

COUNSEL:  
K&L Gates LLP  
1601 K Street NW  
Washington D.C. 20006

October 23, 2025

Submitted electronically to <https://www.regulations.gov>

Ashley Romanias  
Director  
Office of Federal Contract Compliance Programs  
200 Constitution Avenue NW  
Washington, DC 20210

**RE: Proposed Revision of Information Collection Request; U.S. 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)**

Director Romanias:

Disability:IN submits this letter in response to the Office of Federal Contract Compliance Programs’ (OFCCP) Request for Public Comments, “Proposed Revision of Information Collection Request; U.S. 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,” published in the Federal Register on August 25, 2025. Disability:IN appreciates the opportunity to submit comments on the value of the self-identification of disability form and encourages the OFCCP to maintain it.

**I. BACKGROUND**

Disability:IN, a 501(c)(3) public charity, is the leading nonprofit resource for business disability inclusion worldwide. In partnership with hundreds of the foremost companies in the United States and globally, Disability:IN drives progress for disability inclusion through initiatives, tools, and expertise that deliver long-term business impact. *See* <https://disabilityin.org/> for more information about the organization and its corporate partners.<sup>1</sup> Disability:IN’s collaborative effort with businesses from across

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<sup>1</sup> Disability:IN is well established as a trusted resource for businesses committed to advancing disability inclusion, by offering guidance and materials to support their journeys. For instance, Disability:IN, jointly with the American Association of People with Disabilities, launched a benchmarking survey to assist companies in measuring their progress on developing policies and practices

industries (including banking, finance, manufacturing, technology, healthcare, hospitality, to name a few) to advance disability inclusion has its origins in a government initiative and spans three decades.

In 1994, leveraging the power of business peers to drive disability inclusion, the Business Leadership Network (BLN) movement was established as a public-private partnership through the Employer's Subcommittee of the President's Committee on Employment with People with Disabilities, a small federal agency. This small federal agency was chaired by the Honorable Anthony "Tony" Coelho, former congressman and primary author of the Americans with Disabilities Act, and was advised by Tom Donohue, the President of the U.S. Chamber of Commerce. Various BLN chapters were established around the country.

Later, in 2001 the President's Committee was closed, but BLN was moved into the newly created Office on Disability Employment Policy (ODEP) at the U.S. Department of Labor. Thereafter, in 2002, the various BLN chapters met at a national conference, hosted by the U.S. Chamber of Commerce, and established the US Business Leadership Network®. A few years after that, in close coordination with senior leaders in President Bush's administration, the BLN movement transitioned out of the government and was reconstituted as a national non-profit, USBLN (now, Disability:IN) in 2007. But respecting both its roots and the power of a public-private effort to drive disability inclusion, USBLN formed an alliance agreement with ODEP the next year. This alliance with ODEP and the broader U.S. Department of Labor has been maintained and valued for seventeen (17) years, through USBLN rebranding to Disability:IN in 2018. Consistent with its foundation and purpose, Disability:IN has been supportive of government and business efforts to advance the inclusion of persons with disabilities in the workplace, such as intended with Section 503 and its implementing regulations.

## II. RESPONSE TO REQUEST FOR COMMENTS

On September 2, 2025, Disability:IN submitted a public comment to the OFCCP's Notice of Proposed Rulemaking, "Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended," published in the Federal Register on July 1, 2025 ("Section 503 NPRM").<sup>2</sup> In the Section 503 NPRM, OFCCP proposed to rescind Section 503 regulations at 41 C.F.R. § 60-741.42 (Invitation to self-identify), which require contractors to invite applicants and employees to self-identify

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aimed at advancing disability inclusion, enterprise-wide, as compared to their peers (now called "the Index") in 2014, with 48 Fortune 1000 companies participating in the pilot. Over a decade later, nearly 500 companies, many highly ranked by Fortune Magazine, take the Index, annually! Disability:IN also offers a Section 503 compliance checklist on its website - [https://disabilityin.org/wp-content/uploads/2022/05/CHECKLIST-Section-503-508\\_a11y.pdf](https://disabilityin.org/wp-content/uploads/2022/05/CHECKLIST-Section-503-508_a11y.pdf). Some of our additional programs include professional development and mentoring programs for college students and recent graduates entering the workforce to offer a pool of talented and qualified potential job candidates with disabilities; certification of disability-owned business/veteran-owned or disabled-veteran-owned business to allow businesses to identify who among these certified and qualified companies may fill a supplier or service provider need; and individualized consulting services focused on helping businesses develop their own policies and programs to help drive their disability inclusive progress, via our Inclusion Works Program.

