Description of graphic: RI State Seal an anchor in gold behind a blue wheelchair logo. Just below is a blue banner with the state motto "Hope". All are in the center of a ring of 8 blue stars, in groups of 2 separated by the logos for Braille, hearing aids, low vision and amplified phone.

Governor's Commission on Disabilities
Business Meeting Agenda
Monday February 6, 2012 5 - 7 PM

John O. Pastore Center, 41 Cherry Dale Court,
Cranston, RI 02920-3049
(voice) 401-462-0100 (fax) 462-0106 (tty) via RI Relay 711
(e-mail) disabilities@gcd.ri.gov
(website) www.disabilities.ri.gov

	Attendees: R. Timothy Flynn (Chair.); Sharon Brinkworth; Frederick Burke; Christopher Butler; Joseph Cirillo; Dr. Judith Drew; Sarah Everhart Skeels; Marylousie Gamache; Roger Harris; William Inlow; Ronald McMinn; Arthur Plitt; Patricia Ryherd; Msgr. Gerard Sabourin; & Linda Ward **Absent:** Dr. Kate McCarthy-Barnett (Vice Chair.); Andrew Argenbright; Jeanne Behie; Rosemary Carmody; James Pitassi; Angelina Stabile; & Theresa Thoelke
Staff:	Bob Cooper, Secretary & Jessica Burrows, EJS Fellow

	Agenda Topics	Moderator/Leader	Time
Clock graphic	Call to Order and Acceptance of the Minutes	R. Timothy Flynn, Chairperson	5:00
	Chair calls the meeting to order at 5:28 PM Introductions of Commissioners and guests		
☑ voting check off graphic	MOTION: To accept the minutes of the previous meeting as presented RMcM/RH passed unanimously		

	Action Items:		
Working graphic	US Department of Labor's Section 503 Improving Job Opportunities for Americans with Disabilities Proposed Regulation & Employment Committee Report	Patricia Ryherd, Chair Employment Committee	5:05
	Purpose/Goal: To review and adopt a position on the US Department of Labor's Proposed Revisions to the Section 503 Affirmative Action Regulation		

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
OFCCP
U.S. DEPARTMENT OF LABOR

1 US Department of Labor - Office of Federal Contract Compliance Programs

FACT SHEET

Notice of Proposed Rulemaking on Section 503 of the Rehabilitation Act of 1973

Improving Job Opportunities for Americans with Disabilities

Background

On December 9, 2011, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*. OFCCP is seeking public comment on a proposal to revise and update the regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended (Section 503).

Section 503 prohibits employment **discrimination** based on disability by companies doing business with the federal government. Section 503 also requires that federal contractors and subcontractors take **affirmative action** to recruit, employ, train, and promote qualified individuals with disabilities.

Prior to issuing this NPRM, on July 23, 2010, OFCCP published an Advance Notice of Proposed Rulemaking (ANPRM) requesting public comment on ways to strengthen the affirmative action regulations in Section 503. Comments received on that ANPRM helped shape the rule now proposed by OFCCP.

Need for the NPRM

- The framework articulating contractors' Section 503 responsibilities has remained unchanged since the implementing rules were first published in the 1970s.
- The most recent data from the U.S. Department of Labor's Bureau of Labor Statistics (BLS) indicate that the unemployment rate and degree of participation in the labor force of working age individuals with disabilities remain significantly higher than for those without disabilities.
  - BLS data show stark disparities facing working-age people with disabilities, with 79.2 percent outside the labor force altogether, compared with 30.5 percent of individuals without disabilities.
- Strengthening the Section 503 regulations is an important tool for reducing barriers to equal employment opportunity for individuals with disabilities.
- Prior to issuing this NPRM, OFCCP conducted town hall meetings, webinars, and listening sessions with individuals from the contractor community, state employment services, disability and veterans' organizations, and other interested parties. We obtained input on the features of the current regulations that work well, as well as those that need improvement. We also received suggestions for new requirements to help achieve the objective of increasing employment opportunities for individuals with disabilities.

Highlights of the NPRM

GOALS: Establish, for the first time, a single, national utilization goal for individuals with disabilities. Federal contractors and subcontractors would be required to set a hiring goal of having 7 percent of their employees be workers with disabilities in each job group of the contractors' workforce. The goal is neither a quota, nor a restrictive hiring ceiling, and a failure to attain the goal does not necessarily constitute a violation of Section 503 or OFCCP's regulations. The goal will serve as an important tool for employers to measure their progress toward achieving equal employment opportunity, and for assessing where in their workforce barriers to such opportunity remain.

DATA COLLECTION: Improve collection of data on employment of people with disabilities by modifying the invitation for workers to self-identify by requiring that contractors invite all applicants to voluntarily self-identify as an "individual with a disability" at the *pre-offer stage* of the hiring process. Contractors will also be required to invite *post-offer* voluntary self-identification, and to survey all employees annually in order to invite their self-identification in an anonymous manner. Collection of this enhanced data will allow the contractor and OFCCP to better identify and monitor employment practices with respect to individuals with disabilities. The NPRM provides that OFCCP will prescribe the language that contractors will be required to use when inviting self-identification and publish it on the OFCCP website. The NPRM also seeks public comment on proposed text for an invitation to self-identify.

RECORD-KEEPING: Require that contractors maintain records on the number of individuals with disabilities applying for positions, and the number of individuals with disabilities hired. This provides contractors and OFCCP with important information that does not currently exist, and aids contractors in evaluating and tailoring their recruitment and outreach efforts.

ACCOMMODATION REQUESTS: Require, for the first time, that contractors develop and implement written procedures for processing requests for reasonable accommodation. Such procedures will assist contractors in consistently satisfying their reasonable accommodation obligations. These new procedures will also ensure that job applicants and employees receive clear instructions on how to request reasonable accommodation, the maximum amount of time for processing a request and, if the request is denied, the reason for the denial.

OUTREACH: Require that contractors engage in a minimum of three specific types of outreach and recruitment efforts; review, on an annual basis, the effectiveness of these efforts in identifying and recruiting individuals with disabilities; and document this review.

JOB LISTINGS: Require that contractors list job openings with one-stop career centers or other appropriate employment delivery systems, as is currently required for protected veterans under the Vietnam Era Veterans' Readjustment Assistance Act of 1974.

ANNUAL REVIEWS: Require previously recommended steps contractors must take to review their personnel processes, as well as physical and mental job qualifications. Contractors would be required to conduct both of these self-reviews "annually," rather than "periodically," and to document specific review actions and their results.

ADAAA UPDATES: Incorporate updates made necessary by the ADA Amendments Act (ADAAA) of 2008 and subsequent amendments to the Equal Employment Opportunity Commission's (EEOC) regulations implementing the Americans with Disabilities Act (ADA).

Additional NPRM Topics

OFCCP invites public comment on any of the changes to the regulations in the NPRM. In addition, the OFCCP invites the public to comment on select topics related to the proposed regulatory changes, including:

- The proposed text of the voluntary self-identification invitations that contractors would use when asking an applicant or employee to identify as an individual with a disability;
- The possible inclusion of a 2 percent sub-goal for individuals with certain particularly severe or targeted disabilities. OFCCP seeks comment on both the concept of using a sub-goal, and on the disabilities that should be included in such a sub-goal; and
- The use of a utilization range rather than the fixed 7 percent national goal the NPRM proposes. OFCCP seeks comment on a range of values between 4 percent and 10 percent.

