October 22, 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:

The Center for Disability Inclusion, Inc. (CDI) 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. CDI 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

CDI partners with businesses to advance disability inclusion in the workplace, marketplace and beyond. The organization has a 16-year history of supporting businesses in driving change for greater inclusion of people with disabilities in the workplace and workforce.

Over 16 years, CDI has grown from serving 4 counties in the Kansas City, MO area to partnership that reaches a global audience, with 28% of CDI partners having a global workforce. From 2009-2017 CDI was known as USBLN Kansas City and during this time it was awarded the Affiliate of the Year award in 2011 and 2016. In 2018, USBLN changed its name to Disability:IN and the organization became known as Disability:IN Greater Kansas City.

Due to opportunities to expand outside of the Greater Kansas City area, in September of 2021 the organization left the Disability:IN affiliate network and the name changed to The Center for Disability Inclusion. This change started acceleration of national growth with Omaha, NE becoming another hub of partners, and partnerships expanding coast to coast. In 2022 the organization experienced a 24% growth in new business partners and learning opportunities reached people in 22 countries.

As shown in the organization 2024 Year In Review, at the close of 2024 the organization provided 54 customized disability inclusion trainings reaching over 4,100 attendees. The 15 programmed learning

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events reached over 1,500 attendees. CDI has corporate partners, hosts disability-related events and trainings, and is recognized as an expert organization in disability inclusion in the workplace. The CDI partner network represents over 500,000 employees across 14 industries with 28% of business partners having a global workforce. In addition, 80% of CDI partners are federal contractors.

II. RESPONSE TO REQUEST FOR COMMENTS

On August 29, 2025, CDI 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").[1] 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 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.[2]

As set forth in CDI's public comment—which is incorporated into, and attached to, this comment— CDI supports maintaining the self-identification and utilization goal requirements.[3] 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.[4] The proposed changes would increase the burden to businesses and individuals with disabilities, contrary to the stated goals of Executive Order 12866.[5]

As detailed further below, for the same reasons that CDI supports maintaining the self-identification and utilization goal requirements, CDI 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.[6] 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.

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[1] 90 Fed. Reg. 28494 (July 1, 2025).
[2] *Id.*
[3] August 29, 2025 Public Comment of The Center for Disability Inclusion, Inc., "Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended" (RIN 1250-AA18).
[4] *Id.*
[5] *Id.*
[6] 41 C.F.R. § 60–741.42.

[1] 90 Fed. Reg. 28494 (July 1, 2025).
[2] *Id.*
[3] August 29, 2025 Public Comment of The Center for Disability Inclusion, Inc., "Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended" (RIN 1250-AA18).
[4] *Id.*
[5] *Id.*
[6] 41 C.F.R. § 60–741.42.

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The self-identification form has multiple benefits to workers, 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 workers determine if a condition they have qualifies as 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 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-identification of disability form has historically facilitated OFFCP and the Office of Disability Employment Policy 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, CDI strongly encourages the OFCCP to maintain the self-identification of disability form. As the OFCCP reviews these issues further, CDI 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,

Meaghan Walls

Chief Executive Officer

[1] 90 Fed. Reg. 28494 (July 1, 2025).
[2] *Id.*
[3] August 29, 2025 Public Comment of The Center for Disability Inclusion, Inc., "Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as Amended" (RIN 1250-AA18).
[4] I*d.*
[5] *Id.*
[6] 41 C.F.R. § 60–741.42.

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August 29, 2025

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

Director Eschbach:

The Center for Disability Inclusion, Inc. 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").[1] The Center for Disability Inclusion, Inc. 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.

The Center for Disability Inclusion, Inc. 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. The Center for Disability Inclusion, Inc. also appreciates that the Section 503 NPRM maintains Section 503 outreach and recruitment. However, The Center for Disability Inclusion, Inc. is concerned about the changes to Section 503 regulations, particularly to regulations pertaining to self-identification and utilization goals, which will undermine the effectiveness of Section 503 with increased burdens and no gains.

The Center for Disability Inclusion, Inc. 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

[1] 90 Fed. Reg. 28494 (July 1, 2025).

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individuals with disabilities. Section 503 has been upheld 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. The requirements are 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

The Center for Disability Inclusion (CDI) partners with businesses to advance disability inclusion in the workplace, marketplace and beyond. The organization has a 16-year history of supporting businesses in driving change for greater inclusion of people with disabilities in the workplace and workforce.

Over 16 years, CDI has grown from serving 4 counties in the Kansas City, MO area to partnership that reaches a global audience, with 28% of CDI partners having a global workforce. From 2009-2017 CDI was known as USBLN Kansas City and during this time it was awarded the Affiliate of the Year award in 2011 and 2016. In 2018, USBLN changed its name to Disability:IN and the organization became known as Disability:IN Greater Kansas City.