<sup>2</sup> 90 Fed. Reg. 28494 (July 1, 2025).

their disability status, and 41 C.F.R. § 60–741.45 (Utilization goals), which require contractors to apply a seven percent utilization goal for employment of qualified individuals with disabilities to each of their job groups, or to their entire workforce if the contractor has 100 or fewer employees, among others.<sup>3</sup>

As set forth in Disability:IN’s public comment—which is incorporated into, and attached to, this comment—Disability:IN supports maintaining the self-identification and utilization goal requirements.<sup>4</sup> Maintaining these requirements is consistent with the priorities of the first Trump Administration, which acknowledged the critical role that they play in achieving higher employment and equal opportunity for individuals with disabilities.<sup>5</sup> The proposed changes would increase the burden to businesses and individuals with disabilities, contrary to the stated goals of Executive Order 12866.<sup>6</sup>

As detailed further below, for the same reasons that Disability:IN supports maintaining the self-identification and utilization goal requirements, Disability:IN strongly encourages the maintenance of the self-identification of disability form. The self-identification of disability form has consistently received bipartisan support since the OFCCP first instituted the form in 2013.<sup>7</sup> In fact, the first Trump Administration applauded the impact of self-identification in achieving higher employment and equal opportunity for people with disabilities, and made active efforts to improve the self-identification of disability form.

The self-identification form has multiple benefits for qualified workers with disabilities, contractors, and the federal government. First, it facilitates self-identification and measuring the success of outreach and recruitment efforts. Without self-identification data, it will be much harder to not only conduct outreach and recruitment but also measure the impact of such efforts. The burden to businesses will increase as they will now have to find other ways to measure the effectiveness of their outreach and recruitment efforts. Second, the form includes a comprehensive list of disabilities that helps qualified workers determine if a condition they have constitutes a disability. This knowledge is invaluable, as it empowers workers who may not know that they are protected by the Americans with Disabilities Act and Rehabilitation Act. This empowerment can lead workers with disabilities to seek accommodations for their disability that allow them to succeed in the workplace, thereby increasing productivity. Rescinding the form would make it less likely for people with disabilities to disclose their disabilities and seek reasonable accommodations in the workplace, increasing the possibility of discrimination and decreasing productivity. Finally, the self-

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<sup>3</sup> *Id.*

<sup>4</sup> September 2, 2025 Public Comment of Disability:IN, “Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended” (RIN 1250-AA18), <https://www.regulations.gov/comment/OFCCP-2025-0003-0443>. Notably, an overwhelming majority of those who submitted comments to this proposed rule change support maintaining the current voluntary self-identification reporting and utilization goals.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 41 C.F.R. § 60–741.42.



identification of disability form has historically facilitated OFCCP and ODEP in advising contractors on best practices for disability inclusion.

### III. CONCLUSION

Given its longstanding history of providing value to workers, contractors, and the Department of Labor, Disability:IN strongly encourages the OFCCP to maintain the self-identification of disability form. As the OFCCP reviews these issues further, Disability:IN looks forward to serving as a resource. Please do not hesitate to let us know if you need additional information. We appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Houghton", is positioned above the typed name.

Jill Houghton  
President & CEO

Attachment



Date **COUNSEL:**  
K&L Gates LLP  
1601 K Street NW  
Washington D.C. 20006

September 2, 2025

Submitted electronically to <https://www.regulations.gov>

Catherine L. Eschbach  
Director  
Office of Federal Contract Compliance Programs  
200 Constitution Avenue NW  
Washington, DC 20210

**Re:** “Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended” (RIN 1250-AA18)

Director Eschbach:

Disability:IN submits this letter in response to the Office of Federal Contract Compliance Programs (OFCCP) Notice of Proposed Rulemaking, “Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended,” published in the Federal Register on July 1, 2025 (“Section 503 NPRM”).<sup>1</sup> Disability:IN appreciates the opportunity to comment on proposed changes to regulations implementing Section 503, which prohibits federal contractors and subcontractors from discriminating against employees and applicants because of their disability status.

Disability:IN appreciates that the Section 503 NPRM maintains Section 503 and VEVRAA written affirmative action programs, as well as VEVRAA regulations given the significant overlap between VEVRAA and Section 503. Disability:IN also appreciates that the Section 503 NPRM maintains

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<sup>1</sup> 90 Fed. Reg. 28494 (July 1, 2025).

