

July 6th, 2021

Shalanda Young
Acting Director, Office of Management and Budget
725 17th Street NW
Washington, DC 20503

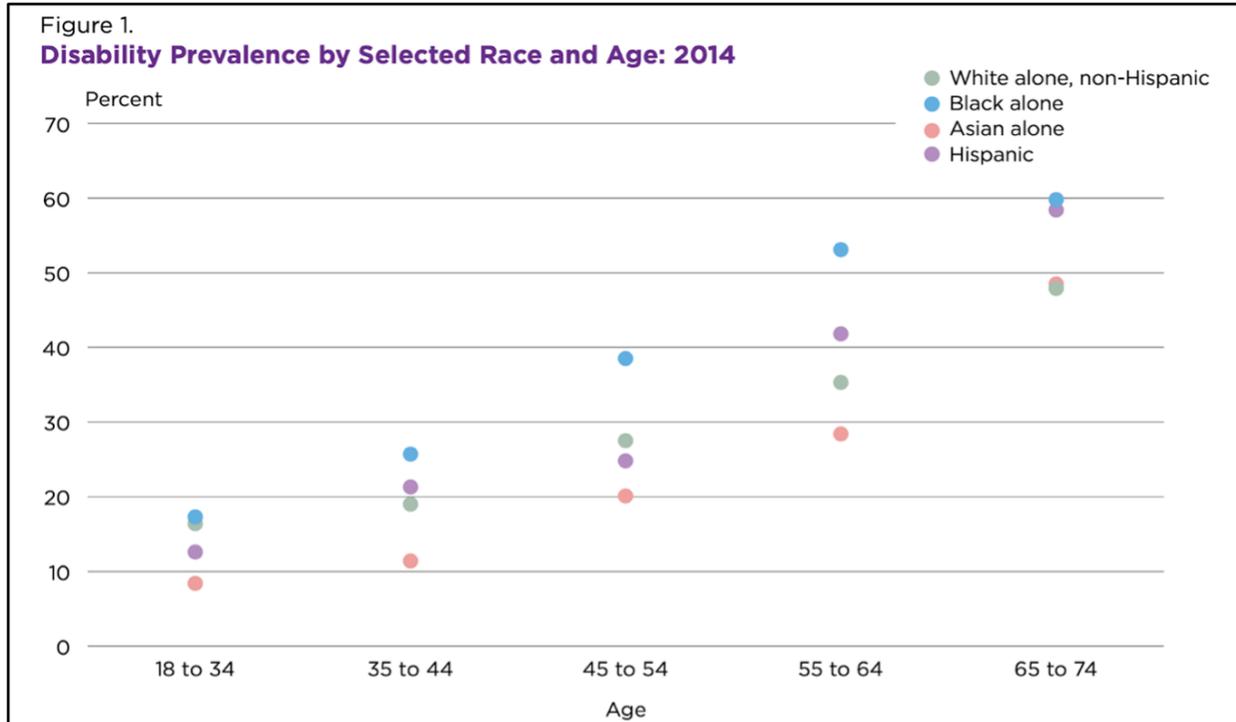
Re: Comments on Request for Information, 86 FR 24029: Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government

Dear Ms. Young,

We write to provide feedback on OMB's recent Request for Information (Methods and Leading Practices for Advancing Equity and Support for Underserved Communities Through Government, OMB-2021-0005). This comment specifically seeks to address Area 3 on procurement and contracting, highlighting areas designed to address equity for people with disabilities. We specifically seek to communicate areas of common ground between disability and labor advocates, with the goal of presenting a shared agenda for disability-inclusive federal procurement and contracting. Dating back to the creation of the federal vocational rehabilitation program, disability rights advocates and organized labor have made common cause to promote the integration of people with disabilities into the workforce. We continue this tradition in our submission to you.

Disability represents a key dimension of equity. As reflected within the Americans with Disabilities Act, "physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination." Workers with disabilities are significantly underrepresented in the labor force. While the federal government has undertaken various prior efforts to promote employment of people with disabilities through procurement and contracting, we believe that further efforts are required to fully meet our society's obligation to equity and inclusion for people with disabilities.

In addition, disability represents an important dimension for other equity efforts. As reflected in Census Bureau data, African-Americans are more likely to have a disability than whites across all age groups, while Hispanic Americans are more likely to have a disability in older age cohorts. Failing to account adequately for disability in equity efforts would represent a missed opportunity to advance equity in an intersectional fashion, acknowledging the complexities of the barriers facing marginalized populations and the ways in which systemic inequality of different types interact and thus must be addressed in a holistic fashion.



Source: Taylor, D. M. (2018). [Americans with disabilities: 2014](#). US Census Bureau, 6.

We highlight the following areas for OMB’s consideration as it seeks to promote greater equity in federal procurement and contracting efforts.