	Submitting Comments OFCCP invites the public to comment on the NPRM, either electronically at www.regulations.gov or by mail or hand delivery to: Debra A. Carr, Director, Division of Policy, Planning, and Program Development OFCCP, Room C3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210. All comments should include the identification (RIN) 1250-AA02, and must be received by February 7, 2012. For more info, please go to www.dol.gov/ofccp
	Discussion: The Employment Committee reviewed the above fact sheet of the proposed changes to the Section 503 Regulations. The Committee's concerns: Item 1. Sec. 60-741.46 Utilization goals. The Committee is concerned with the hiring goal of 7%. The employment committee recommends 5% given the economy and the issue of disclosure. Item 2. Sec. 60-741.42 Invitation to self-identify. The Committee is concerned with the suggestion to invite all applicants to self-identify as an "individual with a disability" at the pre-offer stage of the hiring process. The employment committee recommends removing this subsection. Item 3. Sec. 60-741.45 Reasonable accommodation procedures. The employment committee supports requiring written notice of the grievance procedure/appeal process. Item 4. Annual Reviews: The Employment Committee supports annual rather than periodic reviews of employment policies and procedures. Item 5. ADAAA Updates: The Employment Committee supports the incorporation of the provisions of the ADA Amendments Act (ADAAA) of 2008 the subsequent amendment of the Equal Employment Opportunity Commission (EEOC) Regulation 29 CFR part 1630. Item 6. Additional NPRM topics: Concern over the possible inclusion of a 2 percent sub-goal for individuals with certain particularly severe or targeted disabilities. The Employment Committee does NOT support the inclusion this sub-goal.
	Proposed Regulation: Item 1. Sec. 60-741.46 Utilization goals. (a) Goal. **OFCCP has established a utilization goal of 7% for employment of individuals with disabilities for each job group in the contractor's workforce[1].**

[1] OFCCP proposes to set a goal for individuals with disabilities, based on the most recent 2009 ACS disability data for the ``civilian labor force'' and the ``civilian population,'' first averaged by EEO-1 job category, and then averaged across EEO-1 category totals. Specifically, we use the mean across these EEO-1 groups (5.7%) as a starting point for deriving a range of values upon which we will take comment. 5.7% is OFCCP's estimate of the percentage of the civilian labor force that has a disability as defined by the ACS. However, OFCCP acknowledges that this number does not encompass all individuals with disabilities as defined under the broader definition in section 503 and the ADAAA; therefore, 5.7% should not be construed as an affirmative action goal for individuals with disabilities under these authorities, nor to convey a false sense of precision. Even if the 5.7% represented a complete availability figure for all individuals with disabilities as defined under the ADAAA, we are concerned that such an availability figure does not take into account discouraged workers, or the effects of historical discrimination against individuals with disabilities that has suppressed the representation of such individuals in the workforce.
Discouraged workers are those individuals who are not now seeking employment, but who might do so in the absence of discrimination or other employment barriers. There are undoubtedly some

(b) Purpose. The purpose of the utilization goal is to establish a benchmark against which the contractor must measure the representation of individuals within each job group in its workforce. The utilization goal serves as an equal employment opportunity objective that should be attainable by complying with all aspects of the affirmative action requirements of this part.

(c) Periodic review of goal. The Director of OFCCP shall periodically review and update, as appropriate, the utilization goal established in paragraph (a) of this section.

(d) Utilization analysis--(1) Purpose. The utilization analysis is designed to evaluate the representation of individuals with disabilities in each job group within the contractor's workforce with the utilization goal established in paragraph (a) of this section. If individuals with disabilities are employed in a job group at a rate less than the utilization goal, the contractor must take specific measures to address this disparity.

(2) Grouping jobs for analysis. The contractor must use the same job groups established for utilization analyses under Executive Order 11246, either in accordance with 41 CFR 60-2.12, or in accordance with 41 CFR part 60-4, as appropriate.

(3) **Annual** evaluation. The contractor shall evaluate its utilization of individuals with disabilities in each job group **annually.**

(e) Action-oriented programs. When the percentage of individuals with disabilities in one or more job groups is less than the utilization goal established in paragraph (a) of this section, the contractor must develop and execute action-oriented programs designed to correct any identified problems areas. These action-oriented programs may include alternative or additional efforts from among those listed in Sec. Sec. 60-741.44 (f)(1) and (f)(2), and/or other actions designed to correct the identified problem areas and attain the established goal.

(f) A contractor's determination that it has not attained the utilization goal established in paragraph (a) of this section in one or more job groups does not constitute either a finding or admission of discrimination in violation of this part.

(g) The utilization goal established in paragraph (a) of this section shall not be used as a quota or ceiling that limits or restricts the employment of individuals with disabilities.

☑ voting check off graphic

(1) MOTION: To submit comments on the US DoL - OFCCP's Proposed Section 503 Regulation: The proposed regulation Sec. 60-741.46 Utilization goals Subsection (a) Goal should be modified as follows:

"OFCCP has established a utilization goal of ~~7%~~ 5% for employment of individuals with disabilities for each job group in the contractor's workforce."

RMcM/JC passed Nay LW

Item 2. Sec. 60-741.42 Invitation to self-identify. The Employment Committee is concerned with the suggestion to invite all applicants to self-identify as an "individual

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individuals with disabilities who, for a variety of reasons, would not seek employment even in the absence of employment barriers. However, given the acute disparity in the workforce participation rates of those with and without disabilities, it is reasonable to assume that at least a portion of that gap is due to a lack of equal employment opportunity.

	with a disability" at the pre-offer stage of the hiring process. The employment committee recommends removing this subsection.
	Sec. 60-741.23 Medical examinations and inquiries. (a) Prohibited medical examinations or inquiries. Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability. (b) Permitted medical examinations and inquiries--(1) Acceptable pre-employment inquiry. The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. (2) Employment entrance examination. The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability. (3) Examination of employees. The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions. (4) Other acceptable examinations and inquiries. The contractor may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program available to employees at the work site. These medical examinations and activities do not have to be job-related and consistent with business necessity. (5) Medical examinations conducted in accordance with paragraph (b)(2) of this section do not have to be job-related and consistent with business necessity. However, if certain criteria are used to screen out an applicant or applicants or an employee or employees with disabilities as a result of such examinations or inquiries, the contractor must demonstrate that the exclusionary criteria are job-related and consistent with business necessity, and that performance of the essential job functions cannot be accomplished with reasonable accommodations as required in this part. **(c) Invitation to self-identify. The contractor shall invite the applicant to self-identify as an individual with a disability as specified in Sec. 60-741.42.** (d) Confidentiality and use of medical information. (1) Information obtained under this section regarding the medical condition or history of any applicant or employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that: (i) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the applicant or employee and necessary accommodations; (ii) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) Government officials engaged in enforcing the laws administered by OFCCP, including this part, or enforcing the Americans with Disabilities Act, as amended, shall be provided relevant information on request.

(2) Information obtained under this section regarding the medical condition or history of any applicant or employee shall not be used for any purpose inconsistent with this part.

Sec. 60-741.42 Invitation to self-identify.

(a) Pre-offer. (1) As part of the contractor's affirmative action obligation, the contractor shall invite applicants to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in Sec. 60-741.2(g)(i) or (ii) of this part. This invitation shall be provided to each applicant when the applicant applies or is considered for employment, whichever comes first. The invitation may be included in the application materials for a position, but must be separable or detachable from the application.

(2) The contractor shall invite an applicant to self-identify as required in paragraph (a) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(b) Post-offer. (1) At any time after the offer of employment, but before the applicant begins his or her job duties, the contractor shall invite the applicant to inform the contractor whether the applicant believes that he or she is an individual with a disability as defined in Sec. 60-741.2(g)(i) or (ii) of this part.

(2) The contractor shall invite an applicant to self-identify as required in paragraph (b) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.

(c) Survey of employees. The contractor shall invite each of its employees to inform the contractor, in an anonymous manner, whether he or she believes themselves to be an individual with a disability as defined in Sec. 60-741.2(g)(i) or (ii) of this part. This survey shall be conducted **annually,** using the language and manner prescribed by the Director and published on the OFCCP Web site.

(d) The contractor may not compel or coerce an individual to self-identify as an individual with a disability.

(e) The contractor shall keep all information on self-identification confidential, and shall maintain it in a data analysis file (rather than in the medical files of individual employees) in accordance with Sec. 60-741.23(d). The contractor shall provide self-identification information to OFCCP upon request. Self-identification information may be used only in accordance with this part.

(f) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees of whose disability the contractor has knowledge.

(g) Nothing in this section shall relieve the contractor from liability for discrimination in violation of section 503 or this part.

☑ voting check off graphic

(2) MOTION: To submit comments on the US DoL - OFCCP's Proposed Section 503 Regulation: The proposed regulation Sec. 60-741.42 Invitation to self-identify should be *modified by delete all of subsection (a)*

~~(a) Pre-offer. (1) As part of the contractor's affirmative action obligation, the contractor shall invite applicants to inform the contractor whether the applicant~~

~~believes that he or she is an individual with a disability as defined in Sec. 60-741.2(g)(i) or (ii) of this part. This invitation shall be provided to each applicant when the applicant applies or is considered for employment, whichever comes first. The invitation may be included in the application materials for a position, but must be separable or detachable from the application.~~

~~(2) The contractor shall invite an applicant to self-identify as required in paragraph (a) of this section using the language and manner prescribed by the Director and published on the OFCCP Web site.~~

LW/SES passed unanimously

Item 3. Sec. 60-741.45 Reasonable accommodation procedures. The Employment Committee supports requiring written notice of the grievance procedure/appeal process.