Section 503 outreach and recruitment. However, Disability:IN is concerned about the changes to Section 503 regulations, particularly regulations pertaining to self-identification and utilization goals, which will undermine the effectiveness of Section 503 with increased burdens and no gains.

**Disability:IN believes that maintaining the self-identification and utilization goal requirements is consistent with the priorities of the first Trump Administration, which acknowledged the critical role they play in achieving higher employment and equal opportunity for individuals with disabilities.** Section 503 has equal dignity to and should be read together with the Americans with Disabilities Act (ADA) as they are both remedial statutes that are meant to benefit people with disabilities in the workplace. The proposed changes are inconsistent with the law. The OFCCP has not demonstrated any purported benefits of those changes. The requirements proposed will only increase burden to businesses and individuals with disabilities.

For the reasons outlined below, the Section 503 NPRM should not be finalized. However, if the OFCCP proceeds with a final rule, alternative changes should be made to reduce burden and achieve the goals of Section 503. At the very least, the OFCCP should wait until the Government Accountability Office (GAO) issues its report on Section 503 and stakeholders have an opportunity to assess the impact.

## I. BACKGROUND

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<sup>2</sup> Disability:IN is well established as a trusted resource for businesses committed to advancing disability inclusion, by offering guidance and materials to support their journeys. For instance, Disability:IN, jointly with the American Association of People with Disabilities, launched a benchmarking survey to assist companies in measuring their progress on developing policies and practices aimed at advancing disability inclusion, enterprise-wide, as compared to their peers (now called "the Index") in 2014, with 48 Fortune 1000 companies participating in the pilot. Over a decade later, nearly 500 companies, many highly ranked by Fortune Magazine, take the Index, annually! Disability:IN also offers a Section 503 compliance checklist on its website - [https://disabilityin.org/wp-content/uploads/2022/05/CHECKLIST-Section-503-508\\_all1y.pdf](https://disabilityin.org/wp-content/uploads/2022/05/CHECKLIST-Section-503-508_all1y.pdf). Some of our additional programs include professional development and mentoring programs for college students and recent graduates entering the workforce to offer a pool of talented and qualified potential job candidates with disabilities; certification of disability-owned business/veteran-owned or disabled-veteran-owned business to allow businesses to identify who among these certified and qualified companies may fill a supplier or service provider need; and individualized consulting services focused on helping businesses develop their own policies and programs to help drive their disability inclusive progress, via our Inclusion Works Program.

In 1994, leveraging the power of business peers to drive disability inclusion, the Business Leadership Network (BLN) movement was established as a public-private partnership through the Employer’s Subcommittee of the President’s Committee on Employment with People with Disabilities, a small federal agency. This small federal agency was chaired by the Honorable Anthony “Tony” Coelho, former congressman and primary author of the Americans with Disabilities Act, and was advised by Tom Donohue, the President of the U.S. Chamber of Commerce. Various BLN chapters were established around the country.

Later, in 2001 the President’s Committee was closed, but BLN was moved into the newly created Office on Disability Employment Policy (ODEP) at the U.S. Department of Labor. Thereafter, in 2002, the various BLN chapters met at a national conference, hosted by the U.S. Chamber of Commerce, and established the US Business Leadership Network®. A few years after that, in close coordination with senior leaders in President Bush’s administration, the BLN movement transitioned out of the government and was reconstituted as a national non-profit, USBLN (now, Disability:IN) in 2007. But respecting both its roots and the power of a public-private effort to drive disability inclusion, USBLN formed an alliance agreement with ODEP the next year. This alliance with ODEP and the broader U.S. Department of Labor has been maintained and valued for seventeen (17) years, through USBLN rebranding to Disability:IN in 2019. Consistent with its foundation and purpose, Disability:IN has been supportive of government and business efforts to advance the inclusion of persons with disabilities in the workplace, such as intended with Section 503 and its implementing regulations.

