

# Federal Government as a Model Employer

Understanding Changes to Section 501 of the  
Rehabilitation Act  
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# Federal Government as a Model Employer: Understanding Changes to Section 501 of the Rehabilitation Act



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# Employer Assistance and Resource Network on Disability Inclusion (EARN)

- A no-cost resource for employers seeking to proactively recruit, hire, retain and advance qualified employees with disabilities
  - Access trainings, webinars and numerous publications
- Funded through a cooperative agreement with the U.S. Department of Labor's Office of Disability Employment Policy
- Collaborative of multiple partners with expertise in technical assistance, training and research
- Visit website at <http://AskEARN.org>

# Housekeeping

- For audio call: **415-655-0045**
  - Access code: : **666 989 317#**
- Contact WebEx tech support at 1-866-229-3239
- Download slides at [AskEARN.org](https://www.AskEARN.org)
- An archived recording of the webinar will be posted to [AskEARN.org](https://www.AskEARN.org) within the week
- Submit questions via Q&A window or via [@AskEARN](https://twitter.com/AskEARN)
- Having trouble posting to the Q&A? Email [AskEARN@viscardicenter.org](mailto:AskEARN@viscardicenter.org)
- Tweet using [#AskEARN](https://twitter.com/AskEARN)
- Live captioning at the bottom right of screen
- Receive 1.0 HR General recertification credit hours through the HR Certification Institute (HRCI) and the Society for Human Resource Management (SHRM) (via email following the event)



How would you rate your knowledge and understanding of the changes to Section 501 of the Rehabilitation Act and how it benefits the Federal Government as a model employer?



# Federal Government as a Model Employer: Understanding Changes to Section 501 of the Rehabilitation Act



**Chai Feldblum**  
Commissioner  
Equal Employment Opportunity Commission  
(EEOC)

# Federal Government as a Model Employer: Understanding Changes to Section 501 of the Rehabilitation Act



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# Federal Government as a Model Employer: Understanding Changes to Section 501 of the Rehabilitation Act



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# Federal Government as a Model Employer: Understanding Changes to Section 501 of the Rehabilitation Act



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# Final Rule on Affirmative Action for Individuals with Disabilities in Federal Employment

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# Background

- More than 40 years since the enactment of the Section 501 of the Rehabilitation, the Federal Government now employs more individuals with disabilities than at any point in our nation's history.
- Today, individuals with disabilities comprise 14% of the federal workforce. In 2015, 19% of new hires in the federal government were individuals with disabilities.
- To build on this success and assist in sustaining the momentum, EEOC amended its regulations to guide federal agencies efforts to be a model employer of individuals with disabilities.

# Section 501

- Section 501 does **2 things**:
  - Prohibits discrimination
    - Adopts ADA standards
  - Requires affirmative action
- This is an **affirmative action** rule

# Main Purpose

- Gather existing requirements into single regulation
  - Makes them easier to find
  - Clarifies that they have the force and effect of law
- Create new obligations
  - Employment goals
  - Personal assistance services
- Main requirements take the form of EEOC's criteria for approval of the Affirmative Action Plan, in section (d)

# Lessons Learned

- While progress has been made, people with disabilities remain disproportionately represented at lower levels of federal employment
- Participation rate of individuals with severe disabilities (targeted disabilities) remains particularly low

# Hiring and Advancement Programs Section by Section Analysis

## (d)(1)(i): Recruitment

- Use programs to identify people eligible for hiring authorities that take disability into account, e.g.:
  - Training and internship programs
  - résumé databases of people eligible for appointment under Schedule A (external or created by the agency)
- Contacts with disability organizations

## (d)(1)(ii): Application Process

- Must have sufficient qualified staff to:
  - Answer disability-related questions
  - Provide reasonable accommodations to job applicants
  - Accept applications for appointment under hiring authorities that take disability into account, determine eligibility, and forward applications when appropriate
  - Oversee any other disability hiring programs

## (d)(1)(iii): Advancement

- Agencies must take steps to ensure that individuals with disabilities have sufficient advancement opportunities
  - Mentoring programs
  - Training programs
  - Exit interviews
- Flexible approach – agencies should tailor their programs to maximize effectiveness



