COMMITTEE ON
EDUCATION AND WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

September 2, 2025

Catherine L. Eschbach
Director, Office of Federal Contract Compliance Programs
U.S. Department of Labor
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

Dear Director Eschbach:

I write to express serious concerns with the Department of Labor's (DOL or Department) proposed changes to the implementing regulations for Section 503 of the *Rehabilitation Act of 1973* (Section 503). Such regulations prohibit federal contractors and subcontractors with contracts valued at $15,000 or more (contractors) from discriminating against disabled employees and applicants.[1] Additionally, contractors with 50 or more employees and a single federal contract or subcontract of $50,000 or more are required to develop and maintain an affirmative action program to employ, retain, and promote qualified disabled individuals. DOL's proposed changes to Section 503's implementing regulations may hinder the progress toward equal opportunity and higher levels of employment for people with disabilities in federal contracts. As such, I urge DOL to withdraw this proposed rule and leave the existing regulations in place.

On January 21, 2025, President Trump issued Executive Order 14173 (E.O. 14173), "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," revoking Executive Order 11246 (E.O. 11246), which prohibited covered contractors from discriminating in employment based on race, color, religion, sex, sexual orientation, gender identity, and national origin, and required

[1] Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as amended, 90 Fed. Reg. 28494 (July 1, 2025) (to be codified at 41 C.F.R Parts 60–30 and 60–741) [hereinafter Proposed Rule for Section 503].

contractors to take affirmative action with respect to these protected individuals.[2] E.O. 14173 did not and cannot impact Section 503, which is statutory and remains the law of the land. However, since E.O. 11246 had been in effect since 1965, the Section 503 regulations referenced E.O. 11246, and DOL is proposing to eliminate these cross-references.[3] Additionally, DOL is proposing to rescind requirements in the regulations that contractors 1) invite applicants and employees to disclose their disability status and 2) target a "utilization goal" of 7 percent for employment of disabled workers.

People with disabilities are far less likely to be employed than their non-disabled counterparts. The unemployment rate for people with disabilities who are actively seeking work is twice that of the general population, and the labor-force participation rate for people with disabilities is about 78% for non-disabled people between the ages of 16-64 but less than half that for disabled individuals in the same age group. For at least the past 50 years, since the passage of the *Rehabilitation Act of 1973*, it has been the policy of the federal government to improve employment outcomes for people with disabilities.[4] Section 504 of the Act prohibits discrimination on the basis of disability by programs receiving federal funding; Section 503 prohibits federal contractors from engaging in disability discrimination and also requires them to engage in affirmative action with regard to disabled employees and applicants.[5]

In this proposed rule, DOL appears to suggest that efforts to improve employment outcomes for people with disabilities may violate the *American with Disabilities Act's* (ADA) prohibition against disability-related inquiries. Specifically, the proposed rule states that Section 503 induces federal contractors to "trespass the ADA's restrictions on pre-conditional job offer disability inquiries in order to avoid regulatory issues with DOL." [6] The ADA prohibits pre-employment inquiries regarding disability,[7] but there is ample evidence that this prohibition was not intended to prohibit applicants from voluntarily disclosing their disability status or prevent employers from inviting voluntary disclosure. For example, a disclosure is permissible so that the applicant can receive a reasonable accommodation in order to participate in the application process or in order to benefit from affirmative action under Section 503. Moreover, when Congress passed the ADA, it was well aware that Section 501 of the Rehabilitation Act required federal agencies to develop and implement affirmative action plans for individuals with disabilities and Section 503 of the Rehabilitation Act mandated that federal contractors and subcontractors take affirmative action to recruit, hire, and promote qualified individuals with disabilities. If Congress had intended to make it impossible for federal agencies or contractors to identify disabled applicants and employees in order to implement affirmative action plans, they would have done so explicitly.