## II. OVERVIEW OF THE PROPOSED REGULATIONS

In the Section 503 NPRM, OFCCP is proposing to revise its regulations implementing Section 503 with the goal of better aligning them with recent case law as well as with President Trump’s Executive Orders, including Executive Order 14173 titled, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” and Executive Order 14219 titled, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative.”<sup>3</sup>

Specifically, OFCCP is proposing to rescind Section 503 regulations at 41 C.F.R. § 60–741.42 (Invitation to self-identify), which require contractors to invite applicants and employees to self-identify their disability status,<sup>4</sup> and 41 C.F.R. § 60–741.45 (Utilization goals), which require contractors to apply a seven percent utilization goal for employment of qualified individuals with disabilities to each of their job groups, or to their entire workforce if the contractor has 100 or fewer employees, among others.<sup>5</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

### III. COMMENTS ON THE PROPOSED REGULATIONS

Disability:IN appreciates that the Section 503 NPRM maintains 503 and VEVRAA written affirmative action programs, as well as VEVRAA regulations given the significant overlap between VEVRAA and Section 503. Disability:IN also appreciates that the Section 503 NPRM maintains Section 503 outreach and recruitment. However, Disability:IN is concerned about the above changes to Section 503 regulations, particularly to regulations pertaining to self-identification and utilization goals.<sup>6</sup> These changes will undermine the effectiveness of Section 503 with increased burdens and no gains.

#### A. **Maintaining the self-identification and utilization goal requirements is consistent with the priorities of the first Trump Administration, which acknowledged the critical role they play in achieving higher employment and equal opportunity for individuals with disabilities.**

While there have been tremendous advancements in disability inclusion and employment since the self-identification and utilization goal requirements were put in place, challenges remain. The unemployment rate for people with a disability was about twice that of those with no disability in 2024.<sup>7</sup> Half of all people with disabilities in 2024 were age 65 and over, with workers with a disability being more likely to work part time and be self-employed in comparison with workers with no disabilities.<sup>8</sup>

The first Trump Administration recognized the importance of Section 503. The OFCCP 2020 Annual Report made Section 503 focused reviews an enforcement priority.<sup>9</sup> Specifically, the first Trump Administration lauded the impact of self-identification and the utilization goal in achieving higher employment and equal opportunity for people with disabilities. This includes active efforts to improve the self-identification form and overall process and implement the utilization goal requirements. Maintaining these requirements would therefore be consistent with the position of the first Trump Administration which has served as an effective legacy in driving forward increased opportunities of employment for those with disabilities subsequently.

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<sup>6</sup> Disability:IN has engaged with ODEP and OFCCP on regular basis on a myriad of topics in multiple ways over the years, under the administrations of both parties. For instance, Disability:IN has provided its critical input to federal agency rulemaking related to Section 503 through its comments, as it again does so here. For example, multiple times over the past decade and half, Disability:IN submitted comments to OFCCP to help inform its rulemaking related to both disability and veteran-related self-ID regulations under Section 503 and VEVRAA, to better increase employment opportunities for people with disabilities and disabled veterans. Further, Disability:IN has collaborated with ODEP in helping to facilitate its inspired “Circle of Champions,” which, over time, has become “the Circle.” The Circle is the distinguished group of U.S. businesses and organizations that received the Secretary of Labor’s New Freedom Initiative Award for innovative and proactive efforts to recruit, hire, and promote people with disabilities. See Disability Friendly Cities, *The Circle of Champions*, available at <https://www.disabilityfriendlycities.org/references/the-circle-of-champions-coc/>.

<sup>7</sup> U.S. Bureau of Labor Statistics, *Persons with a Disability: Labor Force Characteristics News Release – 2024 A01 Results*, available at [https://www.bls.gov/news.release/archives/disabl\\_02252025.htm](https://www.bls.gov/news.release/archives/disabl_02252025.htm).

<sup>8</sup> *Id.*

<sup>9</sup> U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Fiscal Year 2020: Section 503 Focused Reviews* (2020).

We are uniquely positioned to illuminate that fact. Our Disability Index is an objective, confidential, and forward-looking third-party benchmark that allows participating companies to assess the policies, processes, and programs across the enterprise that can contribute to increased disability inclusion for employees, potential employees, customers, suppliers, and other stakeholders. Companies participating in the Disability Index must meet certain eligibility criteria, including having a workforce that exceeds 300 employees.

Disability:IN has tracked a marked increase in the median annual disability self-identification rates for newly hired employees at U.S. companies that participate in its Disability Index benchmarking survey. Since 2019 when the Disability Index first included optional questions regarding self-identification and self ID rates, the median disability self-identification rate for newly hired employees more than doubled from 2.15% in 2019 to 5.0% in 2024. These statistics are calculated from self-reported data aggregated from among the participating companies that opted to disclose such figures. Additionally noteworthy, beyond the sharp increase in the median new hire self ID rate, is the growth in U.S. companies that chose to disclose such workforce figures. Even as overall U.S. participation in the Disability Index tripled in the period of 2019-2024 (180 to 540 participating companies), the percentage of companies self-reporting new hire self ID rates for employees with disabilities held steady, rising slightly from 66% to 68%.

