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# Federal Hiring of Persons with Disabilities

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## Federal Hiring of Persons with Disabilities

Congress and various presidential Administrations have recognized a need to increase and improve federal agencies' efforts to recruit, hire, and retain persons with disabilities. Impacting the ability to meet this need are the processes to recruit, hire, and retain persons with disabilities, which may differ significantly from those for persons without disabilities.

More broadly, Congress and recent presidential Administrations have also expressed an interest in increasing diversity, equity, inclusion, and accessibility (DEIA) in the federal civil service. Efforts to increase federal employment of persons with disabilities may be viewed as aligning with these broader DEIA goals. In 2021, President Joe Biden issued Executive Order 14035, which emphasized his Administration's focus on increasing DEIA in the federal workforce.

Under federal law, an individual with a disability is a person who (1) has a physical or mental impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. Targeted disabilities are a subgroup of statutorily defined disabilities, which include developmental disabilities, traumatic brain injuries, deafness or significant hearing difficulties, blindness, missing extremities, significant mobility impairment, paralysis, epilepsy or other seizure disorders, intellectual disabilities, significant psychiatric disorders, dwarfism, or significant disfigurement. The federal government collects information about federal employee and federal employee applicant disabilities using the SF-256 *Self Identification of Disability Form*.

The Office of Personnel Management (OPM) has established guidance and recruitment strategies to increase federal agencies' hiring of persons with disabilities, which are accessible via OPM's website. For example, the OPM website contains information pertaining to resources such as the Chief Human Capital Officers' Shared List of People with Disabilities, Selective Placement Program Coordinators, and specific strategies for recruiting students with disabilities.

In some cases, federal agencies may use excepted service appointment authorities as an alternative to the competitive hiring process. Excepted appointment authorities referred to as *Schedule A* may streamline the hiring process for persons with disabilities. The Equal Employment Opportunity Commission (EEOC) has established guidance for federal agencies on the use of Schedule A to hire persons with disabilities.

Despite efforts to increase recruitment and hiring of persons with disabilities, retention of employees with disabilities is significantly lower than that of employees without disabilities. According to OPM, employees with disabilities leave the federal government at about three times the rate of those without disabilities. OPM outlines a number of strategies to improve retention of employees with disabilities, such as providing workplace flexibilities and reasonable accommodations.

On January 3, 2017, the EEOC released a final rule to amend regulations related to Section 501 of the Rehabilitation Act of 1973 (P.L. 93-112). Among other items, this rule sets the following goals for federal agencies: (1) a 12% representation rate for persons with disabilities and (2) a 2% representation rate for persons with targeted disabilities. In practice, these benchmarks are also used as hiring goals. In October 2003, the EEOC issued Management Directive 715 (MD-715), which requires federal agencies to assess their own efforts in establishing and maintaining continuous programs of equal employment opportunity and to submit an annual report to the EEOC that demonstrates these efforts and identifies areas for improvement. According to the EEOC, for FY2014-FY2018, the 12% federal sector hiring goal for persons with disabilities was exceeded in FY2014 and FY2015 but not in the following three years (FY2016-FY2018). The 2% hiring goal of persons with targeted disabilities was reached only in FY2018. In addition, those with disabilities and targeted disabilities were more likely to voluntarily or involuntarily separate from federal employment than were persons with no disability from FY2014 to FY2018.

Congress may wish to consider topics related to the recruitment, hiring, and retention of persons with disabilities and persons with targeted disabilities in federal agencies that may present opportunities for congressional oversight and legislative action, including (1) the availability and quality of disability employment data, (2) the EEOC's final rule on affirmative action for persons with disabilities and persons with targeted disabilities in federal employment, and (3) federal agencies' retention rates for employees with disabilities.

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**Taylor N. Riccard**  
Analyst in Government  
Organization and  
Management

**Kathleen E. Marchsteiner**  
Senior Research Librarian

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## Introduction

The federal hiring process for persons with disabilities may differ significantly from the more common federal hiring process for positions in the competitive civil service. Excepted appointment authorities referred to as *Schedule A* allow agencies to hire qualified individuals outside of the competitive hiring process. In addition, the Office of Personnel Management (OPM) has established guidance and resources to aid federal agencies in the recruitment, hiring, and retention of persons with disabilities.

This report provides an overview of the federal hiring authorities and processes that specifically pertain to persons with disabilities. It also examines available data and statistics of federal hiring of persons with disabilities over time and discusses potential options for congressional oversight and legislation. This report does not examine the process of requesting reasonable accommodations under the Americans with Disabilities Act.<sup>1</sup>

## Background

Congress and various presidential Administrations have taken an interest in increasing federal employment of persons with disabilities (see “Historical Overview of Executive Initiatives to Advance Hiring of Persons with Disabilities in the Federal Government” below). On June 25, 2021, President Joe Biden issued “Executive Order (E.O.) on Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce,” which mandates that the federal government enhance its ability to recruit, hire, develop, promote, and retain talented individuals to act as a model employer for diversity, equity, inclusion, and accessibility (DEIA).<sup>2</sup> In particular, Section 10 of the E.O., “Advancing Equity for Employees with Disabilities,” requires agencies to take a number of actions to enhance disability employment in federal agencies.