Section 503 Improvements:

Section 503 of the Rehabilitation Act of 1973 requires large federal contractors to take affirmative action to employ people with disabilities. The Department of Labor’s enforcement of Section 503 presents key opportunities to address a number of the goals stated in the RFI, including identifying: “approaches and methods for assessing equity in agency procurement and contracting processes,” “promising methods and strategies for assessing equity in internal agency practices and policies,” addressing “barriers that underserved communities and individuals may face in participation in agency procurement and contracting opportunities,” and identifying “opportunities in current agency policies, regulations, and guidance to address affirmatively and equitably the underlying causes of systemic inequities in society,” and “opportunities in agency community engagement processes to engage with and empower marginalized, vulnerable, or underserved communities more directly to advance equitable policymaking.”

Current Section 503 rules provide lower expectations for federal contractors’ affirmative action efforts than parallel rules under Section 501 of the Rehabilitation Act, which requires federal agencies to take affirmative action to employ people with disabilities. Under the Obama Administration, the Labor Department promulgated new Section 503 regulations that for the first time required an employment goal—that 7% of a contractor’s workforce be individuals with disabilities. This was a modest goal, particularly since people with disabilities constitute more than 20% of the U.S. population. Subsequently, the EEOC issued regulations under Section 501 of the Rehabilitation Act, reaffirming and expanding on

its guidance to federal agencies. In those regulations, the EEOC set a more appropriate goal for federal agencies pursuant to Section 501's affirmative action mandate. The EEOC requires federal agencies to establish a utilization goal of 12% of people with disabilities within the agency's general workforce. It then requires that within that 12%, the federal agency should have a separate utilization goal of 2% for employment of individuals with significant disabilities. (These are called "targeted disabilities" in the EEOC's regulations and the regulations include a list of those disabilities.)

These Section 501 goals, along with assertive implementation efforts, played an important role in helping the Obama Administration achieve its goal of hiring 100,000 new employees with disabilities in federal agencies, including people with significant disabilities. By contrast, based on data provided by OFCCP, federal contractors—who employ one quarter of the national workforce—have been slow to hire people with disabilities. Of significant importance, we have no data on how many people with significant disabilities have been hired by federal contractors because there is no requirement for such contractors to track such data.

This is a significant lost opportunity. Improvements to Section 503 present an important opportunity to bring equity for people with disabilities by increasing their opportunities for employment and self-sufficiency, and helping to provide a pathway out of poverty. The labor force participation rate of people with disabilities remains the lowest of any group tracked by the Bureau of Labor Statistics, and was lowered even further due to the pandemic.

The Department of Labor, through the Office of Federal Contract Compliance (OFCCP), should be asked to take a number of steps to improve implementation and enforcement of Section 503:

- First, OFCCP should revisit the Section 503 regulations and align them with the EEOC's Section 501 regulations. The fact that employment rates for people with all disabilities in the federal government are significantly higher than those in the federal contractor workforce—indeed, across much of the federal government these rates exceed Section 503's aspirational goal of 7% people with disabilities—demonstrates that higher rates are achievable. In addition, federal agencies are slowly achieving the aspirational goal of 2% for people with significant disabilities. The Department of Labor's aspirational goal is both too low for people with all disabilities and omits the important sub-goal for people with significant disabilities who have historically been the most underemployed. The employment positions offered by federal contractors are not radically different from those in the federal government. People with disabilities hold a wide variety of jobs in the federal government, including jobs with management or supervisory responsibilities, jobs that are physically strenuous, and jobs that expose individuals to taxing or hazardous conditions. There is no reason why the goals of Section 501 cannot be extended to Section 503 as well.
- Second, OFCCP should take steps in its enforcement efforts, including through its compliance reviews, to look at the extent to which people with targeted disabilities are represented in contractors' workforces to ensure that Section 503 implementation is effective for individuals with all types of disabilities, including individuals with targeted disabilities.

- Third, OFCCP should be provided resources to engage in aggressive enforcement of Section 503. The agency has had staffing resources to review compliance of only a miniscule percentage of covered contractors. As a consequence, according to OFCCP's own statements, many covered contractors do not even meet the most basic requirements of Section 503, such as having an affirmative action plan. OFCCP should receive the resources necessary to significantly increase staff in order to review compliance of a larger number of federal contractors (including compliance with Section 503, the Vietnam Era Veterans' Readjustment Assistance Act, and Executive Order 11246). It should also collect and make available data from its compliance reviews, including data on disability employment patterns. This data can be used for research purposes with the data anonymized so that names of particular contractors are not available. Such data would be extremely valuable for purposes of identifying effective strategies to increase employment of people with disabilities, particularly people with significant disabilities.
- Fourth, OFCCP should require covered contractors to have formal arrangements with state disability service systems, state vocational rehabilitation agencies, disability organizations such as independent living centers, and other organizations focused on assisting individuals with disabilities to secure and maintain employment.
- Fifth, OFCCP should coordinate its review and enforcement work with national and local disability organizations that may help such reviews to be more efficient. In addition, OFCCP should make greater use of these organizations to assist in identifying job accommodations and training contractors to overcome attitudinal barriers that hinder employment and advancement of individuals with disabilities, including people with significant disabilities.

AbilityOne Reform:

The AbilityOne program is a contracting preference for employers that predominantly hire people with certain disabilities (blind individuals and people with significant disabilities) to provide goods or services to the federal government. The program reflects the values framework of an earlier era in disability policy that is now outdated. AbilityOne incentivizes segregated employment rather than incentivizing competitive, integrated employment for individuals with significant disabilities. The National Council on Disability (NCD) has noted that AbilityOne "undermines current national disability policy goals to create competitive integrated employment opportunities for people with disabilities."