Sec. 60-741.45 Reasonable accommodation procedures.

(a) Development and implementation. The contractor shall develop and implement written procedures for processing requests for reasonable accommodation. Contractors that are not required to develop an affirmative action program pursuant to this subpart are encouraged to voluntarily develop and implement written reasonable accommodation procedures to assist the contractor in meeting its nondiscrimination obligations under subpart B of this part.

(1) The contractor's reasonable accommodation procedures shall be included in the contractor's affirmative action program, and shall be developed and implemented in compliance with section 503 and this part.

(2) Minimum required elements that shall be addressed or contained in the reasonable accommodation procedures are described in paragraph (d) of this section. Inclusion of these elements in all reasonable accommodation procedures will ensure that applicants and employees are informed as to how to request a reasonable accommodation and are aware of how such a request will be processed by the contractor. It will also ensure that all of the contractor's supervisors and managers know what to do should they receive a request for reasonable accommodation, and that all requests for accommodation are processed swiftly and within established timeframes.

(b) Designation of responsibility. The contractor shall designate an official to be responsible for the implementation of the reasonable accommodation procedures. The responsible official may be the same official who is responsible for the implementation of the contractor's affirmative action program. The responsible official must have the authority, resources, support, and access to top management that is needed to ensure the effective implementation of the reasonable accommodation procedures.

(c) Dissemination of procedures. (1) The contractor shall disseminate its reasonable accommodation procedures to all employees. Notice of the reasonable accommodation procedures may be provided by their inclusion in an employee handbook that is disseminated to all employees and/or by email or electronic posting on a company Web page where work-related notices are ordinarily posted. Notice of the reasonable accommodation procedures shall be provided to employees who work off-site in the same manner that notice of other work-related matters is ordinarily provided to these employees.

(2) The contractor shall inform all applicants of its reasonable accommodation procedures regarding the application process. See

paragraph (d)(2)(iii) of this section.

(d) Required elements of reasonable accommodation procedures. The specific requirements of a contractor's reasonable accommodation procedures may vary depending upon the size, structure, and resources of the contractor. However, the contractor's reasonable accommodation procedures shall, at a minimum, include the following elements:

(1) Responsible official contact information. The name, title/office, and contact information (telephone number and email address) of the official designated as responsible for implementing the reasonable accommodation procedures pursuant to paragraph (b) of this section. This information should be updated when changes occur.

(2) Requests for reasonable accommodation. The reasonable accommodation procedures shall specify that a request for reasonable accommodation may be oral or written and shall explain that there are no required words that must be used by the requester to effectuate a request for accommodation. The procedures shall also state that requests for reasonable accommodation may be made by an applicant, employee, or by a third party on his or her behalf.

(i) Recurring requests. The reasonable accommodation procedures shall provide that in instances of a recurring need for an accommodation (e.g., a hearing impaired employee's need for a sign language interpreter) the requester will not be required to repeatedly submit or renew their request for accommodation each time an interpreter is needed. In the absence of a reasonable belief that the individual's recurring need for the accommodation has changed, requiring the repeated submission of a request for the accommodation could be considered harassment on the basis of disability in violation of this part.

(ii) Submission of request. The reasonable accommodation procedures shall identify to whom an employee (or a third party acting on his or her behalf) must submit an accommodation request. At a minimum, this shall include any supervisor or management official in the employee's chain of command, and the official responsible for the implementation of the reasonable accommodation procedures.

(iii) Requests made by applicants. The reasonable accommodation procedures shall include procedures to ensure that all applicants, including those using the contractor's online or other electronic application system, are made aware of the contractor's reasonable accommodation obligation and are invited to request any reasonable accommodation needed to participate fully in the application process. All applicants shall also be provided with contact information for contractor staff able to assist the applicant, or his or her representative, in making a request for accommodation. The contractor's procedures shall provide that reasonable accommodation requests by or on behalf of an applicant are processed expeditiously, using timeframes tailored to the application process.

(3) Written confirmation of receipt. The reasonable accommodation procedures shall specify that written confirmation of receipt of a request will be provided to the requester, either by letter or email. The written confirmation shall include the date the accommodation request was received, and be signed by the authorized decision maker or his or her designee.

(4) Timeframe for processing requests. (i) The reasonable accommodation procedures shall indicate that requests for

accommodation will be processed as expeditiously as possible. Oral requests must be considered received on the date they are initially made, even if a reasonable accommodation request form has not been completed. A contractor may set its own timeframes for completing the processing of requests. However, if supporting medical documentation is not needed, that timeframe shall not be longer than 5 to 10 business days. If supporting medical documentation is needed, or if special equipment must be ordered, that timeframe shall not exceed 30 calendar days, except in the event of extenuating circumstances beyond the control of the contractor. The procedures shall explain what constitutes extenuating circumstances.

(ii) Delay in responding to request. If the contractor's processing of an accommodation request will exceed established timeframes, written notice shall be provided to the requester. The notice shall include the reason(s) for the delay and a projected date of response. The notice shall also be dated and signed by the authorized decision maker or his or her designee.

(5) Description of process. The contractor's reasonable accommodation procedures shall contain a description of the steps the contractor takes when processing a reasonable accommodation request, including the process by which the contractor renders a final determination on the accommodation request. If specific information must be provided to the contractor in order to obtain a reasonable accommodation, the description shall identify this information. For example, the contractor's reasonable accommodation procedures may state that to obtain a reasonable accommodation, the contractor must be informed of the existence of a disability, the disability-related limitation(s) or workplace barrier(s) that needs to be accommodated, and, if known, the desired reasonable accommodation. The description shall also indicate that, if the need for accommodation is not obvious, or if additional information is needed, the contractor may initiate an interactive process with the requester.

(6) Supporting medical documentation. The reasonable accommodation procedures shall explain the circumstances, if any, under which medical documentation may be requested and reviewed by the contractor.

(i) The procedures shall explain that any request for medical documentation may not be open ended and must be limited to documentation of the individual's disability and the functional limitations for which reasonable accommodation is sought.

(ii) The procedures shall also explain that the submission of medical documentation is not required when the disability for which a reasonable accommodation is sought is known or readily observable and the need for accommodation is known or obvious.

(7) Denial of reasonable accommodation. The contractor's reasonable accommodation procedures shall specify that any denial or refusal to provide a requested reasonable accommodation will be provided in writing. The written denial shall include the reason for the denial and must be dated and signed by the authorized decision maker or his or her designee. **A statement of the requester's right to file a discrimination complaint with OFCCP shall also accompany or be included in the written denial. If the contractor provides an internal appeal or reconsideration process, the written denial shall inform the requester about this process. The written denial shall also include a clear statement that participation in the internal appeal or**

reconsideration process does not toll the time for filing a complaint with OFCCP or EEOC.

(8) Confidentiality. The contractor's reasonable accommodation procedures shall indicate that all requests for reasonable accommodation, related documentation (such as request confirmation receipts, requests for additional information, and decisions regarding accommodation requests), and any medical or disability-related information provided to the contractor will be treated as a confidential medical record and maintained in a separate medical file, in accordance with section 503 and this part.

(e) Training. The contractor shall provide annual training for its supervisors and managers regarding the implementation of the reasonable accommodation procedures. Training shall also be provided whenever significant changes are made to the reasonable accommodation procedures. Training regarding the reasonable accommodation procedures may be provided in conjunction with other required equal employment opportunity or affirmative action training.

☑ voting check off graphic

(3) MOTION: To submit comments on the US DoL - OFCCP's Proposed Section 503 Regulation: The proposed regulation Sec. 60-741.45 Reasonable accommodation procedures; Subsection (d)(7) Denial of reasonable accommodation requiring the following statement:

"A statement of the requester's right to file a discrimination complaint with OFCCP shall also accompany or be included in the written denial. If the contractor provides an internal appeal or reconsideration process, the written denial shall inform the requester about this process. The written denial shall also include a clear statement that participation in the internal appeal or reconsideration process does not toll the time for filing a complaint with OFCCP or EEOC."

should be *adopted as proposed* LW/RMcM passed unanimously

Item 4. Annual Reviews: The Employment Committee supports annual rather than periodic reviews of employment policies and procedures.

Sec. 60-741.4 Coverage and waivers.

(a) Coverage--(1) Contracts and subcontracts in excess of $10,000. Contracts and subcontracts in excess of $10,000 are covered by this part. No contracting agency or contractor shall procure supplies or services in less than usual quantities to avoid the applicability of the equal opportunity clause.