The E.O. also requires the director of OPM and the deputy director for management of the Office of Management and Budget (OMB), in collaboration with relevant agency officials, to issue a “Government-wide DEIA Plan.” The White House published a government-wide DEIA plan in November 2021<sup>3</sup> that “offers a roadmap for implementing the Executive Order and lays out key steps agencies can take to strengthen DEIA in their workforce policies, practices, and culture.”<sup>4</sup> It includes DEIA operating principles, a roadmap for agency action, and a framework to promote safe and inclusive workplaces. Further, it required each executive agency to publish its own DEIA strategic plan by March 23, 2022.<sup>5</sup>

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<sup>1</sup> P.L. 101-336, July 26, 1990 (104 Stat. 327).

<sup>2</sup> E.O. 14035, “Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce,” 86 *Federal Register* 34593, June 25, 2021.

<sup>3</sup> OPM, “Government-Wide Strategic Plan to Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce,” November 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/11/Strategic-Plan-to-Advance-Diversity-Equity-Inclusion-and-Accessibility-in-the-Federal-Workforce-11.23.21.pdf>.

<sup>4</sup> OPM, “Government-Wide Strategic Plan,” p. 4.

<sup>5</sup> OPM, “Government-Wide Strategic Plan,” p. 19. For an example of an agency-specific DEIA strategic plan, see U.S. Department of Interior, “Department of the Interior Strategic Plan to Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce,” March 2022, <https://www.doi.gov/sites/doi.gov/files/doi-deia-strategic-plan-march-2022.pdf>.

## Definitions

### Disability

Under federal law,<sup>6</sup> an individual with a disability is a person who (1) has a physical or mental impairment that substantially limits one or more major life activities,<sup>7</sup> (2) has a record of such an impairment, or (3) is regarded as having such an impairment.<sup>8</sup> In this report, persons with disabilities will be referred to as PWD.

### Targeted Disability

Targeted disabilities are a subgroup of the aforementioned statutorily defined disabilities. The U.S. Equal Employment Opportunity Commission (EEOC) states that “qualified individuals with certain disabilities, particularly manifest disabilities, face significant barriers to employment that are above and beyond the barriers faced by people with the broader range of disabilities ... often due to myths, fears, and stereotypes about such disabilities.”<sup>9</sup> Targeted disabilities include developmental disabilities, traumatic brain injuries, deafness or significant hearing difficulties, blindness, missing extremities, significant mobility impairment, paralysis, epilepsy or other seizure disorders, intellectual disabilities, significant psychiatric disorders, dwarfism, or significant disfigurement.<sup>10</sup> In this report, persons with specifically targeted disabilities will be referred to as PWTDD.

### SF-256

The SF-256 *Self Identification of Disability Form* captures information about federal employee and federal employee applicant disabilities. It can be used to note a new hire’s disability under Schedule A or to identify an employee’s disability for data collection purposes (see “Schedule A” below). While those hired under Schedule A are required to complete the SF-256 upon their appointment,<sup>11</sup> the submission of the self-identification form is considered voluntary for other

<sup>6</sup> 42 U.S.C. §12102.

<sup>7</sup> Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. A major life activity also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions (42 U.S.C. §12102 (2)(A-B)).

<sup>8</sup> “An individual meets the requirement of ‘being regarded as having such an impairment’ if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity. [This] shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less” (42 U.S.C. §12102 (3)).

<sup>9</sup> EEOC, “Questions and Answers: The EEOC’s Final Rule on Affirmative Action for People with Disabilities in Federal Employment,” January 3, 2017, <https://www.eeoc.gov/laws/guidance/questions-answers-eeocs-final-rule-affirmative-action-people-disabilities-federal>.

<sup>10</sup> More information on the specifics of targeted disabilities compared to other disabilities can be found on OPM’s SF-256 *Self Identification of Disability* form at [https://www.opm.gov/forms/pdf\\_fill/sf256.pdf](https://www.opm.gov/forms/pdf_fill/sf256.pdf).