# Goals

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# Definitions

- Disability: Same as ADA
- Targeted Disability:
  - Deafness or serious difficulty hearing
  - Blindness or serious difficulty seeing even when wearing glasses
  - Missing extremities
  - Partial or complete paralysis
  - Significant disfigurements (e.g., severe disfigurements caused by burns, wounds, accidents, or congenital disorders)
  - Significant mobility impairments (for example, uses a wheelchair, scooter, walker or uses a leg brace to walk)
  - Developmental disabilities (for example, cerebral palsy or autism spectrum disorder)
  - Traumatic brain injuries
  - Epilepsy or other seizure disorders
  - Intellectual disabilities
  - Significant psychiatric disabilities, e.g., bipolar disorder, schizophrenia, PTSD, and major depression
  - Dwarfism



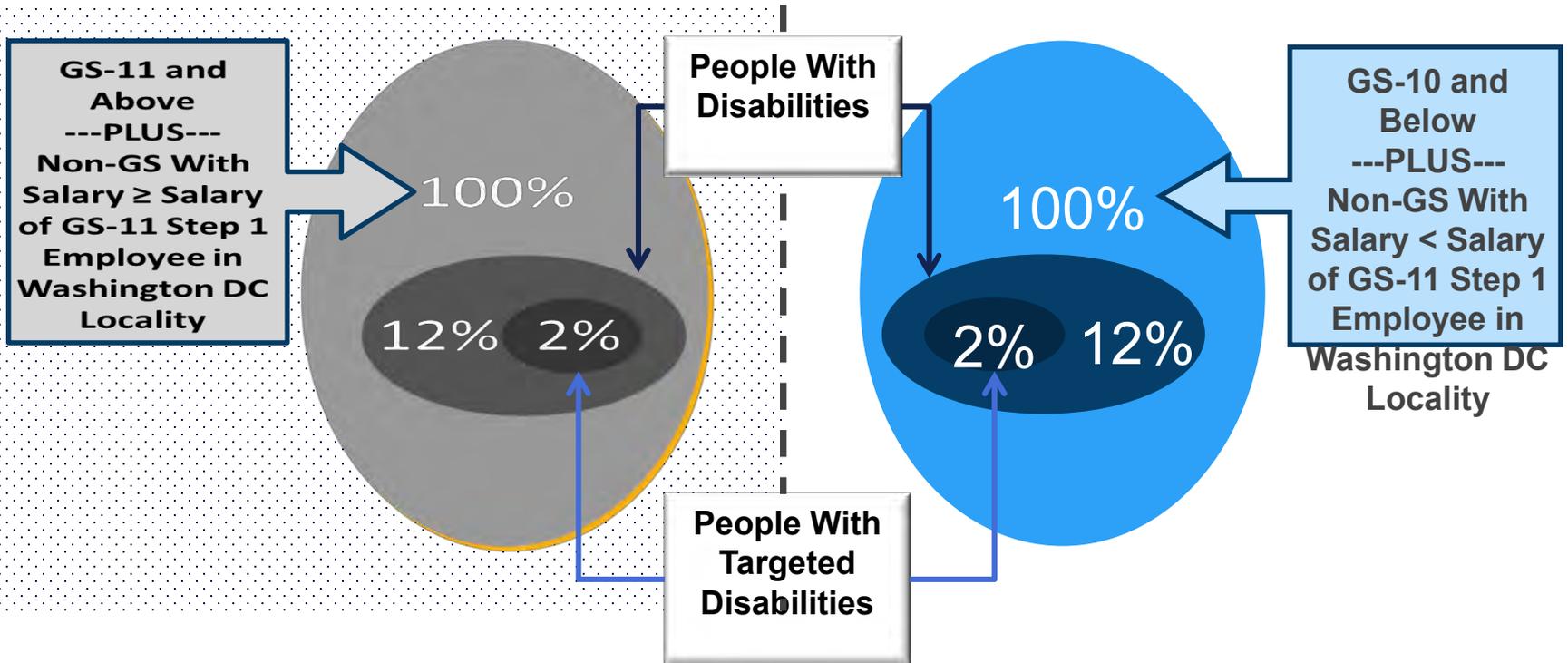
## (d)(6) & (7): Goals

- Adopt goals of achieving representation rates of:
  - 12% people with **disabilities** at GS-11 and above
  - 12% people with **disabilities** at GS-10 and below
  - 2% people with **targeted disabilities** at GS-11 and above
  - 2% people with **targeted disabilities** at GS-10 and below

## (d)(6) & (7): Goals

- Employees who are not on the GS scale:
  - Placed in the “GS-11 and above” category if salary is equal to or greater than the salary of a GS-11, Step 1 employee in the Washington, DC locality
  - Placed in the “GS-10 and below” category if salary is less than the salary of a GS-11, Step 1 employee in the Washington, DC locality
- Only permanent, full-time, non-seasonal employees count toward the goals

