



September 2, 2025

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

Submitted via [www.regulations.gov](http://www.regulations.gov)

Re: Comments On Proposed Rule, Modifications to the Regulations  
Implementing Section 503 of the Rehabilitation Act of 1973, as Amended,  
Docket No. OFCCP-2025-0003, RIN 1250-AA18

Dear Ms. Eschbach:

The undersigned members and allies of the Consortium for Constituents with Disabilities (CCD) Rights and Employment and Training Task Forces write in strong opposition to the above-captioned proposed rule and to urge you not to finalize the proposal to eliminate (1) the utilization goal in Section 503 of the Rehabilitation Act, (2) the annual analysis related to the utilization goal, (3) the requirement that covered contractors invite job applicants and people with disabilities to self-identify, and (4) the data collection requirements concerning how people with disabilities fare in the hiring process. CCD is the largest coalition of national organizations advocating for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of children and adults with disabilities in all aspects of society.

## **1. Background**

Section 503 of the Rehabilitation Act of 1973 prohibits employers with federal contracts of more than \$15,000 from discriminating against their employees on the basis of disability and requires employers with 50 or more employees and a contract of \$50,000 or more to maintain an affirmative action program to employ and advance qualified people with disabilities. 41 C.F.R. Part 60-741 (as adjusted for inflation pursuant to 41 U.S.C. § 1908). The proposed rule published by the Office of Federal Contract Compliance Programs (OFCCP) would eliminate several

critically important elements of OFCCP's current rule implementing the affirmative action requirements of Section 503: (1) the aspirational utilization goal that covered contractors have 7% of each job group in their workforce be people with disabilities (or 7% of the workforce for contractors with 100 or fewer employees), (2) the annual analysis related to that goal, (3) the requirement that covered contractors invite job applicants and employees to self-identify as having a disability, and (4) hiring data collection requirements. Without these provisions, the rule would become largely ineffective.

In 2013, following many years of concern that Section 503's affirmative action requirements had been implemented with little effectiveness, OFCCP issued an updated Section 503 rule that made a number of improvements to ensure that meaningful steps were taken to employ and advance individuals with disabilities. The most significant components of these improvements were the imposition of the 7% utilization goal and associated analysis and the requirement that contractors invite job applicants and employees to voluntarily self-identify if they believed they had a disability.

## **2. OFCCP Should Not Eliminate the Utilization Goal, the Annual Analysis Related to the Utilization Goal, and Data Collection about the Hiring Process**

### ***A Benchmark is Needed to Measure Progress in Complying with Section 503***

We strongly oppose eliminating the 7% utilization goal and the annual analysis of the contractor's progress in meeting Section 503's affirmative action requirements. The 7% utilization goal imposed by 41 C.F.R. § 60-741.45 is the core of Section 503 implementation. Prior to the imposition of a utilization goal, the Section 503 regulations provided little meaningful guidance for determining compliance with Section 503's affirmative action requirements. The 7% utilization goal has been a critically important benchmark against which compliance can be measured. Without any benchmark or yardstick against which efforts to employ and advance people with disabilities can be compared, efforts to determine whether affirmative action programs are achieving sufficient progress are not meaningful. For example, without the utilization goal, contractors would have no means of determining whether their outreach and recruitment efforts were sufficient for purposes of the assessment required by 41 C.F.R. § 60-741.44(f)(3), or whether their affirmative action program is effective for purposes of the assessment required by 41 C.F.R. § 60-741.44(h).

The benchmark is also important to ensure that contractors have clarity about what they should be striving to achieve. Without such a goal, contractors would be subject to a broad affirmative action requirement with little guidance about what they should aim for and whether they are taking sufficient steps to comply.

### ***The 7% Goal was Carefully Calculated and is Modest***

The 7% goal was carefully calculated using Census Bureau data to reflect the percentage of people with disabilities in the national workforce and those discouraged from applying for jobs. It is extremely modest, given that people with disabilities represent a much larger percentage of the U.S. population. Notably, the Equal Employment Opportunity Commission, in its similar regulations implementing the affirmative action requirements of Section 501 of the Rehabilitation Act for federal agency employers, set a 12% goal for employment of people with disabilities, and shortly after it did so, federal agencies met that benchmark on average.

