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## **HR Policy Association Applauds Chairman Kline and Chairman Roe for Seeking Information Regarding the Labor Department's Proposed Changes to Affirmative Action Obligations Establishing a 7 Percent Hiring Benchmark to Determine Compliance**

**Washington, DC**—HR Policy Association, representing the chief human resource officers of more than 330 of the largest private sector employers in the United States, appreciates the letter written by two key House Republican leaders urging the Office of Federal Contract Compliance Programs (OFCCP) of the U.S. Department of Labor to allow for an extended public comment period and provide the basis for many of its proposals in its notice of proposed rulemaking (NPRM) on Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities. The regulatory proposal, which was characterized by the OFCCP Director as a “sea change” for affirmative action, would significantly change employment practices and redefine traditional notions of affirmative action, including the imposition of a seven percent utilization benchmark for persons with disabilities.

Chairman John Kline (R-MN) of the Education and Workforce Committee, and Phil Roe (R-TN), Chairman for the Subcommittee on Health, Employment, Labor, and Pensions, wrote a letter to Secretary of Labor Hilda Solis requesting that DOL grant a 90 day extension for the public to file comments with respect to OFCCP's proposed disability regulations. This letter was based on numerous substantive and procedural concerns regarding OFCCP's proposal. HR Policy Association members share the same concerns.

HR Policy Association member companies employ 10 million people in the United States, which is nearly nine percent of the private sector workforce. The OFCCP's NPRM published in the Federal Register is a 50 page proposal that, if adopted, would significantly change contractor employment practices and would affect many HR Policy Association member companies. In fact, the OFCCP estimates the proposed rule will cost federal contractors \$81.1 million in the first year alone.

The Chairmen highlighted the fact that the NPRM "would, for the first time, require contractors to establish a goal of having seven percent of their workforce made up of employees with disabilities" and questioned OFCCP's legal authority to establish a numerical benchmark expressing the concern "that a hiring standard would, in effect, institute a quota, which is been met with great scrutiny from the Supreme Court," and points out that the new requirement that federal contractors ask job applicants to self-identify as disabled would conflict with statutory text of the Americans with Disabilities Act.

In addition, the Chairmen specifically requested that by February 10, 2012, the OFCCP provide all documents and communications related to the following inquiries:

- Identify and explain OFCCP statutory authority under Section 503 to establish a numerical hiring standard.

- Identify and explain the basis for OFCCP's decision that federal contractors' good faith efforts are insufficient affirmative action under Section 503.
- Identify and explain OFCCP's statutory authority to require contractors to ask job applicants to self identify as a qualified individual with a disability, given that the ADA prohibits disability related questions before an offer of employment has been made.
- Identify and explain the basis for OFCCP's assumption that job applicants and contractors' current employees would understand the legal definition of "disability," as defined in the NPRM's prescribed self identification notice.
- Under proposed section 60-741.44(b), OFCCP assumed contractors would spend 30 minutes per year to draft and provide written "statements of reasons explaining the circumstances for rejecting individuals with disabilities for vacancies and training programs." Simple math suggests the amount of time required would far exceed this estimate. Explain how OFCCP determined the 30 minutes per year estimate.
- Under proposed section 60- 741.44(d), OFCCP failed to consider the costs federal contractors would incur to make their "electronic or online job application systems compatible with assistive technology commonly used by individuals with disabilities, such as screen reading and speech recognition software." Likewise under proposed section 60 – 741.44(g), OFCCP failed to consider the economic burdens associated with discussing the NPRM new affirmative action requirements with all employees during, for example, orientation and training events. Explain why OFCCP failed to consider the costs of contractors' compliance with these provisions of proposed section 60-741.44(d) and (g).

The Association is hopeful that the Chairmen's letter, coupled with the concerns of HR Policy Association members recently expressed in a letter to the Department of Labor by the Association's President & CEO Jeffrey McGuinness, will cause the Department to reconsider the extension request and grant an extension to the public comment period on the OFCCP's proposed regulation.

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To view the letter by Chairman Kline and Chairman Roe visit:

[http://www.hrpolicy.org/downloads/2012/Chairmans\\_Kline\\_and\\_Roe\\_Letter\\_to\\_Solis.pdf](http://www.hrpolicy.org/downloads/2012/Chairmans_Kline_and_Roe_Letter_to_Solis.pdf)

To view HR Policy Association's letter, visit:

[http://www.hrpolicy.org/downloads/2011/11-152\\_OFCCP\\_Requesting\\_Extension\\_on\\_Disability\\_Regs.pdf](http://www.hrpolicy.org/downloads/2011/11-152_OFCCP_Requesting_Extension_on_Disability_Regs.pdf)

To view the denial letter, visit:

[http://www.hrpolicy.org/downloads/2012/DOL\\_Letter\\_Denying\\_Extension\\_Request.pdf](http://www.hrpolicy.org/downloads/2012/DOL_Letter_Denying_Extension_Request.pdf)

**HR Policy Association** is the lead organization representing chief human resource officers of major employers. The Association consists of more than 330 of the largest corporations doing business in the United States and globally, and these employers are represented in the organization by their most senior human resource executive. Collectively, their companies employ more than ten million employees in the United States, nearly nine percent of the private sector workforce, and 20 million employees worldwide. They have a combined market capitalization of more than \$7.5 trillion. These senior corporate officers participate in the Association because of their commitment to improving the direction of human resource policy. Their objective is to use the combined power of the membership to act as a positive influence to better public policy, the HR marketplace, and the human resource profession.

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