



April 17, 2012

The Honorable Phil Roe
Chairman
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
2181 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

The Honorable Robert Andrews
Ranking Member
Subcommittee on Health, Employment,
Labor and Pensions
Committee on Education and the Workforce
2181 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Roe and Ranking Member Andrews:

On behalf of Associated Builders and Contractors (ABC), a national association with 74 chapters representing 22,000 merit shop construction and construction-related firms, I am writing in regard to the subcommittee hearing, "Reviewing the Impact of the Office of Federal Contract Compliance Programs' (OFCCP) Regulatory and Enforcement Actions."

ABC supports OFCCP's mission to address employment discrimination against individuals with disabilities. However, ABC has serious concerns regarding a recent proposed rulemaking designed to update existing requirements for federal contractors and subcontractors under Section 503 of the Rehabilitation Act of 1973. OFCCP itself has referred to the proposal as a "sea change."

The December 2011 notice of proposed rulemaking (NPRM), drafted under questionable statutory authority, mandates arbitrary quotas (referred to by the agency as "goals") for the hiring of disabled workers by all contractors with a government contract or subcontract of \$50,000 or more and 50 or more employees. To date, OFCCP has failed to compile any meaningful evidence to indicate federal contractors are currently failing to meet their affirmative action and nondiscrimination obligations toward the disabled community. In addition, OFCCP minimized, and in some instances ignored, the regulatory burdens the NRPM would impose on contractors, particularly small businesses—more than 20,000 of which currently contract with the federal government.

ABC is deeply concerned about each of the failures identified above. However, our greatest concern is that OFCCP failed to analyze or justify the draconian impact of its proposal on the construction industry, and has not acknowledged or explained the inconsistencies between the NPRM and OFCCP's longstanding differentiation of the construction industry from other industries with regard to affirmative action requirements. Our industry has long been exempted from being forced to engage in job group utilization analyses, data collection and reporting—all of which will be required if the proposal is finalized.

ABC has requested OFCCP withdraw its proposal immediately so the agency can address the many concerns outlined in this letter (and described in greater detail in our formal comments, which are attached). It is our hope that this hearing will also highlight these concerns.

We commend the subcommittee for its attention to this issue, and look forward to its continued oversight of this important rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoffrey Burr", with a long horizontal line extending to the right.

Geoffrey Burr
Vice President, Federal Affairs