These insights gleaned from data reported to Disability:IN through the Disability Index by large-scale U.S. employers underscore that during the most recent six-year period of Section 503's active implementation, employers have been able to track and report a noteworthy increase in the percentage of their newly hired employees that self-identify as having a disability based upon each company's internal definition of disability. Moreover, the growth in the total number of companies reporting such figures to Disability:IN suggests that the practice of confidential disability self-identification for newly hired employees has become a mainstream practice for most employers participating in the Disability Index, a cohort that includes both U.S. federal contractors and non-federal contractors alike."

As Disability:IN interprets the trends from its Index, the self-identification and utilization goal regulations have increased employment of individuals with disabilities, which promotes merit-based hiring. Rescinding them would make it less likely for people with disabilities to disclose their disabilities and seek reasonable accommodations in the workplace, increasing the possibility of discrimination and decreasing productivity. In this regard, it is worth noting that most accommodations have no cost, and the median is about \$300 for those with a cost.<sup>10</sup> Furthermore, without self-identification data and utilization goals, it will be much harder to not only conduct outreach and recruitment, but also measure the impact of

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<sup>10</sup> See Job Accommodation Network, *Costs and Benefits of Accommodation*, available at <https://askjan.org/topics/costs.cfm>.

such efforts. The burden to businesses will increase as they will now have to find other ways to measure the effectiveness of their outreach and recruitment efforts.

**B. Section 503 has been upheld and should be read together with the Americans with Disabilities Act as they are both remedial statutes meant to benefit people with disabilities in the workplace.**

The ADA includes a section preserving Title V of the Rehabilitation Act and related federal regulations, which includes Section 503 and its regulations. *See* 42 U.S.C. Sec. 12201 (a) and (b). Section 503 is worded in a way that requires self-identification and supports setting a utilization goal or hiring benchmark: “party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities.”

Section 503 regulations were upheld in *Associated Builders & Contractors v. Shiu*, 773 F.3d 257 (D.C. Cir. 2014), including the self-identification requirement. In *Shiu*, the DC Circuit held that under *Chevron* Step 1, appellant’s challenges to the Section 503 regulations “fail.” 773 F.3d at 263; *see also Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984). This reasoning still holds water after *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), which overruled *Chevron*. Under *Loper Bright*, the single “best” interpretation of a statute will govern, not merely a “permissible” construction by the agency. Accordingly, because the court already ruled that regulation was valid because it represented the best interpretation of a statute (or old *Chevron* Step 1), that interpretation is locked in and cannot be changed without congressional intervention, as opposed to if the regulation was upheld because the court merely deferred to the agency’s reasonable interpretation of the statute (under the old *Chevron* Step 2).

Section 503 of the Rehabilitation Act should be read together with ADA as they are both remedial statutes meant to benefit people with disabilities in the workplace. Therefore, the OFCCP’s construction should seek to give full meaning to both. The ADA’s statutory text notes that nothing in the Act should “be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973.” 42 U.S.C. § 12201. The ADA’s protection is at a lower standard than the Rehabilitation Act. The Rehabilitation Act is an affirmative action statute; ADA is not. Affirmative action advancing employment opportunities for people with disabilities is a higher standard for compliance than the ADA. The ADA goes on to say that the Act should not “be construed to invalidate or limit the remedies, rights, and procedures of any Federal law that provides greater or equal protection for the rights of individuals with disabilities.” 42 U.S.C. § 12201. The EEOC’s 1991 interpretive guidance on the ADA provided that “the existence of a lesser standard of protection to individuals with disabilities under the ADA will not provide a defense to failing to meet a higher standard under another law. Thus, for example, Title I of the ADA would not be a defense to failing to prepare and maintain an affirmative action program under section 503 of the Rehabilitation Act.” 29 C.F.R. pt. 1630, app. § 1630.1(c)