The Biden Administration has strongly endorsed the goal of competitive integrated employment opportunities for people with disabilities. We appreciate the various ways in which the Administration has manifested this commitment. However, a failure to make reform of the AbilityOne program a high priority for the new Administration would undermine that commitment in a significant manner.

In addition, we have noted a growing problem of AbilityOne being utilized to undermine collective bargaining rights in the federal contracting workforce, a problem made worse by the extent to which workers under AbilityOne contracts have seen their collective bargaining rights limited.

In order to address these two distinct, but interrelated issues of segregation and undermining of collective bargaining rights, we recommend comprehensive reform of the AbilityOne program, including:

- Consistent with the recommendations of the 898 Panel on Department of Defense and AbilityOne Contracting Oversight, Accountability, and Integrity, revision of the implementation of the present labor hour percentage requirements under AbilityOne to give credit for placement into competitive integrated employment and the placement of people with significant disabilities into supervisory positions.
- Recognition of the right of workers under the AbilityOne program, and workers with disabilities more broadly, to unionize and engage in collective bargaining.
- Consistent with the recommendations of the Department of Labor Advisory Committee for Increasing Competitive Integrated Employment for Individuals with Disabilities:
 - the establishment of a more restrictive definition of significant disability under the AbilityOne program, tying the present definition to receipt of long-term services and supports or prior receipt of Supplemental Security Income, Social Security Disability Insurance or Veteran’s Disability Compensation.
 - the documentation of a significant disability should be determined independently and not by the contractors who compete for the federal contracts. This aligns closely with the NCD’s recommendation of separating the roles of evaluator of eligibility for AbilityOne employment and employer, recognizing the fundamental conflict of interest that emerges from the same non-profit agencies serving both roles.
 - authorization for for-profit employers to participate within the AbilityOne program, allowing them to meet their labor hour percentage requirements through placement of individuals with significant disabilities in other areas of their business beyond the scope of the AbilityOne contracted work, thereby generating labor hour “offsets” that will enable them to compete for AbilityOne contracts.¹ Such a program of offsets should include:
 - A requirement that offset hours be worked by individuals with significant disabilities in competitive integrated settings, consistent with the definition of competitive integrated employment articulated within the Department of Education’s WIOA regulations;
 - Arrangements to facilitate the participation of small businesses within the AbilityOne program;
 - Limited pilot programs to reduce the labor hour percentage required to participate in the AbilityOne program in order to evaluate the effectiveness of different labor hour percentages at securing the participation of for-profit employers within AbilityOne and the placement of individuals with significant disabilities in competitive integrated employment.

Section 8(a):

The Section 8(a) Business Development program prioritizes small businesses owned by socially and economically disadvantaged people for federal contracts. At present, people with disabilities are not

¹ If permitting for-profit contractors to participate in the AbilityOne program requires modification of the statute, we urge the Biden Administration to support such an amendment to the statute developed in collaboration with the listed signatories.

included within the groups presumed to be socially and economically disadvantaged for the purposes of 8(a). We recommend that the Small Business Administration develop a list of targeted disabilities for inclusion within the list of presumptive categories of social and economic disadvantage. We also recommend that individuals who previously received Supplemental Security Income or Social Security Disability Insurance also be included in the list of presumptively socially and economically disadvantaged groups under 8(a). Furthermore, we urge the SBA to consider other investments it can make to facilitate entrepreneurship opportunities for people with disabilities.

Data Collection/Research Partnerships:

Federal procurement and contracting efforts represent a significant policy intervention for the federal government. However, relatively little data exists to support independent evaluation of the effectiveness of such interventions in the context of disability. We recommend that significant investments be made to improve disability data collection in federal procurement and contracting. In particular, we urge the addition of disability status and targeted disability status to the EEO-1 Data Collection mandated for large employers. We also believe that DOL should require employers to report information on disability employment collected under Section 503 in an appropriately anonymized fashion to the federal government for the production of an anonymized data set for research use.

We look forward to working with you to improve equity and inclusion for people with disabilities within federal procurement and contracting and stand ready to collaborate with you as your partners in our shared mission of building a more inclusive and just world. Please direct any further inquiries to Glenn Adler, Deputy Policy Director (Property Services) of the Service Employees International Union, at 202-730-7335 or by e-mail at glenn.adler@seiu.org.

Sincerely,

Disability Rights Partners:

The Arc of the United States
American Association of People with Disabilities
Association of People Supporting Employment First (APSE)
Association on Higher Education and Disability
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
Center for Public Representation
Disability Rights Education and Defense Fund
Disability Policy Consortium
Easter Seals
National Down Syndrome Society
TASH
United Cerebral Palsy
Viscardi Center

Labor Partners:

Communications Workers of America
International Brotherhood of Teamsters

Service Employees International Union
SEIU Local 49
SEIU 32BJ
Strategic Organizing Center
Transport Workers Union of America
National Employment Law Project