effectiveness of federal contractors’ affirmative action outreach and recruitment --- it does not violate either statute’s nondiscrimination provision. Therefore, the voluntary self-identification and 7% utilization goal requirements in Section 503 regulations do not violate the ADA.

C. EEOC Regulations and Legal Opinion Make Clear that Self-Identification Does Not Violate ADA

In its proposal, DOL argues that OFCCP’s reliance on an August 8, 2013 letter from EEOC Legal Counsel “does not reflect a binding view of the EEOC on the permissibility of inviting employment candidates to self-identify as individuals with disabilities under ADA.”⁴³ According to the DOL, “the 2013 letter reflects the opinion of one lawyer at the Commission and not the Commission itself as to whether this practice was permissible under the ADA.”⁴⁴ The DOL goes on to argue that the EEOC regulation⁴⁵ which permitted federal contractors to collect

³⁸ 90 *Fed. Reg.* 28494, 28495.

³⁹ 29 U.S.C. §793(a).

⁴⁰ 29 U.S.C. §793(b).

⁴¹ 78 *Fed. Reg.* 58682, 58683.

⁴² 41 C.F.R. §60-741.42(e).

⁴³ 90 *Fed. Reg.* 28494, 28495.

⁴⁴ *Id.*

⁴⁵ 29 C.F.R. §1630.15(e).

self-identification for affirmative action purposes relied on by the EEOC letter “is now unlikely to survive scrutiny” under *Loper Bright*.⁴⁶

The letter described above was signed by Peggy R. Mastroianni, then Legal Counsel of the EEOC Office of Legal Counsel.⁴⁷ The Office of Legal Counsel (“OLC”) provides legal counsel to the Chair and the Commission on a wide range of substantive, administrative, and procedural issues. The Office of Legal Counsel develops policy guidance, provides technical assistance to employers and employees, and coordinates with other agencies and stakeholders regarding the statutes and regulations enforced by the Commission.⁴⁸ Additionally, OLC is responsible for developing Commission rules and guidance under the ADA among the other laws for which EEOC is responsible.⁴⁹ The letter from Ms. Mastroianni provided OLC’s formal guidance on behalf of the EEOC and the guidance was issued as part of the Office’s obligation to coordinate with other agencies regarding statutes and regulations enforced by the Commission.⁵⁰

The letter stated that under EEOC’s regulations, interpretative guidance and two sub-regulatory documents the DOL’s proposal to require federal contractors to invite applicants pre-offer to voluntarily self-identify as individuals with disabilities did not violate Title I of the ADA.⁵¹ The letter cites 29 C.F.R. §1630.15(e)⁵² which provides that employers are not liable for a violation of ADA for action it is required to take by another federal statute or regulation.

The letter goes on to correctly state that the EEOC has from early in its ADA enforcement made explicit in formal policy and repeated in numerous policy and technical assistance materials ever since, that *any* employer may invite applicants or employees to voluntarily self-identify as individuals with disabilities for affirmative action purposes, whether pursuant to federally-mandate affirmative action requirement such as Section 503 or a voluntarily adopted programs.⁵³

Ms. Mastroianni’s letter specifically cites EEOC’s 1995 Title I Technical Guidance⁵⁴ which states federal contractors *can* invite employees to voluntarily self-identify as individuals with disabilities without violating the ADA’s disability-related inquiry provision because they

⁴⁶ 603 U.S. 369 (2023).

⁴⁷ A copy of the letter to Patricia A Shiu from Peggy Mastroianni dated August 8, 2013 can be found [here](#).

⁴⁸ Appendix A: Organization and Jurisdiction from 2014; available at <https://www.eeoc.gov/appendices-2?renderforprint=1>.

⁴⁹ See OLC described in EEOC news release on Carol Miadkoff appointment; see [here](#).

⁵⁰ Respectfully, the characterization of the Mastroianni letter as “one lawyer’s opinion,” and not the authorized views of the EEOC, is inaccurate, particularly because in the subsequent 12 years, during different administrations including the first Trump Administration, the EEOC never questioned or modified OLC’s guidance that was provided by the Mastroianni letter.

⁵¹ August 8, 2013 letter from Peggy Mastroianni to Patricia Shiu, p. 1-2.

⁵² 29 C.F.R. §1630.15(e).

⁵³ August 8, 2013 letter from Peggy Mastroianni to Patricia Shiu, p. 2.