(2) Contracts and subcontracts for indefinite quantities. With respect to indefinite delivery-type contracts and subcontracts (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, ``call-type'' contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the contracting agency has reason to believe that the amount to be ordered in any year under such contract will not be in excess of $10,000. The applicability of the equal opportunity clause shall be determined at the time of award for the first year and **annually** thereafter for succeeding years, if any.

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Subpart C--Affirmative Action Program

Sec. 60-741.40 General purpose and applicability of the affirmative action program requirement.

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(b) Applicability of the affirmative action program.

(3) The affirmative action program shall be reviewed and updated **annually** by the official designated by the contractor pursuant to Sec. 60-741.44(i).

Sec. 60-741.45 Reasonable accommodation procedures.

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(e) Training. The contractor shall provide **annual** training for its supervisors and managers regarding the implementation of the reasonable accommodation procedures. Training shall also be provided whenever significant changes are made to the reasonable accommodation procedures. Training regarding the reasonable accommodation procedures may be provided in conjunction with other required equal employment opportunity or affirmative action training.

Sec. 60-741.46 Utilization goals.

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(d) Utilization analysis—

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(3) Annual evaluation. The contractor shall evaluate its utilization of individuals with disabilities in each job group **annually**.

Sec. 60-741.42 Invitation to self-identify.

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(c) Survey of employees. The contractor shall invite each of its employees to inform the contractor, in an anonymous manner, whether he or she believes themselves to be an individual with a disability as defined in Sec. 60-741.2(g)(i) or (ii) of this part. This survey shall be conducted **annually,** using the language and manner prescribed by the Director and published on the OFCCP Web site.

Sec. 60-741.44 Required contents of affirmative action programs.

*****

(b) Review of personnel processes. The contractor must ensure that its personnel processes provide for careful, thorough, and systematic consideration of the job qualifications of applicants and employees with known disabilities for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. The contractor shall ensure that its personnel processes do not stereotype individuals with disabilities in a manner which limits their access to all jobs for which they are qualified. In addition, the contractor shall ensure that its use of information and communication technology is accessible to applicants and employees with disabilities. The contractor shall review such processes on at least an **annual basis** and make any necessary modifications to ensure that these obligations are carried out.

(c) Physical and mental qualifications. (1) The contractor shall provide in its affirmative action program, and shall adhere to a schedule for the **annual review** of all physical and mental job qualification standards to ensure that, to the extent qualification standards tend to screen out individuals on the basis of disability, they are job-related for the position in question and are consistent with business necessity.

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(f) External dissemination of policy, outreach, and positive recruitment.

(3) Assessment of external outreach and recruitment efforts. The

contractor shall, **on an annual basis**, review the outreach and recruitment efforts it has taken over the previous twelve months to evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities.

*****

(k) Data Collection Analysis. The contractor shall document and maintain the following computations or comparisons pertaining to applicants and hires on an annual basis:

(1) The number of referrals of individuals with disabilities that the contractor received from applicable employment service delivery system(s), such as State Vocational Rehabilitation Service Agencies and Employment One-Stop Career Centers;

(2) The number of referrals of individuals with disabilities that the contractor received from other entities, groups, or organizations with which the contractor has a linkage agreement pursuant to paragraph (f)(1)(i).

(3) The number of applicants who self-identified as individuals with disabilities pursuant to Sec. 60-741.42(a), or who are otherwise known to be individuals with disabilities;

(4) The total number of job openings and total number of jobs filled;

(5) The ratio of jobs filled to job openings;

(6) The total number of applicants for all jobs;

(7) The ratio of applicants with disabilities to all applicants (``applicant ratio'');

(8) The number of applicants with disabilities hired;

(9) The total number of applicants hired; and

(10) The ratio of individuals with disabilities hired to all hires (``hiring ratio''). The number of hires shall include all employees.

Sec. 60-741.47 Providing priority consideration in employment.

(a)The contractor is encouraged to voluntarily develop and implement programs that provide priority consideration to individuals with disabilities in recruitment and/or hiring. Examples of priority consideration programs include, but are not limited to, assigning a weighted value or additional ``points'' to job applicants who self-identify as being an individual with a disability, and developing a job training program focused on the specific needs of individuals with certain disabilities such as traumatic brain injury (TBI) or developmental disabilities and utilizing linkage agreements to recruit program trainees.

(1) If a contractor elects to implement a priority consideration program for individuals with disabilities, a description of the program and the policies governing the program, including the name and title of the official responsible for the program, shall be included in the contractor's written affirmative action program. An **annual report** describing the contractor's activities pursuant to the priority consideration program and identifying the outcomes achieved should also be included in the contractor's affirmative action program."

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(4) MOTION: To submit comments on the US DoL - OFCCP's Proposed Section 503 Regulation: The proposed regulations requiring an annual reviews of employment policies and procedures, in sections:

	Sec. 60-741.4 Coverage and waivers, Subsections (a)(1) and (a)(2); Sec. 60-741.40 General purpose and applicability of the affirmative action program requirement, Subsection(b)(3); Sec. 60-741.45 Reasonable accommodation procedures, Subsection (e); Sec. 60-741.46 Utilization goals, Subsection (d)(3); Sec. 60-741.42 Invitation to self-identify, Subsection (c); Sec. 60-741.44 Required contents of affirmative action programs, Subsections (b), (c), (f)(3), and (k); and Sec. 60-741.47 Providing priority consideration in employment, Subsection (a)(1), should be modified to include an employment review schedule based on the size of contract. LW/RH passed unanimously
	Item 5: ADAAA Updates: The Employment Committee supports the incorporation of the provisions of the ADA Amendments Act (ADAAA) of 2008 the subsequent amendment of the Equal Employment Opportunity Commission (EEOC) Regulation 29 CFR part 1630.
	Subpart A--Preliminary Matters, Equal Opportunity Clause Section 60-741.1 Purpose, Applicability, and Construction (c) Construction--(1) In general. Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title I of the Americans with Disabilities Act (ADA) of 1990, as amended, (42 U.S.C. 12101 et seq.) or the regulations issued by the Equal Employment Opportunity Commission pursuant to that title (29 CFR part 1630). The Interpretive Guidance on Title I of the Americans with Disabilities Act set out as an appendix to 29 CFR part 1630 issued pursuant to that title may be relied upon for guidance in interpreting the parallel non-discrimination provisions of this part. ***** (2) Benefits under State worker's compensation laws. Nothing in this part alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs. Section 60-741.2 Definitions ***** (g) Disability--(1) The term disability means, with respect to an individual: (i) A physical or mental impairment that substantially limits one or more major life activities of such individual; (ii) A record of such an impairment; or (iii) Being regarded as having such an impairment (as defined in paragraph (w) of this section). (2) As used in this part, the definition of ``disability'' must be construed in favor of broad coverage of individuals, to the maximum extent permitted by law. The question of whether an individual meets the definition under this part should not demand extensive analysis. (3) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. (4) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. (5) See paragraphs (n), (p), (u), (w), and (aa) of this section,

respectively, for definitions of ``major life activities,'' ``physical or mental impairment,'' ``record of such an impairment,'' ``regarded as having such an impairment,'' and ``substantially limits.''

(6) See Sec. 60-741.3 for exceptions to the definition of ``disability.''

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(n) Major life activities--(1) In general. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

(2) Major bodily functions. For purposes of paragraph (n)(1) of this section, a major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

(3) In determining other examples of major life activities, the term ``major'' shall not be interpreted strictly to create a demanding standard for disability. Whether an activity is a ``major life activity'' is not determined by reference to whether it is of ``central importance to daily life.''

(o) Mitigating measures--(1) In general. The term mitigating measures includes, but is not limited to:

(i) Medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) Reasonable accommodations or ``auxiliary aids or services'' (as defined by 42 U.S.C. 12103(1));

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(2) Ordinary eyeglasses or contact lenses. The term ordinary eyeglasses or contact lenses means lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(3) Low-vision devices. The term low-vision devices means devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses.

(4) Auxiliary aids and services. The term auxiliary aids and services includes--

(i) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(ii) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(iii) Acquisition or modification of equipment or devices; and

(iv) Other similar services and actions.

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(s) Qualified individual means an individual who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position. See Sec. 60-741.3 for exceptions to this definition.

(t) Reasonable accommodation--(1) In general. The term reasonable accommodation means modifications or adjustments:

(i) To a job application process that enable a qualified applicant with a disability to be considered for the position such applicant desires; or

(ii) To the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or

(iii) That enable the contractor's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by the contractor's other similarly situated employees without disabilities.

