

Oct. 15, 2013

Hon. Tom Perez
Secretary of Labor
Hon. Patricia Shiu
Director, Office of Federal Contract Compliance Programs
200 Constitution Ave. NW
Washington DC 20210

Dear Secretary Perez and Director Shiu:

The undersigned disability rights organizations write to thank the Department of Labor and its Office of Federal Contract Compliance Programs for issuing final rules implementing Section 503 of the Rehabilitation Act. As you know, the employment rates for people with disabilities remain far below the employment rates for any other group tracked by the Bureau of Labor Statistics, and people with disabilities participate in the workforce at less than one-third the rate of the general population. The new Section 503 rules published on September 24th are an important step to help address this problem.

We applaud the Labor Department's efforts to ensure that Section 503 now includes a goal for federal contractors' employment of people with disabilities. Such a goal has long been needed to make implementation of Section 503's affirmative action requirements meaningful and to more closely align these requirements with federal contractors' affirmative action obligations relating to race, ethnicity and gender.

We are disappointed, however, that OFCCP declined to adopt a separate subgoal that would have enabled the government to monitor whether individuals with significant disabilities are being employed, despite comments from the vast majority of the disability community underscoring the critical importance of such a subgoal. We hope that OFCCP will, as part of its enforcement efforts, look at whether contractors are employing individuals with *all* types of disabilities, including the most significant disabilities. Just as OFCCP's enforcement of Executive Order 11246 scrutinizes "substantial disparities" that may exist in federal contractors' employment of a particular minority group,¹ the agency's enforcement of Section 503 should include scrutiny of whether substantial disparities exist in employment of different disability groups. While the new Section 503 regulations contain no requirement that contractors collect information about different disability groups, we are confident that OFCCP can find ways to determine whether disparities exist.

We are also disappointed that OFCCP rolled back so many of the important provisions in its proposed regulations that would have made it easier for people with disabilities to secure and maintain employment with federal contractors. We were particularly surprised to see that OFCCP eliminated the proposed requirement that contractors maintain linkage agreements with specified entities to assist with recruitment of people with disabilities, including (1) a local vocational rehabilitation agency or Employment Network, (2) a veterans' service organization, and (3) any one of a list of other organizations including One-Stops, DOL-funded entities that provide recruitment or

¹ 42 C.F.R. § 41.60-2.16(d). These regulations permit OFCCP to require contractors to have separate goals for particular minority groups when there are substantial disparities in employment of those groups.

training services for individuals with disabilities, centers for independent living or other local disability organizations, VA regional offices, and other entities. The final rules impose a generalized obligation on contractors to do “outreach and positive recruitment activities,” but state that enlisting the assistance of the types of organizations listed above is merely an *example* of an outreach activity rather than a required step. We believe that linkage with such organizations is critical to improving recruitment of individuals with disabilities and it is difficult to see how a contractor could do effective recruitment of individuals with disabilities without establishing such linkages.

We were surprised to see that OFCCP eliminated the proposed requirement that contractors ensure that their online applications are accessible, and instead opted merely to “encourage” contractors to do so. While existing non-discrimination provisions in Title I of the ADA and Section 503 entitle individuals with disabilities to reasonable accommodations in the application process, inaccessible applications continue to be a significant barrier to many job seekers with disabilities despite reasonable accommodation requirements. We believe that OFCCP’s original proposal to require accessible online obligations was an eminently reasonable requirement for employers benefitting from large federal contracts.

We are disappointed that OFCCP eliminated the requirement that contractors have written procedures outlining how to request reasonable accommodations and how such requests will be processed. As the rule notes, “[s]uch procedures help ensure that applicants and employees are informed as to how to request a reasonable accommodation and are aware of how such a request will be processed by the contractor” and “. . . also help ensure that the contractor’s supervisors and managers know what to do should they receive a request for a reasonable accommodation. . . .”

Finally, we are disappointed that OFCCP:

- eliminated its proposed requirement that contractors review annually the physical and mental qualification requirements for their jobs to ensure that they do not needlessly screen out individuals with disabilities (the final rule simply requires that the contractor follow a “schedule” for doing such a review)
- eliminated its proposed requirement that training of relevant personnel concerning Section 503’s requirements include specific topics and its proposed requirement that contractors make and maintain specific records
- eliminated its proposed requirement that contractors document and update data including the “applicant ratio” of applicants with known disabilities to total applicants, the “hiring ratio” of individuals with known disabilities to the total number of individuals hired, and the “job fill ratio” of job openings to job openings filled (the final rule only requires contractors to collect raw data)
- exempted employers with fewer than 100 employees from the requirement that the 7% goal be at the job group level (the final rule requires that, for these employers, the 7% goal applies only at the level of the entire workforce)
- changed the requirement that contractors annually invite employees to self-identify as individuals with disabilities to a requirement to invite employees to do this once every five years

The omission of key obligations in the final regulations makes it more difficult to ensure that federal contractors' employment of people with disabilities will improve. As OFCCP has pointed out, the 7% employment goal in the regulations is not a mandate but rather a benchmark to identify when a contractor's efforts to employ people with disabilities should be carefully scrutinized. Ultimately, contractors' obligations are to do what the regulations require in order to promote the employment of people with disabilities. It is these underlying requirements that will determine the effectiveness of affirmative action efforts.

While we are concerned about the regulations' omission of certain requirements, we believe that these regulations can nonetheless provide a strong foundation for increasing employment of people with disabilities. We stand ready to work with you to help ensure that implementation and enforcement of the Section 503 regulations result in significant improvements in the employment of people with disabilities.

Sincerely,

ACCSES

American Council of the Blind

American Foundation for the Blind

The Arc of the United States

Autistic Self-Advocacy Network

Bazelon Center for Mental Health Law

Disability Rights Education and Defense Fund

Disability Rights Legal Center

Easter Seals

Learning Disabilities Association of America

Lutheran Services in America Disability Network

Mental Health America

National Council on Independent Living

National Disability Rights Network

United Spinal Association