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[2] Exec. Order No. 14,173, 90 Fed. Reg. 863330 (Jan. 31, 2025) (Ending Illegal Discrimination and Restoring Merit-Based Opportunity), https://www.federalregiste r.gov/documents/2025/01/31/2025-02097/ending-illegal-discrimination-and-restoring-merit-based-opportunity.
[3] *Supra* note 1.
[4] 29 U.S.C. § 701.
[5] *Id.*
[6] Modifications to the Regulations Implementing Section 503 of the Rehabilitation Act of 1973, as amended, 90 Fed. Reg. 28494 (July 1, 2025).
[7] 42 U.S.C. § 12112(d); *see also* Prohibiting Illegal Discrimination in Registered Apprenticeship Programs, 90 Fed. Reg. 28947 (2015)).

Additionally, the goal of the ADA was to prevent discrimination and promote better employment outcomes for people with disabilities. This is evidenced by the fact that in the National Council on Disability report containing the original legislative proposal that would become the ADA, the authors note that:

> In recent years, there have been some promising programs in the private sector to remove barriers and achieve participation by persons with disabilities. Many private companies have begun programs to hire and advance employees with disabilities. In 1985, the President's Committee on Employment of the Handicapped and the Dole Foundation published a booklet, *Disabled Americans at Work,* that chronicles efforts of many of America's major corporations to train and employ workers with disabilities.[8]

This suggests very strongly that efforts to identify, train, and employ workers with disabilities does not contravene the ADA's prohibition against pre-employment disability inquiries.

In 2018, during the first Trump Administration, the EEOC declared in an informal discussion letter in response to an inquiry from a member of the public that for more than 20 years, it had been recognized that "the ADA permits affirmative action on behalf of individuals with disabilities, whether legally required or voluntarily undertaken."[9] The EEOC's letter goes on to reaffirm enforcement guidance from 1995 on "Preemployment Disability-Related Questions and Medical Examinations Under the ADA,"[10] in which the EEOC explained that employers may ask job applicants to voluntarily self-identify as individuals with disabilities for affirmative action purposes provided that the employer: (1) is undertaking affirmative action pursuant to either a legal requirement *or* voluntarily to benefit individuals with disabilities; (2) states clearly that the information is being used solely in connection with its affirmative action obligations or efforts; and (3) states clearly that the information is being requested on a voluntary basis, that it will be kept confidential in accordance with the ADA, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with the ADA.[11]

It must be noted that no affirmative action for people with disabilities can be effective without some mechanism for offering individuals an opportunity to voluntarily disclose hidden disabilities; otherwise only those with obvious disabilities, for example wheelchair users, will have an opportunity to benefit from affirmative action. This is entirely inconsistent with the ADA, which purposely defines disability broadly to include hidden disabilities such epilepsy,

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[8] National Council on Disability, *Towards Independence, An Assessment of Federal Laws and Programs Affecting Persons with Disabilities--With Legislative Recommendations,* https://www.ncd.gov/report/national-disability-policy-a-progress-report-february-1986/ (last visited Aug. 13, 2025).
[9] Equal Employment Opportunity Commission, Informal Discussion Letter (July 10, 2018), https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-320 (last visited Aug. 13, 2025).
[10] Equal Employment Opportunity Commission, Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations, www.eeoc.gov/policy/docs/preemp.html (last visited Aug. 13, 2025).
[11] *Id.*

HIV positive status, learning disabilities, and psychiatric disabilities that can pose significant barriers to employment but may not be ascertainable without voluntary disclosure.

While the Department's assertion in the proposed rule that nothing in the text of Section 503 requires the use of a utilization goal may be correct, the Department is also not proposing any alternative enforcement measures that would enable the Department to ensure that covered employers are engaging in affirmative action in accordance with Section 503 and the terms of their government contracts. Without the ability to invite voluntary disclosure, a utilization goal, and requirements that contractors collect data regarding their progress towards that goal, Section 503 becomes virtually meaningless and cannot be expected to make progress towards higher levels of employment for people with disabilities.

Accordingly, I urge the Department to withdraw the proposed rule. It would negatively impact the employment of workers with disabilities in federal contracts and is contrary to the letter and spirit of both Section 503 and ADA to prevent discrimination and promote better employment outcomes for people with disabilities.

Sincerely,

ROBERT C. "BOBBY" SCOTT
Ranking Member