(2) Reasonable accommodation may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustments or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the contractor to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation[2]. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations. (Appendix A of this part provides guidance on a contractor's duty to provide reasonable accommodation.)

(4) Individuals who meet the definition of ``disability'' solely under the ``regarded as'' prong of the definition of ``disability'' as defined in paragraph (w)(1) of this section are not entitled to receive reasonable accommodation.

(u) Record of such impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. An individual shall be considered to have a record of a disability if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was is classified as having had such an impairment.

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[2] Regulation Footnote: Before providing a reasonable accommodation, the contractor is strongly encouraged to verify with the individual with a disability that the accommodation will effectively meet the individual's needs.

(w) Regarded as having such an impairment--(1) Except as provided in paragraph (w)(4) of this section, an individual is ``regarded as having such an impairment'' if the individual is subjected to an action prohibited under subpart B (Discrimination Prohibited) of these regulations because of an actual or perceived physical or mental impairment, whether or not the impairment substantially limits or is perceived to substantially limit a major life activity. Prohibited actions include but are not limited to refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment.

(2) Except as provided in paragraph (w)(4) of this section, an individual is ``regarded as having such an impairment'' any time a contractor takes a prohibited action against the individual because of an actual or perceived impairment, even if the contractor asserts, or may or does ultimately establish a defense to such action.

(3) Establishing that an individual is ``regarded as having such an impairment'' does not, by itself, establish liability for unlawful discrimination in violation of this part. Such liability is established only when an individual proves that a contractor discriminated on the basis of disability as prohibited by this part.

(4) Impairments that are transitory and minor. Paragraph (w)(1) of this section shall not apply to an impairment that is shown by the contractor to be transitory and minor. The contractor must demonstrate that the impairment is both ``transitory'' and ``minor.'' Whether the impairment at issue is or would be ``transitory and ``minor'' is to be determined objectively. The fact that a contractor subjectively believed the impairment was transitory and minor is not sufficient to defeat an individual's coverage under paragraph (w)(1) of this section.

(i) An impairment is transitory if it has an actual or expected duration of six months or less.

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(aa) Substantially limits--(1) In general. The term ``substantially limits'' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by law. ``Substantially limits'' is not meant to be a demanding standard and should not demand extensive analysis.

(i) An impairment is substantially limiting within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered ``substantially limiting.'' Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(ii) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis. However, nothing in this section is intended to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate.

(iii) In determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate

cases to consider, as compared to most people in the general population, the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity. This may include consideration of facts such as the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function.

(2) Non-applicability to the ``regarded as'' prong. Whether an individual's impairment substantially limits a major life activity is not relevant to a determination of whether the individual is regarded as having a disability within the meaning of Sec. 60-741.2(g)(1)(iii).

(3) Ameliorative effects of mitigating measures. Except as provided in paragraph (aa)(3)(i) of this section, the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures as defined in Sec. 60-741.2(o).

(i) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered when determining whether an impairment substantially limits a major life activity. See Sec. 60-741.2(o)(2) for a definition of ``ordinary eyeglasses or contact lenses.''

(ii) Non-ameliorative effects of mitigating measures. The non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(4) In determining whether an individual is substantially limited the focus is on how a major life activity is substantially limited, and not on the outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in the major life activity of learning because of the additional time or effort he or she must spend to read, write, or learn compared to most people in the general population.

(5) Predictable assessments. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, the principles set forth in this section are intended to provide for generous coverage through a framework that is predictable, consistent, and workable for all individuals and contractors with rights and responsibilities under this part. Therefore, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under Sec. Sec. 60-741.2(g)(1)(i) or (ii). Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity. With respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(i) Examples of predictable assessments. Applying the principles set forth in this section it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated: Deafness substantially limits hearing; blindness substantially limits seeing; an intellectual disability (formerly termed mental retardation) substantially limits brain function; partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function; autism substantially limits brain function; cancer substantially limits normal cell growth; cerebral palsy substantially limits brain function; diabetes substantially limits endocrine function; epilepsy substantially limits neurological function; Human Immunodeficiency Virus (HIV) infection substantially limits immune function; multiple sclerosis (MS) substantially limits neurological function; muscular dystrophy substantially limits neurological function; and major depressive disorder, bipolar disorder, post-traumatic stress disorder (PTSD), obsessive compulsive disorder, and schizophrenia substantially limit brain function. The types of impairments described in this section may also substantially limit additional major life activities not explicitly listed above.

Sec. 60-741.3 Exceptions to the Definitions of ``Disability'' and ``Qualified Individual''

(a) Current illegal use of drugs--(1) In general. The terms ``disability'' and ``qualified individual'' do not include individuals currently engaging in the illegal use of drugs, when the contractor acts on the basis of such use.

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(4) Construction. (i) Nothing in paragraph (a)(1) of this section shall be construed to exclude from the definition of disability or qualified individual an individual who:

(A) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;

(B) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(C) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(ii) In order to be protected by section 503 and this part, an individual described in paragraph (a)(4)(i) of this section must, as appropriate, satisfy the requirements of the definition of disability and qualified individual.

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Subpart B--Discrimination Prohibited

Sec. 60-741.21 Prohibitions

(a) The term discrimination includes, but is not limited to, the acts described in this section and Sec. 60-741.23.

(1) Disparate treatment. It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual on the basis of disability.

(2) Limiting, segregating and classifying. Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the

basis of disability. For example, the contractor may not segregate employees into separate work areas or into separate lines of advancement on the basis of disability.

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(6) Not making reasonable accommodation.

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(iv) A contractor is not required to provide reasonable accommodation to an individual who satisfies only the ``regarded as having such an impairment'' prong of the definition of ``disability,'' as defined in Sec. 60-741.2(w)(1).

(7) Qualification standards, tests and other selection criteria--

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(ii) Qualification standards and tests related to uncorrected vision. It is unlawful for the contractor to use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the contractor, is shown to be job-related for the position in question and consistent with business necessity. An individual challenging a contractor's application of a qualification standard, test, or other criterion based on uncorrected vision need not be an individual with a disability, but must be adversely affected by the application of the standard, test, or other criterion.

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(9) Compensation. In offering employment or promotions to individuals with disabilities, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related pension or other disability-related benefit the applicant or employee receives from another source. Nor may the contractor reduce the amount of compensation offered to an individual with a disability because of the actual or anticipated cost of a reasonable accommodation the individual needs or may request.

(b) Claims of No Disability. Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of the lack of disability, or because an individual with a disability was granted an accommodation that was denied to an individual without a disability.

Sec. 60-741.47 Providing Priority Consideration in Employment

(a) The contractor is encouraged to voluntarily develop and implement programs that provide priority consideration to individuals with disabilities in recruitment and/or hiring. Examples of priority consideration programs include, but are not limited to, assigning a weighted value or additional ``points'' to job applicants who self-identify as being an individual with a disability, and developing a job training program focused on the specific needs of individuals with certain disabilities such as traumatic brain injury (TBI) or developmental disabilities and utilizing linkage agreements to recruit program trainees.

(1) If a contractor elects to implement a priority consideration program for individuals with disabilities, a description of the program and the policies governing the program, including the name and title of the official responsible for the program, shall be included in the contractor's written affirmative action program. An annual report describing the contractor's activities pursuant to the priority

	consideration program and identifying the outcomes achieved should also be included in the contractor's affirmative action program. (2) Disability-related information from the applicant and/or employee self-identification request required by Sec. 60-741.42 may be used to identify individuals with disabilities who are eligible to benefit from a priority consideration program. (b) The contractor shall not use a priority consideration program to segregate individuals with disabilities or to limit or restrict the employment opportunities of any individual with a disability. (c) The contractor shall not discriminate against an individual with a disability that has received priority consideration with respect to any term, condition, or benefit of employment, including, but not limited to, employment acts such as compensation, promotion, and termination, that are listed in Sec. 60-741.20.
☑ voting check off graphic	(5) MOTION: To submit comments on the US DoL - OFCCP's Proposed Section 503 Regulation: The proposed regulation revising the regulations to confirm to the provisions of the Americans with Disabilities Act Amendments Act should be adopted as proposed AP/LW passed unanimously.
	Item 6. Additional NPRM topics: The Employment Committee is concern over the possible inclusion of a 2 percent sub-goal for individuals with certain particularly severe or targeted disabilities. The employment committee does NOT support the inclusion this sub-goal.
	OFCCP invites public comment on any of the changes to the regulations in the NPRM. In addition, the OFCCP invites the public to comment on select topics related to the proposed regulatory changes, including: ☐ The proposed text of the voluntary self-identification invitations that contractors would use when asking an applicant or employee to identify as an individual with a disability; ☐ The possible inclusion of a 2 percent sub-goal for individuals with certain particularly severe or targeted disabilities. OFCCP seeks comment on both the concept of using a sub-goal, and on the disabilities that should be included in such a sub-goal; and ☐ The use of a utilization range rather than the fixed 7 percent national goal the NPRM proposes. OFCCP seeks comment on a range of values between 4 percent and 10 percent. Sub-Goal Option OFCCP is considering the option of including within the 7% goal for individuals with disabilities a sub-goal of 2% for individuals with certain particularly severe disabilities. The federal government currently monitors internal hiring with respect to a list of particularly severe disabilities, referred to as ``targeted disabilities'' in furtherance of its affirmative action obligation to employ and advance in employment individuals with disabilities in the Government pursuant to section 501 of the Rehabilitation Act. The list of targeted disabilities is defined in the President's July 2010 Executive Order ``Increasing Federal Employment of Individuals with Disabilities,'' as set forth in Standard Form 256 (SF256). Subject to