Relying on the language from 42 U.S.C. § 12201, appellate courts, including the Supreme Court read the two Acts together. *See e.g., Bragdon v. Abbott*, 524 U.S. 624, 631-32 (1998) (stating that courts are required to “construe the ADA to grant at least as much protection as provided by the regulations implementing the Rehabilitation Act); *Buckley v. Consolidated Edison Co. of New York, Inc.*, 127 F.3d 270 (2d Cir. 1997); *Urban by Urban v. Jefferson County School Dist. #-1*, 89 F.3d 720 (10th Cir. 1996); *Duncan v. Washington Metropolitan Area Transit Authority*, 240 F.3d 1110 (D.C. Cir. 2001); *D’Angelo v. ConAgra Foods, Inc.*, 422 F.3d 1220 (11th Cir. 2005); *Wisconsin Community Services, Inc. v. City of Milwaukee*, 465 F.3d 737 (7th Cir. 2006); *Menkowitz v. Pottstown Memorial Medical Center*, 154 F.3d 113 (3d Cir. 1998); *Frame v. City of Arlington*, 657 F.3d 215 (5th Cir. 2011); *Lewis v. Humboldt Acquisition Corp., Inc.*, 681 F.3d 312 (6th Cir. 2012).

Reading the ADA and Rehabilitation Act together makes clear that the ADA’s pre-offer inquiry bar is a term of art that does not apply to Section 503 self-identification forms, which are kept separate from an applicant or employee’s personnel file. For example, EEOC enforcement guidance on disability-related inquiries under the ADA clearly distinguishes prohibited “preemployment disability-related inquiries” from “acceptable” “invitations to voluntarily self-identify as persons with disabilities for affirmative action purposes.” 29 C.F.R. Part 1630, 29 C.F.R. Part 1614.

**C. A contrary reading would be inconsistent with the law. The OFCCP has not demonstrated any benefits. The changes will only increase burden to businesses and individuals with disabilities.**

The Section 503 NPRM did not make an effort to read the ADA and Rehabilitation Act together. Because these acts should be read together, this oversight alone is arbitrary and capricious. Further, the OFCCP has not demonstrated any purported benefits to this change, which increases burden and harm to individuals with disabilities. In addition, these increased burdens would have an outsized and substantial impact on small businesses, necessitating review under the Regulatory Flexibility Act.

The Regulatory Flexibility Act requires an agency to prepare initial and final regulatory flexibility analyses for any rule proposed by public comment unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Section 503 NPRM states that the proposed rule would not have a significant economic impact on a substantial number of small entities, and therefore the preparation of a final regulatory flexibility analysis is not warranted. The Regulatory Flexibility Act does apply, and the OFCCP should analyze the proposed rule more closely. Many federal contractors are small businesses under the Regulatory Flexibility Act’s definition. Indeed, in the Fiscal Year 2024, small business contracts were awarded by the federal government to 78,677 companies.<sup>11</sup>

<sup>11</sup> GovSpend, Federal Contract Awards Hit \$773.68B in FY24, Small Businesses See \$4B Increase , available at <https://govspend.com/blog/federal-contract-awards-hit-773-68b-in-fy24-small-businesses-see-4b-increase/>.

These small businesses are required to comply with Section 503’s affirmative action requirements, and, if they have fifty or more employees, are required to comply with the regulations’ affirmative action requirements. As discussed above, these small businesses benefit by having clear guidelines to follow year-to-year—the self-identification form and the 7% utilization goal. Small entities will be substantially economically impacted by being forced to develop new processes in an uncertain environment, likely requiring the need to hire outside counsel. Thus, the Regulatory Flexibility Act does apply, and the OFCCP erred in not doing a regulatory flexibility study.

What’s more, the OFCCP has not mitigated the harm that these changes will have on individuals with disabilities. Individuals with disabilities have historic reliance on voluntary self-identification and the 7% utilization goal, so phasing it out without a hearing causes substantial due process and reliance-based concerns. *See Perry v. Sindermann*, 408 U.S. 593 (1972). The Department must “be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.” *Encino Motorcars LLC v. Navarro*, 579 U.S. 211, 212 (2016). “It would be arbitrary and capricious to ignore such matters.” *FCC v. Fox Television Studios*, 556 U.S. 502, 515 (2009).

Contrary to the stated goals of E.O. 12866, the proposed rule would increase the burden on contractors by creating uncertainty and removing the tools companies use to ensure they are compliant with Section 503 and 60 C.F.R. § 741.40. As discussed above, Section 503 requires contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Moreover, under Department of Labor regulations not subject to the proposed rule, contractors with 50 or more employees and a contract of \$50,000 or more are required to prepare and maintain an affirmative action program “designed to ensure equal employment opportunity and foster employment opportunities for individuals with disabilities.” 60 C.F.R. § 741.40(a)-(b). This affirmative action program must include “measurable objectives, quantitative analyses, and internal auditing and reporting systems that measure the contractor’s progress toward achieving equal employment opportunity for individuals with disabilities.” 60 CFR § 741.40(a).

