July 24, 2012

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

Dear Mr. Sunstein:

HR Policy Association is writing to express its strong concern regarding the economic analysis conducted by Office of Federal Contract Compliance Programs (OFCCP) for the Notice of Proposed Rulemaking (NPRM) that was published on December 9, 2011, revising the regulations implementing the non-discrimination and affirmative action regulations of Section 503 of the Rehabilitation Act of 1973 (RIN 1250-AA05). Specifically, we would like to bring to your attention a new report from Applied Economic Strategies (AES) that estimates the first year cost of the NPRM to be at least $5.9 billion, 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 (2 U.S.C. § 1501 et. seq.).

HR Policy Association represents the most senior human resource executives in more than 330 of the largest companies in the United States. Collectively, these companies employ more than 10 million people in the United States, and their chief human resource officer is responsible for finding, hiring, retaining and developing the talent needed to staff their organizations. Our organizations share the OFCCP’s goal of increased employment and effective integration of persons with disabilities into the nation’s workforce. Indeed, our members are committed to this goal regardless of what is required by the federal government. However, we believe that the approach set forth in the NPRM imposes unachievable standards and burdensome requirements on federal contractors while undermining the aforementioned goal.

The AES report identifies a number of requirements in the NPRM for which OFCCP either did not estimate costs, or under-estimated the costs of the proposed provision. Although they will require significant new expenditures by federal contractors, OFCCP failed to even include any of the following aspects of the NPRM in its estimate:

- The cost federal contractors will incur to read, analyze, and comprehend the new rule;
- What it will cost contractors to ensure their online job application systems are compatible with assistive technology commonly used by individuals with disabilities;
- What it will cost contractors to modify their online job application systems and human resource information systems because OFCCP’s internet applicant rule does not apply to individuals with disabilities;
- The opportunity cost of employees reading and responding to the annual survey; and
- The opportunity cost of employees attending training.
Moreover, OFCCP did not qualitatively or quantitatively describe or estimate how the proposed mandates will lower the unemployment rate or increase the labor force participation rate of persons with disabilities. The high compliance costs of the individual provisions in the NPRM points to the necessity for OFCCP and OIRA to carefully consider the costs of the proposed strategy in comparison to the costs of alternatives that could yield similar benefits.

We recognize that OFCCP has not yet forwarded the final rule to OMB for review. In anticipation that the agency may do so in the near future, we would ask that the enclosed study be considered in your review of the final rule and that OMB ensure that OFCCP has considered a wide range of alternative approaches that would minimize or avoid the substantial costs that will otherwise be incurred by federal contractors.

Thank you for your consideration in this matter.

Sincerely,

Daniel V. Yager
President & General Counsel

Enclosure

cc (with enclosure): The Honorable Hilda Solis
House Committee on Appropriations
House Committee on Education and the Workforce
Patricia Shiu
Jocelyn Frye
Mathew Blum
Margaret Malinowski
Senator Mike Enzi
Senator Tom Harkin
Senator Richard Shelby