updating, SF 256 currently identifies the following as ``targeted/severe disabilities:'' Total deafness, blindness, missing extremities (hand, foot, arm or leg), partial paralysis, complete paralysis, epilepsy, severe intellectual disability, psychiatric disability, and dwarfism.

If such a sub-goal is adopted, the Director would similarly prescribe the language and manner in which contractors should invite applicants and employees to self-identify. This will ensure consistency in all pre-offer invitations that are made, and will reassure applicants that the request is routine and executed pursuant to obligations created by OFCCP.

OFCCP invites comments from the public on this sub-goal option. If OFCCP adopts the use of a sub-goal, it will be included in the Final Rule. We are seeking public input and comment on both the concept of a sub-goal, as well as the disabilities to be included within that sub-goal. Comments on the questions below will be especially helpful.

1. What data or research is available that informs the design of an appropriate sub-goal including, but not limited to which severe disabilities should be covered by the sub-goal, and the appropriate sub-goal target?

2. How does a sub-goal further the overall objective of increasing employment opportunities for individuals with severe disabilities?

3. What data or research is available on the need for a sub-goal for specific disabilities?

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(6) MOTION: To submit comments on the US DoL - OFCCP's Proposed Section 503 Regulation: Additional NPRM topics: In not *support to* the inclusion of a 2 percent sub-goal for individuals with certain particularly severe or targeted disabilities. RH/RMcM passed, Nay LW

Balancing Budget graphic

2012 -- H 7323 Disability Related FY 2012 Revised & FY 2013 Appropriations & Articles	Bob Cooper, Executive Secretary	5:30

Purpose/Goal: To review the proposed FY 2012 & 2013 Budget Bill and comment on its impact on people with disabilities.

Appropriations: The Commission's and Other Disability Services

Appropriations for the Governor's Commission On Disabilities	FY 2010 Audited	FY 2011 Audited	FY 2012 Enacted	FY 2012 Revised	FY 2013 Recommend
Expenditures By Program					
Central Management	$578,829	$514,758	$829,892	$771,835	$756,292
Total Expenditures	$578,829	$514,758	$829,892	$771,835	$756,292
Expenditures By Object					
Personnel	$362,394	$382,231	$419,445	$414,911	$403,157
Operating Supplies and Expenses	$22,075	$29,112	$24,812	$35,149	$40,500
Assistance and Grants	$49,860	$68,873	$133,754	$67,894	$60,754
Subtotal: Operating Expenditures	$434,329	$480,216	$578,011	$517,954	$504,411
Capital Purchases and Equipment	$142,250	$7,042	$251,881	$253,881	$251,881
Operating Transfers	$2,250	$27,500	-	-	-
Total Expenditures	**$578,829**	**$514,758**	**$829,892**	**$771,835**	**$756,292**
Expenditures By Funds					

Appropriations for the Governor's Commission On Disabilities	FY 2010 Audited	FY 2011 Audited	FY 2012 Enacted	FY 2012 Revised	FY 2013 Recommend
General Revenue	$343,441	$352,190	$388,786	$387,929	$371,096
Federal Funds	$85,780	$124,377	$181,842	$122,546	$125,502
Restricted Receipts	$7,931	$5,191	$9,264	$11,360	$9,694
Operating Transfers from Other Funds (RICAP)[3]	$141,677	$33,000	$250,000	$250,000	$250,000
Total Expenditures	**$578,829**	**$514,758**	**$829,892**	**$771,835**	**$756,292**
FTE Authorization	4.0	4.0	4.0	4.0	4.0
		FY 2012		FY 2013	
	Grade	FTE	Cost	FTE	Cost
Executive Secretary	0132A	1.0	$81,951	1.0	$81,951
Classified Subtotal		**1.0**	**$81,951**	**1.0**	**$81,951**
Special Projects Coordinator	0829A	1.0	$79,242		($79,242)
Assistant ADA Coordinator	0824A	2.0	$108,418	2.0	$110,654
Public Education Aide	0115A		--	1.0	$36,283
Unclassified Subtotal		**3.0**	**$187,660**	**3.0**	**$226,179**
Turnover			--		($50,001)
Total Salaries		**4.0**	**$269,611**	**4.0**	**$258,129**

The Governor's Budget authorizes the Commission to hire a Public Education Aide @ a starting salary of at least $34,833, after Harvey retires. The Executive Committee should be authorized to finalize the job descriptions (initial draft attached) and begin recruitment and selection by the spring. It may be possible to hire the person and have s/he start employment prior to July 1st. Under the Commission's operating rules, the full Commission must ratify the Executive Committee's hiring decision.

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MOTIONS:

(1) To *support* the Governor's recommended FY 2012 & 2013 Operating Budgets for the Commission LW/RMcM passed unanimously

(2) To *authorize* the Executive Committee to finalize the Public Education Aide's job description and by the spring begin recruitment and selection, with flexibility on the starting employment date LW/RMcM passed, Nay WI

Appropriations: Other Disability Services

See attached RI Disability Budget Report
The Commission's Legislative Package includes the following budget related items:
2. Transportation to Employment, job training, education, health care, etc.
   a. Maintain the existing RIPTA/RIde service areas;
   b. Adequate funding/new & stable funding source
   c. Expand the RIPTA/RIde service areas/hours beyond the existing service/hours.
3. Global Medicaid Consumer Choice Waiver; making sure the 2008 level of services stay in place for persons with severe disabilities:
   a. Restore the 2008 Katie Beckett and children with autism spectrum

[3] The Budget does not propose any General Obligation Bond Referendum in 2014 or later.

Appropriations for the Governor's Commission On Disabilities	FY 2010	FY 2011	FY 2012	FY 2012	FY 2013
	Audited	Audited	Enacted	Revised	Recommend

disorders eligibility rules;

b. Restore the right to medically necessary brand name drugs without requiring two generic failures before allowing brand name drugs;
c. Improve services for adults with autism spectrum disorders;
d. Retain multiple behavioral healthcare service delivery models; and
e. Restore developmental disability service funding.

4. Housing Supports and other services for people with behavioral health concerns:
   a. Restore the Neighborhood Opportunities Program funding;
   b. Create a supportive housing program; and
   c. Restore Assistive housing SSI funding.
5. Transition from Youth services (education, Medicaid, etc.) to Employment, or post-secondary education or adult services:
   a. Require implementation of the transition planning be completed prior to exiting youth services;
   b. Provide navigators to assist aging parents/caregivers of independent consumer with developmental disabilities transition to services; and
   c. Provide transition for young adults with autism spectrum disorders to adult service providers.