Further, under the current rule and proposed rule, contractors are required to review their outreach and recruitment efforts annually to “evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities.” 60 C.F.R. § 741.44(f)(3); *see also* proposed 60 C.F.R. § 741.44(f)(3). If the contractor determines its efforts were not effective, it is required to “identify and implement alternative efforts . . . in order to fulfill its obligations.” *Id.*; *see also* 60 CFR § 741.44(h)(2) (“Where the affirmative action program is found to be deficient, the contractor shall undertake necessary action to bring the program into compliance.”).

Similarly, the contractor is required to design and implement an audit and reporting system to: “(i) Measure the effectiveness of the contractor’s affirmative action program; (ii) Indicate any need for remedial action; (iii) Determine the degree to which the contractor’s objectives have been attained; (iv)

Determine whether known individuals with disabilities have had the opportunity to participate in all company sponsored educational, training, recreational, and social activities; (v) Measure the contractor's compliance with the affirmative action program's specific obligations; and (vi) Document the actions taken to comply with the obligations of paragraphs (h)(1)(i) through (v) of this section, and retain these documents as employment records subject to the recordkeeping requirements of § 60-741.80.” 60 C.F.R. § 741.44(h)(1).

The proposed rule does not impact the compliance evaluations that may be conducted by OFCCP to determine if contractors are “taking affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination on the basis of disability in all employment practices.” 60 C.F.R. § 741.60(a). A compliance evaluation can encompass, *inter alia*, analysis and evaluation of the contractor’s affirmative action program, and a determination of “whether the contractor has complied with the requirements of section 503 and its regulations.” 60 C.F.R. § 741.60(a)(1)-(4). Moreover, certain contracts require pre-award compliance evaluations. 60 C.F.R. § 741.60(c).

To comply with the current regulatory requirements, contractors have established procedures for self-identification to measure their effectiveness in outreach and recruitment compared to the utilization goal. These procedures are not burdensome because contractors utilize the OFCCP’s approved form for self-identification,<sup>12</sup> and measuring effectiveness is simple when the contractor has the self-identification data in hand.

However, without the tools of self-identification and benchmark utilization goals to help companies measure the effectiveness and returns on their outreach and recruitment of individuals with disabilities, companies will struggle to evaluate their effectiveness and ensure their compliance with Section 503 and other applicable regulations. Indeed, the proposed rule does not impact a contractor’s obligations to: (1) take affirmative action to employ and advance in employment qualified individuals with disabilities (under both Section 503 and OFCCP regulations); (2) annually review outreach and recruitment efforts to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities; or (3) design and implement an audit and reporting system to measure effectiveness and compliance, nor does it remove the compliance evaluations process.

To impose a change on federal contractors by stripping away tools they have already developed and implemented to advance disability inclusive employment practices in compliance with Section 503 and the regulations’ provisions and requiring them to start all over will increase their regulatory burden, in conflict with the purported intent of this rulemaking. Indeed, federal contractors would be forced to again expend time, money, energy, and resources to identify, test, and eventually implement new procedures to

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<sup>12</sup> OFCCP, *Voluntary Self-Identification of Disability Form*, available at: [https://www.dol.gov/sites/dolgov/files/OFCCP/regs/compliance/sec503/Self\\_ID\\_Forms/503Self-IDForm-04262023.pdf](https://www.dol.gov/sites/dolgov/files/OFCCP/regs/compliance/sec503/Self_ID_Forms/503Self-IDForm-04262023.pdf).

measure effectiveness of outreach and recruitment, as their compliance obligations remain untouched, hardly qualifying as an unburdening via deregulation. Because of the uncertainty created by the proposed rulemaking, contractors will be forced to hire outside counsel to advise them on whether they are compliant, further increasing burden and costs.