⁵⁴ August 8, 2013 letter from Peggy Mastroianni to Patricia Shiu, p. 2-3; Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations, EEOC, Oct. 10, 1995; available at <https://www.eeoc.gov/laws/guidance/enforcement-guidance-preemployment-disability-related-questions-and-medical>.

are “required by Section 503 of the Rehabilitation Act to engage in affirmative employment efforts.”⁵⁵

The regulation, the Technical Assistance Manual and the enforcement guidance cited in Ms. Mastroianni’s letter continue to be in effect. Ms. Mastroianni⁵⁶ who was Legal Counsel in the Office of Legal Counsel from 2011 to 2017 had authority to provide the opinion to DOL. Therefore, federal contractors can continue to rely on the EEOC’s position that federal contractors can invite applicants and employees to self-identify as individuals with disabilities without violating Title I of the ADA.

D. Utilization Goal is Not a Quota

The DOL states in its proposal that having the utilization goal encourages federal contractors to use the utilization goal as a quota.⁵⁷ However, the DOL does not provide any facts, anecdotes or evidence to support that claim. Respectfully, the concern about using the utilization goal as a quota is misplaced. Section 503 regulations *specifically* prohibit federal contractors from using the utilization goal as a quota.⁵⁸ There is no evidence that retaining the utilization goal will lead to quotas.

It is important to note that Section 503 and VEVRAA are different from Title VII and EO 11246. Under Section 503 and VEVRAA, only individuals **with** a disability are covered by Section 503 and only covered veterans are covered by VEVRAA. Meaning, a **non**-disabled individual and/or a **non**-veteran has no protection under those Acts.

For example, the federal government uses a veteran preference in its hiring process.⁵⁹ In response, the EEOC has issued guidance titled Veterans and the Americans with Disabilities Act: A Guide For Employers.⁶⁰ Question #5 under the guidance states the following:

5. Are there any laws that allow agencies to give special consideration to veterans with disabilities who are looking for jobs with the federal government?

Yes. Under the Veterans' Preference Act, veterans with and without disabilities are entitled to preference over others in hiring from competitive lists of eligible applicants and may be considered for special noncompetitive appointments for which they are eligible.

⁵⁵ August 8, 2013 letter from Peggy Mastroianni to Patricia Shiu, p 1-2.

⁵⁶ Ms. Mastroianni was with EEOC from 1991 to her retirement in 2017 and received the ABA’s Federal Labor/Employment Attorney Of Year in 2009. See her bio [here](#) and the news release on ABA award [here](#).

⁵⁷ 90 *Fed. Reg.* 28494, 28495.

⁵⁸ 41 C.F.R. §60-741.42.

⁵⁹ 5 U.S.C. §§2108, 3309-3319.

⁶⁰ Veterans and the Americans with Disabilities Act: A Guide For Employers; available at <https://www.eeoc.gov/laws/guidance/veterans-and-americans-disabilities-act-guide-employers>.

Federal agencies also may use specific rules and regulations, called "special hiring authorities," to hire individuals with disabilities outside the normal competitive hiring process, and sometimes are even required to give preferential treatment to veterans, including disabled veterans, in making hiring decisions.

Here are some of the special hiring authorities federal agencies may be able to use to hire veterans with disabilities:

- the **Veterans' Recruitment Appointment (VRA)** program allows agencies to appoint eligible veterans without competition;
- the **Veterans Employment Opportunity Act (VEOA)** can be used when filling permanent, competitive service positions; it allows veterans to apply for jobs that are only open to "status" candidates, which means "current competitive service employees"; and,
- the **Schedule A Appointment Authority**, though not specifically for veterans, allows agencies to appoint eligible applicants who have a severe, physical, psychological, or intellectual disability.

To be clear and to alleviate any concerns the DOL may have about the Section 503 utilization analysis, the current Section 503 regulations do not permit nor prescribe that contractors should provide preference in the employment process. In fact, the regulations strongly reinforce the notion of merit-based hiring.

