



July 14, 2014

Ms. Bernadette Wilson
Acting Executive Officer
Executive Secretariat, Equal Employment Opportunity Commission
U.S. Equal Employment Opportunity Commission,
131 M Street NE
Washington, DC 20507

Dear Ms. Wilson:

On behalf of its 3,000+ members, APSE is pleased to provide the following comments regarding the Federal Sector's Obligation To Be a Model Employer of Individuals With Disabilities. APSE is a national advocacy organization focused exclusively on the advancement of employment and careers for individuals with disabilities in the general workforce. We are offering comments on those specific areas, in which APSE feels it has sufficient knowledge of, regarding efforts to enhance the ability of the federal government to be a model employer of people with disabilities.

1. What barriers do individuals with disabilities face in the federal recruitment and hiring process? For example, are there specific job qualifications that frequently exclude individuals with disabilities from federal jobs they can perform? What kinds of regulatory requirements, other than the existing requirement not to discriminate based on disability, might effectively address these barriers?

Individuals with disabilities face a number of barriers in the federal recruitment and hiring processes. Among these are the following:

- Job qualifications that categorically exclude people with disabilities (e.g., exclusion of individuals with psychiatric disabilities for specific jobs), or that have job qualifications unrelated to the essential functions of the job, that result in exclusion of individuals with disabilities.
- Limited use of Schedule A, due to lack of awareness of Schedule A by job seekers, and lack of understanding by Selective Placement Coordinators regarding how to utilize Schedule A.
- Lack of awareness of available federal positions by job seekers with disabilities.

Regulatory requirements that would effectively address these barriers include the following:

- Requiring federal agencies to review their job qualification standards on an annual basis to ensure they are fully reflective of only the essential job functions, and to also determine whether any of the standards screen out people based on disability and whether those standards can be modified.
- Requiring federal agencies to include in their MD-715 reports to EEOC all instances where job applicants were disqualified for a disability-related reason, so that such reasons can be systematically analyzed and appropriate action taken.
- Requiring federal agencies to have linkage agreements with a variety of organizations and entities that can assist with recruitment of job seekers with disabilities, including but not limited to public Vocational

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Rehabilitation, state/county mental health and developmental disability agencies, independent living centers, community rehabilitation providers, Ticket to Work Employment Networks.

- Proscribing specific criteria for federal agencies in terms of full accessibility for job application processes, and a high degree of awareness for job applicants regarding requesting reasonable accommodations.
- A review of the Schedule A processes and procedures to ensure a high degree of awareness of Schedule A by both federal agencies and job applicants, and development of goals and benchmarks for federal agencies in terms of use of Schedule A.

2. Would requiring federal agencies to adopt employment goals for individuals with disabilities help them to become model employers of individuals with disabilities? What are the advantages and disadvantages of requiring federal agencies to adopt employment goals? How and what information should be used to analyze the benefits and costs of such a requirement?

Adoption of employment goals would absolutely help federal agencies become model employers of individuals with disabilities, by creating accountability, and also ensuring awareness and ongoing attention to this issues. The primary challenge of such an approach is the need for disclosure of disability by individuals in order to be counted towards the goal. The analysis of cost vs. benefit should be based on the amount of time and effort it takes to developing and tracking such a goal, and whether it is having any impact on the employment rate of people with disabilities in the federal government. This is not an analysis that can be conducted over the short-term, and will take time in terms of implementation of a goal-setting process and the ultimate results.

- i. **Should the regulations give federal agencies the option of either meeting a uniform goal(s) set by EEOC or meeting a goal(s) which they set after considering factors enumerated in the regulations? What are the advantages and disadvantages of this approach, and what factors are most relevant for establishing goals?**

The federal workforce should be reflective of the world at large. As such, the goal should be uniform. Letting each federal agency set their own goal is also likely to introduce a level of complication and manipulation of information that is both time consuming and potentially a distraction from the primary goal. In addition, in APSE's view, the regulations should require agencies to impose a sub-goal that measures employment of people with significant or "targeted" disabilities.

- ii. **Should the goal(s) be applied to specified job categories, GS, or SES levels, or applied across federal agencies' workforces?**

The goals should be applied across all job categories, similar to the 503 regulations.

b. Which types of disabilities should count toward fulfillment of the goal(s), and why? For example, should there be separate goals for individuals with disabilities as defined by the Rehabilitation Act



and individuals with the most significant disabilities (known in federal employment as “targeted disabilities”)?

The regulations should impose one goal for employment of people with disabilities as defined in the Rehabilitation Act and the ADA, and a second goal focusing specifically on employment of individuals with targeted or significant disabilities. The challenge is that if a broad definition of disability is exclusively used, then there is potential for the focus to be on individuals with “milder” disabilities with less support needs. It is recommend that the targeted disabilities under Schedule A, serve as a guide for the targets for individuals with more significant disabilities (i.e., individuals with mental health issues, and those with intellectual/developmental disabilities).

c. What should an agency do to determine whether the goals have been met? For example, should it rely solely on voluntary self-disclosure through SF 256 and the form used by federal agencies to collect demographic information on job applicants? Or should it also, for example, consider individuals who have requested reasonable accommodation or entered the workforce through the Schedule A excepted hiring authority for “persons with intellectual disabilities, severe physical disabilities, or psychiatric disabilities”?