Disability Related Budget Article

Question	Governor's Recommended Funding	Unfunded Access Renovation Projects
Budget Article 5 Relating to Capital Development Program		
(1) Higher Education Facilities		
URI/RIC Joint Nursing School	$65,200,000	
RI College - renovations of academic buildings	$44,700,000	$2,713,135
University of RI	$0	$8,791,675
Total Higher Education	**$109,900,000**	**$11,504,810**
(2) Transportation		
DoT – highways, roads & bridges	$20,000,000	$635,450
RIPTA – purchase buses	$1,500,000	
Total Transportation	**$21,500,000**	**$635,450**
(4) Environmental Management		
(a) Narragansett Bay and Watershed Restoration	$4,000,000	
(b) State Land Acquisition – Open Space	$2,500,000	
(c) Farmland Development Rights	$4,500,000	
(d) Local Land Acquisition Grants	$2,500,000	
(e) Local Recreation Grants	$3,500,000	
(f) Historic/Passive Parks	$1,000,000	
(g) Local Recreation – Distressed Communities	$2,000,000	
(h) State Recreation Facilities	$5,000,000	$856,875
Total Environmental Management	**$25,000,000**	**$856,875**
(5) Affordable Housing (Neighborhood Opportunities Program)	$25,000,000	

	Question	Governor's Recommended Funding	Unfunded Access Renovation Projects
	Article 7 Relating To Debt Management Act Joint Resolutions		
	Sec. 3. Rhode Island Airport Corporation	$174,000,000	$368,400
	Remaining Access Projects are:		
	(a) BHDDH Total		$6,780,165
	(b) DBR Total		$6,000
	(c) DHS Total		$667,000
	(d) DoA Total		$4,738,935
	(e) DoC Total		$1,492,000
	(f)RI National Guard Total		$67,500
	Total Remaining Access Projects		**$13,751,600**

	Article 11 Relating To Education Aid
	SECTION 6. Chapter 16-25 of the General Laws entitled "Education of Children Who are Deaf or Blind" is hereby repealed in its entirety.
	~~**§ 16-25-1. Appointment of state beneficiaries at special institutions.** - The governor, on recommendation of the department of elementary and secondary education and upon application of the parent or guardian, may appoint any child who is deaf, blind, or visually impaired being a legal resident of this state, who shall appear to the department to be a fit subject for education, as a state beneficiary at any suitable institution or school now established or that may be established either within or without the state, for the period that he or she may determine, within the limit of ten (10) years; provided, that he or she may, upon the special recommendation of the department, extend the period and that he or she shall have the power to revoke any appointment at any time for cause.~~ ~~**§ 16-25-2. Supervision of beneficiaries - Reports to general assembly.** The department of elementary and secondary education is invested with the duty and responsibility of supervising the education of all those beneficiaries, and no child appointed as provided in § 16-25-1 shall be withdrawn from any institution or school except with its consent, or the consent of the governor; and the department shall annually report its doings under this chapter to the general assembly, with any further information in relation to the several institutions at which these beneficiaries have been placed that may be deemed desirable.~~ ~~**§ 16-25-4. Care and instruction of children who are blind or visually impaired under school age.** -The department of elementary and secondary education shall have power to provide for the suitable care, maintenance, and instruction of babies and children under school age residing in this state who may be born blind or become blind or visually impaired, in any case where by reason of lack of means or other cause the parent or parents of the children may be unable to properly care for, maintain, and educate the children.~~ ~~**§ 16-25-5. Contracts for care of children who are blind or visually impaired.** For the purpose of providing care, maintenance, and education of children who are blind or visually impaired, the department of elementary and secondary education shall have power to contract with any institution having or furnishing special education and related services in this or any other state at a contract price within the amount appropriated.~~ ~~**§ 16-25-6. Payment of expenses of chapter.** Each community, as defined in chapter 7 of this title, shall contribute to the department of elementary and secondary education in accordance with regulations to be prescribed by the department.~~
	Article 17 Relating To Medical Assistance - Dental Benefits
	Section 1 eliminates dental coverage to individuals 21 and older.
	40-8.4-19. Managed health care delivery systems for families. -- (a) Notwithstanding any other provision of state law, the delivery and financing of the health care services provided under this chapter shall be provided through a system of managed care. "Managed care" is defined as systems that: integrate an efficient financing mechanism with quality service delivery; provide a "medical home" to assure appropriate care and deter unnecessary services; and place emphasis on preventive and

	primary care. (b) Enrollment in managed care health delivery systems is mandatory for individuals eligible for medical assistance under this chapter. This includes children in substitute care, children receiving Medical Assistance through an adoption subsidy, and children eligible for medical assistance based on their disability. Beneficiaries with third-party medical coverage or insurance may be exempt from mandatory managed care in accordance with rules and regulations promulgated by the department of human services for such purposes. *(c) Individuals who can afford to contribute shall share in the cost.* The department of human services is authorized and directed to apply for and obtain any necessary waivers and/or state plan amendments from the secretary of the U.S. department of health and human services, including, but not limited to, a waiver of the appropriate sections of Title XIX, 42 U.S.C. § 1396 et seq., to require that beneficiaries eligible under this chapter or chapter 12.3 of title 42, with incomes equal to or greater than one hundred fifty percent (150%) of the federal poverty level, pay a share of the costs of health coverage based on the ability to pay. The department of human services shall implement this cost-sharing obligation by regulation, and shall consider co-payments, premium shares, or other reasonable means to do so in accordance with approved provisions of appropriate waivers and/or state plan amendments approved by the secretary of the United States department of health and human services. (d) Notwithstanding the above, the executive office of health and human services is authorized to eliminate dental services for adults age twenty-one (21) years and older. This article shall take effect as of July 1, 2012.
	Article 19 Relating To Office Of Health And Human Services
	The article removes references for the Department of Elderly Affairs and replaces references to the Department of Mental Health, Retardation and Hospitals with the Department of Behavioral Healthcare, Developmental Disabilities And Hospitals. It also shifts the administration of Medicaid to the Executive Office of Health and Human Services, and the management and operations of programs or services approved for federal financial participation under the authority of the Medicaid state agency. It requires the Secretary to:
	"(3) Review and ensure the coordination of any Global Consumer Choice Compact Waiver requests and renewals as well as any initiatives and proposals requiring amendments to the Medicaid state plan or category ~~one (I) or~~ two (II) or three (III) changes, as described in the special terms and conditions of the Global Consumer Choice Compact Waiver with the potential to affect the scope, amount or duration of publicly-funded health care services, provider payments or reimbursements, or access to or the availability of benefits and services as provided by Rhode Island general and public laws. The secretary shall consider whether any such changes are legally and fiscally sound and consistent with the state's policy and budget priorities. The secretary shall also assess whether a proposed change is capable of obtaining the necessary approvals from federal officials and achieving the expected positive consumer outcomes. Department directors shall, within the timelines specified, provide any information and resources the secretary deems necessary in order to perform the reviews authorized in this section;"
	Article 19 Relating To Rhode Island Veterans' Home
	"WHEREAS, the Special House Commission to Undertake a Comprehensive Study of the R.I. Veterans' Home in Bristol and Develop a Master plan for the Overall Future Direction of the Facility has devoted a considerable amount of volunteer time and effort to develop a proposal to construct a new Veterans' Home and associated assisted living residence on the property at Bristol, and has recommended that the Governor and General Assembly propose a bond issue to the voters in the next general election for this purpose; now, therefore, be it RESOLVED, that the Governor and General Assembly will afford this proposal careful consideration during the deliberations regarding the appropriations act for state fiscal year 2013, and will reach a final decision as to the proposed bond issue no later than June 30, 2012."

	Article 21 Relating To Abused And Neglected Children
	"(b) In the event that after investigation it is determined by the department that the child is being or has been abused or neglected but that the circumstances of the child's family or otherwise do not require the removal of the child for his or her protection, the department may allow the child to remain at home and provide the family and child with access to preventative support and services. In addition, the department is authorized to petition the family court for an order for the provision of treatment of the family and child."
	Article 31 Relating To Medicaid Reform Act Of 2008
	"WHEREAS, in pursuit of a more cost-effective consumer choice system of care that is fiscally sound and sustainable, the Secretary requests general assembly approval of the following proposals to amend the demonstration: (a) *Elimination of Adult Dental Services*. The Medicaid agency proposes to eliminate the optional dental benefit coverage for Medicaid beneficiaries aged twenty-one (21) and older. Emergency and palliative services dental services would be retained when deemed medically necessary. As implementation of this proposal will alter the benefit package available to Medicaid beneficiaries, a Category II change is required under the terms and conditions established for the Global Consumer Choice Compact Waiver. Amendments to the rules, regulations and procedures governing the provision of dental benefit coverage will also be required. (b) *Nursing Home Rate Reduction*. The Medicaid agency proposes, at its discretion, to reduce nursing home per-diem reimbursement rates that would otherwise be in effect for FY 2012 and FY 2013, however, the decrease would be no greater than 1.8 percent. A Category II change is required to implement this proposal under the terms and conditions established for the Global Consumer Choice Compact Waiver. Further, this change may also require the adoption of new or amended rules, regulations and procedures. (c) *Medicaid Managed Care Plan Refinements - New Components.* The Medicaid single state agency proposes to reduce hospital readmissions, promote better health and nutrition and encourage non-invasive approaches to address obesity by incorporating a nutritional education and exercise component into the benefit package offered to certain Medicaid beneficiaries. Establishing a targeted benefit requires amendments to or new rules, regulations and procedures pertaining to coverage for the Medicaid populations affected as well as a Category II change to the Global Consumer Choice Compact Waiver in those areas where additional authority is warranted under the terms and conditions of the demonstration agreement; now, therefore, be it RESOLVED, that the general assembly hereby approves proposals (a) through (c) listed above to amend the demonstration; and be it further RESOLVED, that the secretary of the office of health and human services is authorized to pursue and implement any waiver amendments, category II or category III changes, state plan amendments and/or changes to the applicable department's rules, regulations and procedures approved herein and as authorized by § 42-12.4-7; and be it further RESOLVED, that this joint resolution shall take effect upon passage. SECTION 2. This article shall take effect upon passage."