Therefore, there is no legal reason for DOL to eliminate the utilization goal based on it being used as a quota and thus should retain some type of measurement, whether it be a utilization goal or hiring benchmark. However, DOL should revise the requirement that federal contractors analyze each *job group* against the utilization goal since the mechanism for development of the job group is no longer in place given the proposed elimination and inoperability of the EO 11246 regulations.⁶¹

E. Without Self-Identification Data Federal Contractors will be Unable to Ensure that Discrimination Does Not Exist in Contractors' Employment Practices

As discussed above, in enacting the Rehabilitation Act and the ADA, Congress recognized that discrimination against qualified individuals with disabilities exists.⁶² In response, both Section 503 and the ADA prohibit discrimination against qualified individuals with disabilities. Despite this, and the passage of decades since the enactment of these laws, there continues to be a wide gap in employment between those with disabilities and those without disabilities.⁶³ OFCCP in revising its Section 503 regulations in 2013 added self-identification provisions for applicants and employees to provide "contractors with the tools

⁶¹ 90 Fed. Reg. 28472; 90 Fed. Reg. 28494, 28495.

⁶² 29 U.S.C. §701; 42 U.S.C. §121101.

⁶³ BLS Persons With A Disability: Labor Force Characteristics — 2024, February 25, 2025; available at <https://www.bls.gov/news.release/pdf/disabl.pdf>.

needed to evaluate their own compliance and proactively identify and correct any deficiencies in their employment practices.”⁶⁴

Artificial intelligence and similar tools (collectively known as “AI”) are increasingly being used by employers including federal contractors in recruitment and hiring, as well as other areas of employment. There are growing concerns that AI algorithms may discriminate against individuals with disabilities in recruitment and hiring.⁶⁵ However, without applicant and hire self-identification data, contractors that use AI will be unable “to evaluate their own compliance and proactively identify and correct any deficiencies in their employment practices.”⁶⁶ The data is critical to contractors’ efforts to ensure EEO and identify and seek to eliminate discrimination.

Attorney General Bondi’s July 29, 2025 memo on unlawful discrimination to recipients of federal funds⁶⁷ discusses prohibited use of “proxies” for protected characteristics. In order to determine whether employment practices could be a proxy for illegal discrimination, the memo provides that, before implementing facially neutral criteria, federal contractors and other recipients of federal funds, “should rigorously evaluate and document whether they are proxies for... protected characteristics.”⁶⁸ Applicant and employee self-identification ID data is an important and useful tool to allow contractors to rigorously evaluate whether there may be discrimination – including proxy discrimination – in their employment practices.

The Institute believes DOL’s proposal to eliminate contractors’ ability to collect voluntary self-identification data will make it practically impossible for contractors to evaluate whether facially neutral criteria are a proxy for discrimination. This could have major implications to the disability community as it relates to employment.

Therefore, we strongly urge the DOL to maintain both the requirement in the regulations to solicit disability status both pre and post offer as well as the OMB approved self-identification form.

IV. Current Section 503 Regulations Increased Employment of Individuals with Disabilities

A. Without Voluntary Self-Identification, Contractors Cannot Effectively Determine Compliance with Section 503

Although DOL proposes to eliminate both voluntary self-identification and the 7% utilization goal,⁶⁹ it is retaining the requirement that federal contractors annually assess the

⁶⁴ 78 Fed. Reg. 58682, 58685.

⁶⁵ Derek Mobley’s lawsuit against Workday in which he claimed Workday’s AI discriminated against him for among other reasons that he had a disability may provide more guidance on employers’ liability for discrimination in AI algorithms. *Mobley v. Workday*, 740 F. Supp. 3d 796 (N.D. Calif. 2024).

⁶⁶ 78 Fed. Reg. 58682, 58685.

⁶⁷ Guidance For Recipients Of Federal Funding Regarding Unlawful Discrimination, The Attorney General, July 29, 2025; available at <https://www.justice.gov/ag/media/1409486/dl>.

⁶⁸ Guidance, p. 8-9.

⁶⁹ 90 Fed. Reg. 28494, 28495

effectiveness of their outreach and recruitment efforts.⁷⁰ Without the necessary self-identification data, federal contractors will not have any data to determine whether their outreach and recruitment efforts are effective and as importantly, any analytic tool to evaluate and determine whether any employment practice are potentially discriminatory against individuals with disabilities. It is the combination of the voluntary self-identification and utilization goal that provides much more effective data by which federal contractors can assess their statutorily required affirmative action obligations under Section 503.

B. Self-Identification and the Utilization Goal Have Successfully Increased the Employment of Qualified Individuals with Disabilities

The goal of the 2014 revisions to the Section 503 regulations was to increase the employment of qualified individuals with disabilities.⁷¹ In fact, BLS statistics for employment of individuals with disabilities show that since the revisions were implemented in 2014, the **employment** of individuals with disabilities has increased from 17.1% in 2014 to 22.7% in 2024.⁷² Each year since the revised regulations became effective, the employment of individuals with disabilities has increased except for 2020 when COVID-19 impacted employment.