### ***The Utilization Goal is Not a Quota***

Contrary to OFCCP's new concern that the utilization goal may be treated by some contractors as a quota, it points to no history of contractors doing so over the more than a decade since the goal has been in effect. Indeed, OFCCP has been crystal clear in the regulation and in its public communications that the goal is *not a quota*, nor is it a *requirement that will put a contractor out of compliance* with Section 503 if the contractor does not meet it. Instead, the goal is merely *aspirational*, simply for the purpose of enabling an analysis of progress against the goal as a benchmark. See also *Associated Builders & Contractors, Inc. v. Shiu*, 773 F.3d 257, 261 (D.C. Circuit 2014). Indeed, if contractors were truly treating the aspirational goal as a quota, many more of them would be meeting it.

### ***The Annual Analysis Tied to the Goal and the Hiring Data Collection are Critical***

The importance of the utilization goal is that it permits a meaningful analysis of contractors' progress in achieving compliance with Section 503: the current rule requires contractors to do an annual self-evaluation looking at whether they are meeting the 7% goal in each job group (or for smaller contractors, across the workforce) and if not, to identify barriers to achieving equal employment opportunity and planned steps to address those barriers. That analysis is at the heart of what has made Section 503 implementation meaningful and makes it possible for each contractor to have a meaningful strategy tailored to its own needs.

Relatedly, the data collection required by the current rule at 41 C.F.R. § 60-741.44(k)—the number of applicants, the number of those applicants who self-identified as having disabilities, the number of job openings and the number filled, and the number of applicants hired and number of those with disabilities hired—is also important for purposes of compliance. This data collection provides an important foundation for contractors to understand how people with

disabilities are faring in their hiring process. As the D.C. Circuit observed, “[a]bsent such data, it is ‘nearly impossible for the contractor and OFCCP to perform even rudimentary evaluations of the availability of individuals with disabilities in the workforce, or to make any sort of objective, data-based assessments of how effective contractor outreach and recruitment efforts have been in attracting individuals with disabilities as candidates.’” *Associated Builders & Contractors, Inc. v. Shiu*, at 264.

### **3. OFCCP Should Not Eliminate the Invitation to Self-Identify**

We strongly oppose OFCCP’s proposal to eliminate the requirement to invite applicants to self-identify as having a disability before and after a conditional job offer and invite employees to self-identify every five years. This requirement is another key element of ensuring that the requirements of Section 503 can be meaningfully implemented. While not every applicant or employee chooses to self-identify, providing people with the opportunity to do so is invaluable in providing a picture of whether the contractor’s outreach and recruitment efforts are leading people with disabilities to apply, how people with disabilities are faring in the hiring process, and how successful the contractor’s retention of employees with disabilities is.

OFCCP’s view that the Americans with Disabilities Act forbids a Section 503 rule requiring covered contractors to invite applicants and employees to self-identify is unfounded. OFCCP dismisses the advisory letter from the EEOC’s Legal Counsel explaining that the ADA does not foreclose such a rule as “merely reflect[ing] the opinion of one legal officer at the EEOC over ten years ago.” To the contrary, the position in the letter reflected the consistent position of the agency over decades, including in regulations promulgated by the Commission.

But more importantly, EEOC’s position is correct as a matter of law. Consistent with fundamental statutory construction principles, the EEOC’s regulations implementing Title I of the ADA provide that it “may be a defense to a charge of discrimination under this part that a challenged action is required or necessitated by another Federal law or regulation.” 29 C.F.R. § 1630.15(e). *See also* 29 C.F.R. § 1630.14(a) (“collecting information and inviting individuals to identify themselves as individuals with disabilities as required to satisfy the affirmative action requirements of section 503 of the Rehabilitation Act is not restricted by this part”). Further, the ADA explicitly provides that nothing in it “shall 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 . . . .” Consistent with that, EEOC’s implementing regulations permit employers to comply with laws that afford individuals with disabilities greater or equal rights. 29 C.F.R. § 1630.1(c)(2).

#### **4. The Utilization Goal and Associated Analysis, Self-Identification Invitation, and Data Collection Have Brought Important Improvements in Federal Contractors' Employment of People with Disabilities**

The current Section 503 rule has been a critically important tool in advancing employment of people with disabilities due to the enormous size of the contractor workforce (approximately one-fifth to one-quarter of the national workforce) and the significance of affirmative efforts to increase employment of people with disabilities. For years, people with disabilities have had the lowest employment rates of any group reported on by the Bureau of Labor Statistics, with a labor force participation rate well below half of that for people without disabilities. That rate has been slowly rising, however, since the 2013 rule became effective. The [2011 proposed Section 503 rule](#) cited a labor force participation rate of 21.8% for working age people with disabilities, compared with a rate of 70.1% for working age people without disabilities. In [2024](#), the labor force participation rate for working age people with disabilities was 24.5%, compared with 68.1% for working age people without disabilities.