☑ voting check off graphic	MOTIONS: (1) To recommended the General Assembly add to the Bond Referendums in Article 5 accessibility renovation projects at: Rhode Island College $2,720,000; University of Rhode Island $8,800,000; Department of Transportation $650,000; & Department of Environmental Management $870,000 and Department of Administration $13,800,000 RMcM/RH passed, Nay SB, Abstain BI

☑ voting check off graphic	MOTION: To support on Article 5 Section 5 Affordable Housing – $25 million for the Neighborhood Opportunities Program LW/RMcM passed unanimously
☑ voting check off graphic	MOTION: To express concerns that equal access will be maintained, do the local school district have the skill level and financial ability to absorb these services in Article 12 Relating To Education Aid – Section 6 Repeal of Chapter 16-25 of the General Laws entitled "Education of Children Who are Deaf or Blind". AP/RH passed unanimously
☑ voting check off graphic	MOTION: To oppose Article 17 Relating To Medical Assistance - Dental Benefits – Elimination of dental services for adults age twenty-one (21) years and older LW/JD passed unanimously
☑ voting check off graphic	MOTION: To oppose the consolidation of Medicaid on Article 18 Relating To Office Of Health And Human Services - Global Consumer Choice Compact Waiver Categories II and III LW/AP passed, abstained MG, SB, & JD
☑ voting check off graphic	MOTION: To support the need to replace the Veterans' Home facilities and create an assisted living facility in a location other than Bristol (that is more centrally located, with greater access to public transportation) on Article 19 Relating To Rhode Island Veterans' Home – Renovation Funding AP/RMcM passed unanimously
☑ voting check off graphic	MOTION: To oppose Article 31 Relating To Medicaid Reform Act Of 2008: ➢ Elimination of Adult Dental Services; ➢ Nursing Home Rate Reduction; and ➢ Medicaid Managed Care Plan Refinements – New Components. LW/RMcM, passed Abstain MLG & SB
☑ voting check off graphic	MOTION: To refer to the Legislation Committee for action: ➢ **Article 9 Health Fees** – raising the licensing fees for health care providers ➢ **Article 14 Relating To Restricted Receipt Accounts** - Section 2 creating a restricted receipt account "Non-governmental funding for early childhood education fund". ➢ **Article 24 Relating To Taxation And Revenues** 23-17-38.1. Hospitals – Licensing fee. – continues the (5.43%) upon the net patient services revenue of every hospital. 44-20-12. Tax imposed on cigarettes sold. – increases the tax from one hundred seventy-three (173) to one hundred seventy five (175). 44-20-13.2. Tax imposed on smokeless tobacco, cigars, and pipe tobacco products. – increases the tax from fifty cents ($.50) to one dollar ($1.00) for each cigar. 44-44-2. Taxation of Beverage Containers, Hard-to-Dispose Material and Litter Control Participation - Definitions" replaces the definition of a "beverage" from "means carbonated soft drinks, soda water, mineral water, bottled water, and beer and other malt beverages." to "all non alcoholic drinks for human

	consumption, except milk but including beer and other malt beverages”. LW/BI passed unanimously
 Presentation graphic	**Status Reports:**
	Purpose/Goal: To update the Commissioners on the status of Commission activities, since the last meeting.
 Balancing Budget graphic	Commission Budget, Operations & Executive Committee — Tim Flynn, Chair
	Discussion: A revised budget request was submitted to the Budget Office to address the proposed staff changes when Harvey retires. Much of the December and January was devoted to preparing a report and documentation for the Commission’s $30 million Accessibility Renovation Bond Issue.
 Ramp graphic	Accessibility — Kate McCarthy-Barnett, Chair
	Discussion: The Committee held 2 meetings to review state agencies & colleges ADA Renovation Project requests and submitted a report to the Governor and Budget Office on proposed Access Renovation Bond Issue(s). During the first quarter of the Federal Fiscal Year (Oct. - Dec. 11) 310 individuals participated in 8 ADA training sessions. Technical assistance was provided to 352 persons/entities. Most of the requests came from service providers and businesses. Two hundred ninety two ADA materials were sent out. The staff set up 4 ADA exhibits at conferences. Staff attended the NE ADA Center’s semi-annual meeting and wrote an article that appeared in the NE ADA Center’s on-line newsletter “Access New England.”
 business graphic	Disability Business Enterprises — Theresa Thoelke, Chair
	Discussion: To date, 6 DBE's have been recertified for 2012, 3 will be considered for recertification when the Committee meets Feb. 9th. One may be recertified (the application has been sent in but the 3rd & 4th quarterly data have not been submitted), 1 DBE opted out of the program, 4 DBE's have not requested recertification or submitted their 3rd & 4th quarterly data, and 1 potential DBE never returned the application. Because of the difficulty in getting the DBE'S to submit their quarterly data, the the DBE Committee voted in the November 9, 2011 DBE Committee meeting, that in accordance with Section VI.A.1 of RI GL 37-2.2 Disability Business Enterprises, DBE certification will be revoked on the grounds of "Failure to comply with disability business enterprise or purchasing statues and/or regulations." The 4th quarter DBE data was due on Jan.31, 2012 and to date, only 4 of the 15 2011 certified DBE's have submitted their reports. The adopted meeting schedule erroneously assigned the meetings to Thursdays.
 voting check off graphic	MOTION: To revise the DBE Committee’s schedule of meetings to Wednesdays 05/09; 08/08*; 11/07; and 12/12 @ 9:30 AM. PR/MG passed unanimously
	Election Assistance Committee — Rosemary Carmody, Chair

Ballot box graphic	Discussion: With the 2012 Election fast approaching, the Committee has reaffirmed its efforts to ensure equal voting access for all Rhode Islanders. Our initiatives through November include education and awareness of the new voter ID system, physical accessibility of all polling places, accessible voting policies and practices, poll-worker education and general voter awareness. The committee has continued to work closely with the R.I. Board of Elections and local Boards of Canvassers to ensure continued coordination leads to the elimination and eradication of barriers to voting.		
Working graphic	Employment Committee	Patricia Ryherd, Chair	
	Discussion: During the first quarter of the Federal Fiscal Year (Oct. - Dec. 11) 310 individuals participated in 8 ADA training sessions. Technical assistance was provided to 352 persons/entities. Most of the requests came from service providers and businesses. Two hundred ninety two ADA materials were distributed. The staff set up 4 ADA exhibits at conferences. Staff attended the NE ADA Center's semi-annual meeting and wrote an article that appeared in the NE ADA Center's on-line newsletter "Access New England."		
capitol graphic	Legislation Committee	Linda Ward, Chair	
	Discussion: The Committee formed 9 teams to finalize the drafting of the Commission's legislation, identify allies, and prepare testimony/witnesses for the hearings. The teams are Crisis Intervention Services, Transportation, Global Medicaid Consumer Choice Waiver, Housing Supports, Transition from Youth Services, Neighborhood notification, Specialty Drug Coverage in Tier 3, Disability Business Enterprise Program, and Disability Pension Systems to Reemployment. The Commission's bills have to be introduced this week.		
Access graphic	Coordinating Committee on Disability Rights	Tim Flynn, Chair	
	Discussion: The Committee did not meet.		
Announcer graphic	Announcements	Tim Flynn	6:50
calendar graphic	Agenda and Scheduling the Next Meeting	Tim Flynn	6:55
	Discussions and voting on legislation on should be the first item on the Commission's agenda, in future meetings.		
	Next meeting will be on: Monday April 30, 2012 from 5 - 7 PM		
alarm clock graphic	Adjournment	Tim Flynn	7:00
voting check off graphic	MOTION: To adjourn was adopted at 7:15 PM RMcM/WI passed unanimously		