Due to opportunities to expand outside of the Greater Kansas City area, in September of 2021 the organization left the Disability:IN affiliate network and the name changed to The Center for Disability Inclusion. This change started acceleration of national growth with Omaha, NE becoming another hub of partners, and partnerships expanding coast to coast. In 2022 the organization experienced a 24% growth in new business partners and learning opportunities reached people in 22 countries.

As shown in the organization 2024 Year In Review, at the close of 2024 the organization provided 54 customized disability inclusion trainings reaching over 4,100 attendees. The 15 programmed learning events reached over 1,500 attendees. CDI has corporate partners, hosts disability-related events and trainings, and is recognized as an expert organization in disability inclusion in the workplace. The CDI partner network represents over 500,000 employees across 14 industries with 28% of business partners having a global workforce. In addition, 80% of CDI partners are federal contractors.

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The impact of a self-ID requirement and 7% utilization goal has been realized in business practices as well as hiring outcomes. The requirements for greater outreach and hiring of people with disabilities has:

- been the catalyst for the formation of Business Resource Groups (BRGs) and Employee Resource Groups (ERGs) that focus on increasing disability inclusion practices and supports.
- Resulted in our partners increasing their efforts for identifying and accommodating the needs of people with disabilities in the workforce.
- Resulted in increased training for more effective recruiting and hiring of people with disabilities, including a requirement for disability awareness training to be a part of all employee training.

There have also been tangible impacts on the reported data around these efforts:

- A health insurance partner reported a 20% increase of employees with disabilities year over year
- A manufacturing partner reported a 118% increase over 2 years of applicants who self-identified as having a disability, with a 2% increase in hiring of people with disabilities.
- An insurance partner reported a 3% increase in self-ID within their employees over 2 years
- A fin-tech partner reported a 1% increase of self-ID over 5 years
- An insurance partner reported a 13% self-ID rate in 2023

Collection and tracking of these metrics allows businesses to better tailor their recruitment, hiring and retention processes to reach the broadest candidate pool. These data also provide businesses with concrete measurements of the impact of training, benefits and engagement programs.

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."[2]

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

[2] *Id.*

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their disability status,[3] 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.[4]

III. COMMENTS ON THE PROPOSED REGULATIONS

The Center for Disability Inclusion, Inc. 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. The Center for Disability Inclusion, Inc. also appreciates that the Section 503 NPRM maintains Section 503 outreach and recruitment. However, The Center for Disability Inclusion, Inc. is concerned about the above changes to Section 503 regulations, particularly to regulations pertaining to self-identification and utilization goals. 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 plan 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.[5] 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.[6]

The first Trump Administration recognized the importance of Section 503. The OFCCP 2020 Annual Report made Section 503 focused reviews an enforcement priority.[7] 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.

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[3] *Id*.
[4] *Id*.
[5] 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.
[6] *Id*.
[7] U.S. Department of Labor, Office of Federal Contract Compliance Programs, *Fiscal Year 2020: Section 503 Focused Reviews* (2020).

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The self-identification and utilization goal regulations have increased employment of individuals with disabilities, which promote 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. 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 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

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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. <u>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</u>.

The Section 403 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

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definition. Indeed, in the Fiscal Year 2024, small business contracts were awarded by the federal government to 78,677 companies.[8]

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. While larger entities may be able to absorb the costs of reworking their compliance programs, 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, who "[b]y and large [. . .] were supportive of the three-step approach to voluntary self-identification of disability proposed in the NPRM, while contractors and contractor organizations opposed the proposed approach." Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities: Final Rule, 78 Fed. Reg. 58682, 58690 (Sept. 24, 2013) (codified at 41 C.F.R. pt 60-741).

Individuals with disabilities have historic reliance on voluntary self-identification and the 7% utilization goal, so phasing it out without a hearing is a due process violation. *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

[8] 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/.

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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,[9] and measuring effectiveness is simple when the contractor has the self-identification data in hand.

[9] 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.

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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 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—making it more likely 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 their own form. 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 should therefore not be considered deregulatory.

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D. <u>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</u>.

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.

As an alternate solution, 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.

Third, 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. <u>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.</u>

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.

Center for Disability Inclusion
PARTNERING FOR WORKPLACE SOLUTIONS

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IV. CONCLUSION

The Center for Disability Inclusion, Inc. appreciates the opportunity to comment on the Section 503 NPRM. As outlined above, The Center for Disability Inclusion, Inc. 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, The Center for Disability Inclusion, Inc. 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,

Meaghan Walls
Chief Executive Officer
mwalls@centerfordisabilityinclusion.org

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