<sup>11</sup> While the SF-256 form is required for those hired under Schedule A, the EEOC notes, “Agencies should assure the appointee that every precaution is taken to ensure the information provided is confidential and explain the importance of keeping accurate data to determine an agency’s progress in meeting the requirements set forth in the Rehabilitation Act of 1973. Employees should not be reprimanded or removed from service for declining to identify their disability status.” That said, OPM notes that if persons hired under Schedule A do decline to identify their disability status, “their correct disability code will be obtained from medical documentation used to support their appointment.” For more

federal employees. Note that “agencies may ask individuals with disabilities who request or receive accommodation to complete the SF-256 ... but the agency cannot make completion of the form a condition of providing reasonable accommodation.”<sup>12</sup>

The SF-256 form separates conditions into two categories: “targeted disabilities” and “other disabilities.” In October 2016, OPM modified the SF-256 to “reflect changes to terms used to describe targeted disabilities, serious health conditions, and other disabilities.”<sup>13</sup> Individuals also now have the option to note that they have disabilities or medical conditions without identifying the specifics of their conditions.<sup>14</sup> Additionally, while the form lists many disabilities, people can note that they have disabilities or serious health conditions not listed on the form itself.

### Selective Placement Program Coordinators (SPPCs)

SPPCs help federal agencies manage recruiting, hiring, and accommodating PWD.<sup>15</sup> Most federal agencies have SPPCs, and they may be involved in many aspects of the hiring process, such as recruitment and reasonable accommodations. SPPCs work with both managers in federal agencies and job seekers with disabilities. SPPCs advise managers about available candidates with disabilities. They help managers determine the core duties of positions and evaluate potential obstacles to successfully completing those duties for employees with disabilities. SPPCs provide information to job seekers with disabilities on employment opportunities and accommodations. OPM maintains a SPPC Directory, which can be accessed via the OPM website.<sup>16</sup> OPM updates the directory on an as-needed basis. Users are able to filter their searches by agency or state in order to locate SPPCs in areas of interest to them.

## Recruiting

On July 26, 2010, President Barack Obama issued an E.O. titled “Increasing Federal Employment of Individuals with Disabilities,” which stated that it was a priority of the federal government to recruit PWD into positions in the federal workforce.<sup>17</sup> Specifically, the E.O. required “federal agencies to increase the hiring of people with disabilities by 100,000 between 2010 and 2015.”<sup>18</sup> It required the director of OPM—in collaboration with the Secretary of Labor, the chair of the EEOC, and the director of OMB—to develop recruitment and hiring strategies to increase federal employment of PWD. It also required federal agencies to develop plans for recruiting PWD and

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information, see EEOC, “The ABCs of Schedule A Disability Program Managers and Selective Placement Program Coordinators,” <https://www.eeoc.gov/publications/abcs-schedule-disability-program-managers-selective-placement-program-coordinators>; and OPM, SF-256, [https://www.opm.gov/forms/pdf\\_fill/sf256.pdf](https://www.opm.gov/forms/pdf_fill/sf256.pdf).

<sup>12</sup> EEOC, “Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce,” September 3, 2008, <https://www.eeoc.gov/laws/guidance/questions-answers-promoting-employment-individuals-disabilities-federal-workforce#fn1>.

<sup>13</sup> OPM and EEOC, “Resources for Disability Self-Identification Efforts,” memorandum, October 23, 2018, <https://chcoc.gov/content/resources-disability-self-identification-efforts>.

<sup>14</sup> Specific information on the differences between the old and updated SF-256 is available in Attachment 3 of OPM and EEOC, “Resources for Disability Self-Identification Efforts.”

<sup>15</sup> OPM, “Policy, Data Oversight: Disability Employment, Selective Placement Program Coordinator,” <https://www.opm.gov/policy-data-oversight/disability-employment/selective-placement-program-coordinator/>.

<sup>16</sup> OPM, “Disability Employment: Selective Placement Program Coordinator (SPPC) Directory,” <https://www.opm.gov/policy-data-oversight/disability-employment/selective-placement-program-coordinator-directory/>.

<sup>17</sup> E.O. 13548, “Increasing Federal Employment of Individuals with Disabilities,” 75 *Federal Register* 146, July 26, 2010.

<sup>18</sup> OPM, “Policy, Data, Oversight: Disability Employment,” <https://www.opm.gov/policy-data-oversight/disability-employment/recruiting/#url=OPM-CHCO-Shared-List-of-People-with-Disabilities>.

to designate senior-level agency officials to be accountable for developing and implementing these plans within their agencies.