Moreover, the elimination of the self-identification form will make it harder to pursue and measure affirmative action efforts, and will increase legal risk since contractors can no longer rely on an approved government form. Conversely, maintaining the form decreases burden because it is an approved government form that helps the contractor determine representation of people with disabilities in the workforce, which helps with its statutory affirmative action efforts. The elimination of the form will make it harder to pursue and measure affirmative action efforts

The OFCCP states that its proposed rulemaking is a deregulatory action pursuant to E.O. 14219. However, the proposed rule achieves the opposite aim. The main obligation to implement an affirmative action program and evaluate its success remain. The proposed rule removes the certainty associated with having a clear requirement—self-identification and the utilization goal—increasing the possibility that contractors will violate the law. Under the current regulatory scheme, it is not burdensome to supply applicants with a form compiled and approved by the government; it is burdensome to require contractors to create, implement, test, evaluate, and revise their own form, possibly repeatedly, before final. And assessing the utilization rate is a quick process that provides contractors with certainty as to whether they have satisfied their statutory and regulatory obligations. Thus, even if the proposed rule eliminates regulations, it substantially increases the burden on companies and therefore appears not to satisfy its stated purpose of being deregulatory.

**D. For the reasons discussed above, the Section 503 NPRM should not be adopted. However, if OFCCP believes that changes must be made to the regulations, alternative changes should be made with the goal of reducing burden and achieving the goals and purpose of Section 503.**

If the OFCCP does find that the self-identification requirement should be rescinded, OFCCP should not make a finding that pre-employment self-identification questions are in tension with the ADA, for the reasons discussed above. Contractors that wish to maintain a self-identification process to aid in their outreach and recruitment programs should be allowed to voluntarily maintain such programs. This will also enable contractors to evaluate the effectiveness of their affirmative action programs, in compliance with Section 503.

Even if it makes that finding, it should be limited, and the OFCCP should allow contractors to maintain post-employment self-identification programs. This will aid contractors in their efforts to evaluate the effectiveness of their affirmative action programs, in turn helping contractors comply with Section 503 and the regulations.

Also, if the OFCCP finds that it should move forward with eliminating the utilization rate, the rule should instead use a hiring benchmark similar to VEVRAA. Under VEVRAA, OFCCP publishes hiring benchmarks based on the representation of veterans in the workforce. This methodology should be adopted to determine the representation of individuals with disabilities in the workforce, which is approximately 5% according to the Bureau of Labor Statistics. Individuals with disabilities have a lower labor force participation rate, and the goal of Section 503 is to enable individuals with disabilities to join and succeed in the labor force. Adopting a benchmark consistent with VEVRAA will help achieve the aims of Section 503 and address the OFCCP's concerns that a utilization goal may lead companies to implement quotas. This approach satisfies these aims whether a pre-employment or post-employment self-identification process is utilized. This approach further addresses the OFCCP's concern that the Section 503 utilization analysis is dependent on the E.O. 11246 requirements by tying the benchmark to the Bureau of Labor Statistics data instead of E.O. 11246.

**E. At the very least, the OFCCP should wait until the GAO issues its report on Section 503 and stakeholders have an opportunity to assess the impact of revisions to Section 503 regulations.**

The GAO is in the process of conducting a review followed by a report on the OFCCP's enforcement of Section 503. It is important to wait for the results of this study to inform the proposed rulemaking, assess whether there is a need for it, and what the changes if any should be. The OFCCP and all stakeholders would benefit from such report. Accordingly, the OFCCP should refrain from finalizing the rulemaking until it has been able to consider all relevant data, particularly as the proposed changes would cause a significant disruption to the implementation of Section 503 and raise many legal, administrative, and practical issues that must be carefully analyzed and addressed. Above all, the Section 503 NPRM ultimately impacts a vulnerable community whose interests must be carefully considered.

#### **IV. CONCLUSION**

Disability:IN appreciates the opportunity to comment on the Section 503 NPRM. As outlined above, Disability:IN encourages the Trump Administration to adopt the position of the first Trump Administration on Section 503 and VEVRAA, making Section 503 and VEVRAA focused reviews the cornerstones of these efforts. We believe that the best way to do so is to keep self-id and utilization goals, support Section 503 and VEVRAA focused reviews, and provide more compliance assistance as to how to do these in ways that comply with the ADA and merit-based hiring. As the OFCCP reviews these issues



further, Disability:IN looks forward to serving as a resource. Please do not hesitate to let us know if you need additional information or if you have any questions. We appreciate your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Houghton", is positioned above the printed name.

Jill Houghton  
President & CEO

**CC:** Hon. Lori Chavez-DeRemer, Secretary, Department of Labor  
Hon. Keith E. Sonderling, Deputy Secretary, Department of Labor  
Hon. Jonathan Snare, Deputy Solicitor, Department of Labor