# Goals for Each Agency



# Annual Workforce Analysis

- Check if goals are met
- Agencies are allowed to look at:
  - Schedule A and other hiring authority records
  - Reasonable accommodation records
  - Self-identification: SF-256 **or a different form**
- For agencies regulated by OPM, it is sufficient to request the OPM data
  - But OPM data likely only include SF-256 and Veteran's 30% status

# If Goals are Not Met

- Agency must take specific steps reasonably designed to meet the goal
- Strengthen hiring and advancement programs
  - Increased use of hiring authorities that take disability into account
  - Additional outreach or recruitment efforts
  - Training, mentoring, or internship programs ...



# Personal Assistance Services (PAS)

## (d)(5): Personal Assistance Services

- PAS = assistance with activities of daily living
  - e.g., Assistance with eating, drinking, using the restroom, and putting on and taking off outerwear
- Must provide during work and job related travel if:
  - Needed because of a targeted disability
  - Enables performance of essential job functions
  - Does not impose undue hardship

# Part of Being a “Model Employer”

- The PAS requirement comes from the affirmative action part of Section 501
- Applies to federal agencies (not state or local government employers covered by the ADA)
- Goes beyond nondiscrimination obligations



# Providers

- May be required to perform additional tasks
- May be assigned to multiple individuals
- May be employee or contractor
- Services must be a primary job function
  - Not assigned to coworker
- When choosing a provider for a single individual, primary consideration given to individual's preferences

# Records

## (d)(8): Recordkeeping

- Applicant flow: number of applicants with:
  - Disabilities
  - Targeted disabilities
- Adverse actions based on medical examinations or inquiries
- Detailed information about Schedule A employees
  - Are they being retained?
  - Converted?
- Details about each request for reasonable accommodation

# Recordkeeping

- Records must be made available upon the Commission's request
- Both the NARA records retention rules and the Privacy Act apply, and records relating to reasonable accommodation are protected by the ADA/501 confidentiality rules

# Policies, Procedures, Notices, etc.

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# (d)(3)(i): Written Reasonable Accommodation Procedures

- Explain relevant terms
- Provide that reassignment is a reasonable accommodation
- Easy to make a request (oral or written, made at any time, etc.)
- Provide forms
- Describe decision making process
- Explain how to recognize requests
- Early communication
- Explain confidentiality
- Provide for expedited processing
- Provide interim accommodations that enable performance of some or all essential job functions when reasonably likely that individual is entitled to accommodation
- Explain how to track requests
- Agency must inform requester about delays
- Encourage voluntary dispute resolution for denials
- Denial notices (see (d)(3)(iii))
- Point to Commission guidance



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## (d)(3)(ii): Funding

- Key decision makers (people authorized to grant/denied accommodations and people who make hiring decisions) must be:
  - Informed that all available resources are considered when determining undue hardship
  - Told how to arrange for use of available agency resources

## (d)(3)(iii): Reasonable Accommodation Denial Notice

- Denials of reasonable accommodation must come with **written notice** explaining:
  - Basis for denial
  - How to challenge: informal dispute resolution (if available), and the 1614 process
  - 45-day deadline for making contact with EEO counselor

## (d)(4): Information on Accessibility

- Inform employees—
  - What accessibility rights they have under Section 508 and the Architectural Barriers Act
  - How to file complaints within the agency
  - Where to file complaint with another agency, when relevant (if possible)

## (d)(5)(v): PAS Procedures

- Must have written procedures
- Sufficient to state in reasonable accommodation procedures that:
  - The process for requesting PAS, the process for determining whether PAS are required, and the agency's right to deny based on undue hardship, are the same as for reasonable accommodations

# Other

- Harassment policy (d)(2)
  - Must state specifically in anti-harassment policy that harassment based on disability is prohibited
- Applicant Flow Form (d)(8)(i), (ii)
- A policy adopting the 12% and 2% goals (d)(7)(i)
- If desired, a self-identification form (D)(6)(ii)(A)

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# Resources

- **Employer Assistance and Resource Network on Disability Inclusion (EARN):** <http://www.AskEARN.org/>
- **U.S. Department of Labor, Office of Disability Employment Policy (ODEP):** <https://www.DOL.gov/ODEP/>
- **Job Accommodation Network (JAN):** <http://AskJAN.org/>
- **U.S. Equal Employment Opportunity Commission**  
<https://www.eeoc.gov/>

# Audience Questions





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Thank You!

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