More details on the increased employment of individuals with disabilities can be seen below:⁷³

Employment–Population Ratio (All Ages, Disability)

Based on Bureau of Labor Statistics (BLS) data:

Year	Employment–Population Ratio (All Ages, Disability)
2014	17.1%
2015	17.5%
2016	17.9%
2017	18.7%
2018	19.1%
2019	19.3%
2020	17.9% (COVID dip)
2021	19.1%
2022	21.3%
2023	22.5%
2024	22.7% — a record high since reporting began AIR+1Bureau of Labor Statistics

⁷⁰ *Id.*

⁷¹ 78 *Fed. Reg.* 58682.

⁷² BLS Persons With A Disability: Labor Force Characteristics — 2024, February 25, 2025; available at <https://www.bls.gov/news.release/pdf/disabl.pdf>.

⁷³ *Id.*

Insight: There's a clear upward trend from 17.1% in 2014 to 22.7% in 2024, indicating that individuals with disabilities are increasingly employed.

In the experience of The Institute's members, the increase in the employment of qualified individuals with disabilities in the workplace also relates to the increased acceptance of qualified individuals with disabilities in the workplace. Employees and applicants have been more willing to self-identify their disabilities since the new regulations led federal contractors to provide a workplace more accepting of disabilities. The way to increase the number of applicants and employees who self-identify is to have a workplace that is accepting of qualified individuals with disabilities.

Furthermore, it is conceivable that when more qualified individuals with disabilities are employed, the United States could pay less welfare and Social Security related benefits because economically meaningful employment reduces the reliance on these need-based programs. Increased employment from this population contributes to the economy through taxes and reduced demand for public assistance, while also fostering social participation and economic growth for individuals with disabilities.⁷⁴

Section 503 regulations increased data collection and accountability in disability employment, going beyond ADA requirements. Despite ADA's aim to boost opportunities for individuals with disabilities, it initially had little effect—and may have even lowered employment rates. According to a 2000 survey by the National Organization on Disability/Harris Poll, 67% of working-age people with disabilities would rather be employed than not.⁷⁵ This survey took place 10 years after the ADA was enacted in 1990. The ADA's purpose is to prevent discrimination against people with disabilities so they can access “the same opportunities as everyone else to fully participate in public life.”⁷⁶

Congress enacted the ADA to increase the employment rate of Americans with disabilities. During this time there was little evidence that the ADA had much impact on that employment rate, and it may have initially reduced employment.⁷⁷ From 1990 to 2013, the employment rate for Americans with disabilities fell.⁷⁸ Then, between 2014 and 2023, the employment-to-population ratio for Americans with disabilities rose by more than 11 percentage points.⁷⁹ As previously noted, the 2014-2023 period coincides with the advent of additional requirements added to Section 503's regulatory framework.

⁷⁴ <https://pmc.ncbi.nlm.nih.gov/articles/PMC10445173/>.

⁷⁵ Robert Nicholas, Ronnie Kauder, Kathy Krepcio, and Daniel Baker, *Ready and Able: Addressing Labor Market Needs and Building Productive Careers for People with Disabilities Through Collaborative Approaches* (National Technical Assistance and Research Center to Promote Leadership for Increasing Employment and Economic Independence of Adults with Disabilities, April 2011).

⁷⁶ *Id.*

⁷⁷ <https://www.mercatus.org/research/policy-briefs/boosting-employment-people-disabilities-reforms-beyond-ada#:~:text=Download%20the%20Policy%20Brief%20PDF,rather%20be%20employed%20than%20not.>

⁷⁸ Nicole Maestas, “Identifying Work Capacity and Promoting Work: A Strategy for Modernizing the SSDI Program,” *Annals of the American Academy of Political and Social Science* 686, no. 1, (2019): 101.

⁷⁹ See US Bureau of Labor Statistics, “Persons with a Disability: Labor Force Characteristics,” news release, June 21, 2016, and US Bureau of Labor Statistics, “Table 1: Employment status of the civilian noninstitutional population

C. Section 503 Should be Approached the Same Way as VEVRAA

DOL is correct that Section 503 legislation does not *require* a utilization goal or self-identification specifically as the means to achieve the Affirmative Action obligations in Section 503. Similarly, VEVRAA also does not *require* a hiring benchmark and self-identification. Yet, DOL is retaining both of those VEVRAA requirements.⁸⁰ Moreover, OFCCP's revisions to the Section 503 and VEVRAA regulations in 2014 mirrored each other and increased the ability of federal contractors to assess the effectiveness of their outreach and recruitment. The same framework should be followed again in the 2025 regulatory revisions.