The 2013 rule has had an important impact on practices designed to increase employment of people with disabilities in the contractor workforce. The majority of contractors responding to a large [survey](#) published in 2020 reported that they had changed their affirmative action goals in response to the 2013 regulations “to a great extent” or “somewhat.” Large majorities of contractors reported they were using or planned to use the disability self-identification data to assess progress toward the 7% utilization goal (90%), gauge success in outreach and recruitment (87%), assess progress in hiring (86%), assess progress in retention (66%), and review progress in advancement (61%). Most contractors initiated or increased recruitment efforts and improved employment policies for people with disabilities. As OFCCP highlighted, the 2013 rule has resulted in concrete positive changes that have made contractors’ workplaces more accessible and able to meet the needs of workers with disabilities—for example, OFCCP observed that one contractor reviewed in a Section 503 focused review installed automatic door openers for individuals with disabilities on every door at the facility, including bathrooms, breakrooms, and entrance/exit doors.<sup>1</sup>

While there is little public data on employment of people with disabilities among federal contractors, the data available show that the 2013 rule has boosted employment of people with disabilities. A [2020 National Council on Disability Report](#) showed that between the end of Fiscal Year 2018 and the beginning of Fiscal Year 2020, a small but steadily increasing number of covered contractors who participated in Section 503 compliance reviews were meeting the utilization goal.

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<sup>1</sup> OFCCP, *Section 503 Focused Reviews, Fiscal Year 2020 Annual Report*, at 14.

Further, EEOC's parallel utilization goal for federal agency employment of people with disabilities under Section 501 of the Rehabilitation Act has shown the positive impact of a utilization goal on employment of people with disabilities. The Section 501 utilization goals of 12% for people with disabilities and 2% for people with targeted disabilities were imposed in 2017. According to the [EEOC](#), between FY 2016 and FY 2020, the rate of participation of people with disabilities in the federal workforce increased by 8.5% and the rate of participation of people with targeted disabilities increased by 81.2%.

For the reasons above, we strongly urge that OFCCP retain the utilization goal, the annual analysis related to that goal, the hiring data collection requirement, and the requirement to invite applicants and employees to voluntarily self-identify. These requirements are critically important to ensure that Section 503 is meaningfully implemented and they provide certainty for contractors with respect to what they need to do to comply. Eliminating them would hurt people with disabilities and contractors alike.

Sincerely,

Access Ready, Inc.

The Advocacy Institute

American Association of People with Disabilities

American Association on Health and Disability

American Civil Liberties Union

American Foundation for the Blind

The Arc of the United States

Association of People Supporting Employment First (APSE)

Association on Higher Education and Disability (AHEAD)

Autism Society of America

Autism Speaks

Autistic Self Advocacy Network

Autistic Women & Nonbinary Network

Bazelon Center for Mental Health Law

Center for Public Representation

CommunicationFIRST

Council of State Administrators of Vocational Rehabilitation

Disability Belongs

Disability and Health Justice Program, Legal Aid at Work

Disability Law Center of Utah

Disability Rights and Social Justice Clinic, CUNY School of Law

Disability Rights Arkansas

Disability Rights Arizona

Disability Rights California

Disability Rights Center – New Hampshire, Inc.

Disability Rights Connecticut

Disability Rights Education and Defense Fund

Disability Rights Florida

Disability Rights Iowa

Disability Rights Louisiana

Disability Rights Maine

Disability Rights New Jersey

Disability Rights North Carolina

Disability Rights Ohio

Disability Rights Oregon

Disability Rights Pennsylvania

Disability Rights South Carolina

Disability Rights Washington

Disability Rights of the Virgin Islands

Epilepsy Foundation of America

Kentucky Protection and Advocacy

Lakeshore Foundation

Legal Aid at Work

Liberty Resources, Inc.

Muscular Dystrophy Association

National Association of Councils on Developmental Disabilities

National Association of the Deaf

National Association for Rights Protection and Advocacy

National Disability Institute

National Disability Rights Network

National Disabled Legal Professionals Association

National Down Syndrome Society

National Partnership for Women and Families

National Rehabilitation Association

Native American Disability Law Center

Nevada Disability and Advocacy Law Center

North Dakota Protection and Advocacy Project

Oklahoma Disability Law Center

Paralyzed Veterans of America

Perkins School for the Blind

SPAN Parent Advocacy Network

TASH

United Spinal Association