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November 7, 2013

The Honorable Tom Harkin  
Chairman  
The Honorable Lamar Alexander  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Darrell E. Issa  
Chairman  
The Honorable Elijah Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
House of Representatives

Subject: *Department of Labor, Office of Federal Contract Compliance Programs: Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor, Office of Federal Contract Compliance Programs (OFCCP) entitled “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities” (RIN: 1250-AA02). We received the rule on October 28, 2013. It was published in the *Federal Register* as a final rule on September 24, 2013, with an effective date of March 24, 2014. 78 Fed. Reg. 58,682.

The final rule revises the current regulations implementing the nondiscrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. Section 503 prohibits discrimination by covered federal contractors and subcontractors against individuals on the basis of disability and requires affirmative action on behalf of qualified individuals with disabilities. The final rule adopts several key revisions proposed in the notice of proposed rulemaking. The final rule strengthens the affirmative action provisions by, among other things, requiring data collection pertaining to applicants and hires with disabilities and establishing a utilization goal for individuals with disabilities to assist in measuring the effectiveness of the contractor’s affirmative action efforts. However, some of the proposals in the notice of proposed rulemaking (NPRM), particularly with regard to the creation and maintenance of certain records and the conduct of certain affirmative action obligations, have been eliminated or made more flexible in order to reduce the compliance burden on contractors. To implement changes necessitated by the passage of the ADA Amendments Act (ADAAA) of 2008, the final rule also adopts revisions to the definitions and to the nondiscrimination provisions of the implementing regulations. The specific revisions made, and the rationale for making them, are set forth in the final rule.

Enclosed is our assessment of OFCCP's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that OFCCP complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Debra A. Carr  
Director, Division of Policy, Planning  
and Program Development, OFCCP  
Department of Labor

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF LABOR,  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS  
ENTITLED  
"AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS  
OF CONTRACTORS AND SUBCONTRACTORS REGARDING  
INDIVIDUALS WITH DISABILITIES"  
(RIN: 1250-AA02)

(i) Cost-benefit analysis

OFCCP analyzed the costs and benefits of the final rule. OFCCP states the section 503 rule establishes a utilization goal for employing individuals with disabilities of 7 percent. To meet the goal, OFCCP estimates that federal contractors would hire an additional 594,580 individuals with disabilities. OFCCP believes there are tangible and intangible benefits from investing in the recruitment and hiring of individuals with disabilities. Among them are employer tax credits, access to a broader talent pool, an expanded pool of job applicants, access to new markets by developing a workforce that mirrors the general customer base, lower turnover based on increased employee loyalty, and lower training costs resulting from lower staff turnover. OFCCP states that these projected hires, some of whom will require reasonable accommodation, will not add significant costs for the employers. According to OFCCP, the requirement to provide reasonable accommodation exists under the Americans with Disabilities Act (ADA) and now exists under the ADA Amendments Act for employers. OFCCP states that this is not a new obligation created by the final rule.

OFCCP estimates that first-year costs in the final rule to be in the range of \$349,510,926 to \$659,877,833. This includes: (1) one-time costs, (2) recurring costs, (3) capital start-up costs, and (4) operations and maintenance costs. (OFCCP states that these costs include both establishment and contractor company level costs.) According to OFCCP, the recurring costs in years that contractors do not invite all employees to voluntarily self-identify as an individual with a disability will range from \$162,371,816 to \$395,258,387. OFCCP notes that the recurring costs in the years that contractors do invite all employees to voluntarily self-identify as an individual with a disability will range from \$242,345,778 to \$480,476,442.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

Based on OFCCP's analysis estimating the impact on small entities that are covered contractors required to comply with the final rule, OFCCP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule includes a federal mandate that may result in excess of \$100 million in expenditures in the private sector in any one year. Accordingly, OFCCP provided a written statement to accompany the final rule pursuant to 2 U.S.C. § 1532.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

On December 9, 2011, OFCCP published a NPRM in the *Federal Register* with a 60-day comment period. 76 Fed. Reg. 77,056. On February 10, 2012, after receiving several requests to extend the public comment period, OFCCP published a subsequent notice in the *Federal Register* extending the public comment period an additional 14 days. 77 Fed. Reg. 7108. OFCCP received more than 400 comments from commenters representing diverse perspectives including: 185 individuals, 105 contractors, 41 groups representing contractors, 48 disability and veterans' rights advocacy groups, and 11 governmental entities. OFCCP notes that the commenters raised a broad range of issues, including concerns with the cost and burden associated with the proposed rule, the extended recordkeeping requirements, the proposed utilization goal, and the new categories of data collection and analyses. OFCCP carefully considered all comments in the development of the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

OFCCP states that affected parties do not have to comply with the new information collection requirements in 40 C.F.R. §§ 60-741.5(a), paragraph 7; 60-741.42; 60-741.44(f)(4); 60-741.44(k); 60-741.45; and 60-741.80(a) (requirement to maintain records under §§ 60-741.44(f)(4) and 60-741.44(k)) until it publishes a notice in the *Federal Register* stating that the Office of Management and Budget has approved these information collection requirements.

Statutory authorization for the rule

OFCCP states that the final rule is authorized by section 503 of the Rehabilitation Act of 1973, as amended.

Executive Order No. 12,866 (Regulatory Planning and Review)

OFCCP states that this is an economically significant rule and will have an annual effect on the economy of \$100 million or more.

Executive Order No. 13,132 (Federalism)

OFCCP reviewed the final rule and determined that it does not have federalism implications, substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.