In summary, the revisions to Section 503 have assisted federal contractors in increasing their employment of qualified individuals with disabilities. The same reasons for retaining the hiring benchmark and self-identification for veterans under VEVRAA apply to retaining self-identification for individuals with disabilities under Section 503, particularly because many veterans are also disabled.

D. Utilization Goal Helps Measure Hiring and Advancement of Individuals with Disabilities

Prior to 2014, federal contractors did not have any standard measure of individuals with disabilities in the workforce. The utilization goal enables federal contractors to have a standard benchmark against which to assess their outreach and recruitment. This standard goal can be used by federal contractors to measure both hiring and advancement of individuals with disabilities as required by Section 503.⁸¹

E. Eliminating Self-Identification and Utilization Goals Would Increase Employer Burden and Create Confusion for the Contractor Community on How to Measure Effectiveness

If DOL eliminates both the voluntary self-identification and utilization goal, federal contractors will not have a standard or the data to measure their outreach and recruitment as required by Section 503. Eliminating the utilization goal will increase contractor confusion because they will no longer have a standard against which to measure the effectiveness of their outreach and recruitment leaving the measurement of what is effective to be established *ad hoc* by each contractor. In addition, eliminating self-identification will increase the burden on federal contractors by eliminating the data contractors have used to determine the effectiveness required by Section 503.

by disability status and selected characteristics, 2023 annual averages,” news release, February 22, 2024. Figures are for those between 16 and 64 years old.

⁸⁰ 90 *Fed. Reg.* 28485.

⁸¹ 29 U.S.C. §793(a).

F. Self-Identification Enables Applicants and Employees to Identify Disabilities and Facilitates Accommodations

The OMB form by which applicants and employees self-identify outlines the disabilities that are covered by Section 503.⁸² The form, which is very detailed, informs applicants and employees what are considered disabilities under Section 503. Both applicants and employees may learn that their conditions are in fact covered disabilities, which will enable them to reach out for reasonable accommodations when necessary.

V. Instead of Elimination DOL Could Revise Its Utilization Goal

A. DOL Could Use a Different Utilization Goal

In the final rule, OFCCP stated that although the pre-2014 regulations did not provide a goal, there had been little improvement in the unemployment and workplace participation rates for individuals with disabilities.⁸³ As a result OFCCP decided to develop a single, national goal for individuals with disabilities based on the 2009 American Community Survey of 7%, although ACS only estimated 5.7% of the civilian workforce had a disability as defined by ACS.⁸⁴ The 7% goal represented an additional amount OFCCP estimated for those discouraged workers of approximately 1.7% and even OFCCP recognized the 7% was “an imprecise estimate based on a data set that is more narrow than the universe of individuals with disabilities protected by Section 503.”⁸⁵ As a result DOL could revise the utilization goal downward to 5.7% which would also reflect the increase in individuals with disabilities in the workforce.

If DOL retains a utilization goal, it will need to revise the requirement that federal contractors measure using EO 11246 job groups.⁸⁶ In order to provide an analytically sound foundation for the goal, DOL could require that Federal contractors measure their compliance either against VETS 4212 (EEO-1) Categories or against their total workforce as federal contractors with 100 or less employees do now.⁸⁷

B. DOL Could Establish a Hiring Benchmark for Section 503

DOL has proposed retaining the hiring benchmark for VEVRAA.⁸⁸ Since the current Section 503 and VEVRAA regulations largely mirror each other, DOL could eliminate the Section 503 utilization goal and replace it with a hiring benchmark similar to the one being continued for VEVRAA. Under 41 C.F.R. §60-300.45, a hiring benchmark “is not a rigid and

⁸² The Section 503 self-identification form can be found here <https://www.dol.gov/agencies/ofccp/self-id-forms>.

⁸³ 78 Fed. Reg. 58682, 58703.

⁸⁴ *Id.*

⁸⁵ 78 Fed. Reg. 58682, 58705.

⁸⁶ 78 Fed. Reg. 58682, 58704.

⁸⁷ 41 C.F.R. §60-741.45.

⁸⁸ 90 Fed. Reg. 28485.

inflexible quota which must be met, nor is it to be considered either a ceiling or a floor for the employment of particular groups...Quotas are expressly forbidden.”