To be as accurate as possible in terms of determining whether a goal is met, all three of these measures should be used to determine whether an agency has the goals, provided that it is possible to do so without counting individuals multiple times.

d. Should there be consequences for federal agencies that fail to meet the goals? If so, what should they be?

It is essential that there be consequences for failure to meet required goals. This could include closer monitoring of recruitment and hiring practices, and requirements for more affirmative approaches to outreach and hiring.

3. Are there specific hiring policies and practices other than, or in addition to, establishing goals that should be part of the regulation for being a model employer of individuals with disabilities? For example, should the proposed model employer regulation require agencies to work with entities specializing in the placement of individuals with disabilities, such as state vocational rehabilitation agencies or the Department of Labor’s Office of Workers’ Compensation Programs; to interview all qualified job applicants with disabilities; to assign additional “points” to qualified applicants with disabilities; to subject their qualification standards (including safety requirements) to internal or external review to identify unnecessary barriers to people with disabilities; to include certain information about affirmative action for individuals with disabilities in their job advertisements; to observe certain guidelines for determining the essential functions of the job; or to engage in



additional, targeted outreach? Commenters suggesting that specific policies or practices be included in the proposed regulation are encouraged to include information about the benefits and costs of the suggested policy or practice.

As noted previously, linkages with a full range of organizations that represent individuals should be part of the regulations, including public Vocational Rehabilitation, state/county mental health and developmental disability agencies, independent living centers, community rehabilitation providers, Ticket to Work Employment Networks, etc. In addition, a standard policy should be review of applicant pools, to determine whether individuals with disabilities are among those being considered for positions. Also, a policy should be put in place that pro-active efforts be made to include employees with disabilities as part of interview/hiring teams. Lastly, it is critically important that policies be in places that allow easy access in a user-friendly manner for job accommodations for job applicants and employees with disabilities, within a culture that rewards employees for being pro-active in pursuing accommodations.

- 4. Are there any policies or practices related to retention, inclusion, and advancement of federal employees with disabilities, other than policies and practices that are already required by EEOC regulations, that a federal agency should be required to adopt to become a model employer of individuals with disabilities? For example, should the proposed model employer regulation require agencies to have reasonable accommodation procedures meeting certain standards, or to take certain remedial actions if they fail to achieve roughly equal average levels of compensation for employees with and without disabilities? Are there particular policies related to travel, technology, or security measures that could eliminate systemic barriers to federal employment of people with disabilities? Should agencies be required to gather feedback regarding their efforts to retain, include, and advance employees with disabilities on an ongoing basis, for example by convening roundtables with managers or conducting exit interviews with individuals with disabilities when they leave the agency? Please be as specific as possible about what the proposed new regulation should require. You are encouraged to provide information about the benefits and costs of the suggested policy or practice.**

We urge EEOC to include in its Section 501 regulations, at a minimum:

- A requirement that federal agencies conduct exit interviews for departing employees with disabilities to learn whether their departure is related in any way to their disabilities and if so, what measures might prevent the departure.
- A requirement that federal agencies make available a process for employees with disabilities to provide anonymous feedback concerning the agency's handling of accommodation requests or other issues related to individuals' disabilities, as well as non-anonymous forums for such feedback—such as roundtables.



5. **Are there any policies or practices related to reasonable accommodation, other than policies and practices that are already required by EEOC regulations, that federal agencies should be required to adopt to become model employers of individuals with disabilities? For example, should the proposed model employer regulation require agencies to establish certain time limits for the provision of accommodations; observe certain limitations on the collection of medical information during the interactive process; or adopt certain methods of funding, or budgeting for, reasonable accommodations, such as a centralized funding mechanism that would avoid charging individual program budgets for the cost of accommodations, or a centralized contracting vehicle or contract authority to streamline the accommodation process? Again, please be as specific as possible about what sorts of policies or practices the proposed new regulation should require. You are encouraged to provide information about the benefits and costs of the suggested policy or practice.**

We urge EEOC to include in its Section 501 regulations, at a minimum:

- A requirement that federal agencies use a centralized fund to finance reasonable accommodations for employees, so that each division within the agency is not responsible for funding accommodations for its employees.
- A requirement that federal agencies provide all employees with written policies concerning reasonable accommodations, and that these policies clearly describe the process for requesting reasonable accommodations, the type of information that must be produced to obtain an accommodation, the name and title of the person whom employees may contact for assistance in requesting a reasonable accommodation, information about how to request alternative accommodations if a requested accommodation is denied, and information about how to request reconsideration of a denial of a requested accommodation.

Respectfully,

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