

August 1, 2012

The Honorable Cass R. Sunstein
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget (OMB)
NEOB
725 17th Street, NW
Washington, DC 20503

Dear Mr. Sunstein:

The undersigned organizations are writing to express our strong concerns regarding the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) notices of proposed rulemaking (NPRM) revising the regulations implementing Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act. Specifically, we would like to bring to your attention a new report from the Center for Corporate Equality (CCE). CCE's report finds OFCCP's own enforcement data shows that "discrimination against protected veterans and individuals with disabilities, especially with regard to hiring, is not a frequent finding that OFCCP finds and may not support the major shift in policy that the proposed regulations would necessitate." As a result, the report concludes that OFCCP's enforcement "results fail to provide the evidence needed to make an evidence-based policy decision such as those proposed in the regulations."

The findings of the study are astonishing. Based on the analyses, which are derived from OFCCP's own enforcement data, from 2004 to June 2012, less than 0.021% of federal contractor establishments had findings of discrimination with regard to protected veterans or individuals with disabilities. Likewise, from 2007 through 2011, less than 0.01% of the more than 22,000 routine compliance investigations conducted by OFCCP resulted in findings of discrimination.

A recent cost analysis from Applied Economic Strategies estimates that the first year cost of *just one* of the proposed rules will be at least \$5.9 billion. This is significantly higher than the \$81.1 million estimated by OFCCP, and well in excess of the \$100 million threshold that triggers a more detailed review of the regulatory burdens and potential alternatives required under the Unfunded Mandates Reform Act. The real costs of these two proposed rules are too significant to ignore in order to fix a problem that does not exist.

If the proposed regulations are implemented, a major, costly policy shift will occur – redefining affirmative action to require much more than good-faith efforts. Yet there is not significant evidence to suggest that the underemployment of veterans or individuals with disabilities is a result of widespread employer discrimination or shortcomings in employers' current affirmative action and outreach efforts. Indeed, OFCCP's own enforcement data does not support the major shift in policy that the proposed regulations would necessitate, especially changes as costly as those proposed.

We understand that OFCCP has not yet forwarded the final rule to OMB for review, but, in anticipation that the agency may do so in the near future, we ask that the enclosed study be considered.

Thank you for your consideration in this matter.

Associated General Contractors
HR Policy Association
National Association of Manufacturers
U.S. Chamber of Commerce

Enclosure

cc (with enclosure):

The Honorable Hilda Solis
Patricia Shiu