The purpose of establishing benchmarks is to create a quantifiable method by which the contractor can measure its progress toward achieving equal employment opportunity for protected veterans.⁸⁹

Under this common sense approach, DOL could use a similar process to the process established in the VEVRAA regulations to create a Section 503 hiring benchmark⁹⁰ or establish a process by which federal contractors could create their own Section 503 hiring benchmark.⁹¹

VI. Eliminate the Current Unconstitutional OFCCP Enforcement Framework from These Proposed Section 503 Regulations.

The current Section 503 regulations⁹² cross reference the EO 11246 administrative enforcement procedures at 41 CFR part 60-30. The DOL is proposing to remove the cross-reference to these regulations, rescind the 41 CFR part 60-30 regulations, and simply add those provisions to this regulation.⁹³ This enforcement structure, which includes adjudication of disputes by Administrative Law Judges (“ALJ” or “ALJs”), has recently been found to be unconstitutional.

In the case *AMB v. OFCCP*,⁹⁴ the federal district court, relying on *SEC v. Jarkesy*,⁹⁵ held that the two layers of good-cause removal restrictions preventing removal for DOL ALJs violate Article II of the Constitution.⁹⁶ More recently, in *Sun Valley Orchards v US Department of Labor*,⁹⁷ the Third Circuit found that plaintiffs were “entitled to have its case decided by an Article III court,”⁹⁸ instead of a proceeding before the DOL’s ALJs in an Immigration Law related case. Under *Jarkesy*, DOL must proceed before a federal district court, and not use the unconstitutional ALJ structure when bringing enforcement actions under Section 503 against federal contractors. The unconstitutional ALJ remedy should be removed from the Section 503 regulations.

⁸⁹ 41 C.F.R. §60-300.45(a).

⁹⁰ 41 C.F.R. §60-300.45(b)(1).

⁹¹ 41 C.F.R. §60-300.45(b)(2).

⁹² 41 CFR Section 60-741.

⁹³ 90 *Fed. Reg.* 28494, 28495.

⁹⁴ *ABM Indus. Grps., LLC v. United States DOL*, 756 F. Supp. 3d 468 (S.D. Tex. 2024).

⁹⁵ *SEC v. Jarkesy*, 603 U.S. 109 (2024).

⁹⁶ *ABM* at 472.

⁹⁷ *Sun Valley Orchards, LLC v. United States DOL*, 2025 WL 2112927 (3rd Cir. July 29, 2025).

⁹⁸ *Id.* at 22

VII. DOL Should Refrain from Making Proposed Regulatory Changes Until the Future of OFCCP is Determined

DOL proposed to eliminate OFCCP in its FY2026 budget⁹⁹ because EO 14173 had rescinded EO 11246 “permanently removing the primary basis for OFCCP’s enforcement authority and program work” and to transfer enforcement of the Vietnam Era Veterans’ Readjustment Assistance Act to VETS, and enforcement of Section 503 of the Rehabilitation Act of 1973 to EEOC.

However, DOL cannot reassign or transfer the responsibilities under Section 503 from DOL to EEOC without Congressional approval because Section 503 specifically assigns these responsibilities to the Secretary of Labor.¹⁰⁰ In addition, the Senate Appropriations Committee voted to continue funding OFCCP and 155 former OFCCP employees have been recalled from layoff to be reinstated in DOL. The Institute is also aware the Government Accountability Office is conducting a review of OFCCP’s prior enforcement of Section 503.

With all the uncertainty around the future of OFCCP, combined with the pending report by the GAO on Section 503 enforcement, The Institute respectfully submits that DOL should postpone any changes to Section 503 regulations until there is greater clarity around DOL’s agency structure and how Section 503 enforcement will be conducted. By staging the regulatory reforms to occur after that agency structural issues have been addressed, there will be minimum confusion and inefficiencies that otherwise will result if new regulatory requirements are not fully aligned with the enforcement agency responsibilities.

CONCLUSION

Thank you in advance for your consideration of the comments by The Institute. We are happy to provide any additional information you may need or to answer any questions you may have.

Respectfully,



Barbara L. Moskowitz
Director
The Institute for Workplace Equality

⁹⁹ FY 2026 Department Of Labor Budget In Brief, p. 26, available at <https://www.dol.gov/sites/dolgov/files/general/budget/2026/FY2026BIB.pdf>.

¹⁰⁰ 29 U.S.C. §793 (b).