The OPM website includes numerous webpages with guidance and recruitment strategies to increase federal agencies' hiring of PWD.<sup>19</sup> These webpages contain, among other things, information pertaining to the following:

- **OPM Chief Human Capital Officers' Shared List of People with Disabilities.** The Chief Human Capital Officers (CHCO) Council developed a recruitment resource called the "Shared List of People with Disabilities." This resource is a "database of candidates with disabilities who are eligible to apply for employment through the Schedule A hiring authority."<sup>20</sup> Job seekers with disabilities may submit resumes to be included in the list. Federal agencies may access the list and browse candidates via OMB's MAX Web portal.<sup>21</sup>
- **State Vocational Rehabilitation Agencies and State Disability Service Agencies.** OPM directs federal agencies to work with State Vocational Rehabilitation Agencies and State Disability Service Agencies to recruit PWD for federal employment. These agencies "assist with information regarding accommodations, effective retention strategies, legal compliance, and training for the agency's organizations."<sup>22</sup> They may also provide the proof of disability required by the Schedule A hiring authority to job seekers.<sup>23</sup>
- **Ticket to Work Employment Networks.** The Social Security Administration's Ticket to Work Program is for disability beneficiaries ages 18 to 64 who are seeking employment.<sup>24</sup> Tickets are issued to qualifying candidates who then "may assign those tickets to an Employment Network of their choice to obtain employment services, vocational rehabilitation services, or other support services necessary to achieve a vocational (work) goal."<sup>25</sup>
- **Employment One-Stop Career Centers.** The Workforce Investment Partnership Act of 1998 established One-Stop Career Centers to centralize assistance for job seekers.<sup>26</sup> There are over 3,200 centers throughout the country, with locations in each state.<sup>27</sup>
- **Rehabilitation Services Administration.** This agency is a component of the Department of Education that assists agencies that provide vocational rehabilitation to PWD.<sup>28</sup>

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<sup>19</sup> OPM, "Policy, Data, Oversight: Disability Employment, Recruiting Tips," <https://www.opm.gov/policy-data-oversight/disability-employment/recruiting/#url=Recruiting-Tips>.

<sup>20</sup> OPM, "Policy, Data, Oversight: Disability Employment, OPM Chief Human Capital Officers' Shared List of People with Disabilities," <https://www.opm.gov/policy-data-oversight/disability-employment/recruiting/#url=OPM-CHCO-Shared-List-of-People-with-Disabilities>.

<sup>21</sup> OMB MAX, "Shared List of People with Disabilities, Recruiting Tips," <https://www.opm.gov/leaving/index.aspx?link=https://community.max.gov/x/SpEZIQ>.

<sup>22</sup> OPM, "Policy, Data, Oversight: Disability Employment, Recruiting Tips."

<sup>23</sup> OPM, "Policy, Data, Oversight: Disability Employment, Recruiting Tips."

<sup>24</sup> Social Security Administration, "Ticket to Work," <https://www.ssa.gov/work/index.html>.

<sup>25</sup> OPM, "Policy, Data, Oversight: Disability Employment, Recruiting Tips."

<sup>26</sup> P.L. 105-220, August 7, 1998 (112 Stat. 936).

<sup>27</sup> OPM, "Policy, Data, Oversight: Disability Employment, Recruiting Tips."

<sup>28</sup> U.S. Department of Education, "Welcome to RSA," <https://www2.ed.gov/about/offices/list/osers/rsa/index.html>.



In addition, OPM suggests using social networking platforms, electronic mailing lists, community and governmental groups, Equal Opportunity Publications, and career centers at colleges and universities to recruit PWD for federal employment.

OPM also provides specific strategies for recruiting students with disabilities.<sup>29</sup> For example, the Workforce Recruitment Program for College Students with Disabilities, which is jointly administered by the Office of Disability Employment Policy with the Department of Labor and the Department of Defense, connects “federal agencies nationwide with highly motivated post-secondary students and recent graduates with disabilities.” The program provides summer employment opportunities to college students with disabilities. These opportunities may lead to permanent employment in the federal workforce. In addition, OPM recommends campus visits and partnerships, professional organizations and publications, recruiting initiatives and events, and the Pathways Programs to bolster disability recruitment efforts.

The EEOC, established by the Civil Rights Act of 1964,<sup>30</sup> administers a national outreach and education campaign called “The Leadership for the Employment of Americans with Disabilities (LEAD) Initiative.” The purpose of the initiative is to “address the declining numbers of employees with targeted disabilities in the federal workforce.”<sup>31</sup> While the initiative is not directly involved in the hiring process, its staff works to encourage federal agencies to hire, advance, and retain more PWD. It does this by working to increase awareness of federal employment trends for PWD, educating hiring officials within federal agencies on the special hiring authorities that are available to them, and educating job seekers with targeted disabilities on the federal hiring process.

## Hiring

Federal law categorizes federal civilian employees into three types of service: (1) the competitive service, (2) the excepted service, and (3) the Senior Executive Service. These types of service may be distinguished by different selection, compensation, and other standards.<sup>32</sup> For competitive service positions, “individuals must go through a competitive process (i.e. competitive examining) which is open to all applicants. This process may consist of a written test, an evaluation of the individual’s education and experience, and/or an evaluation of other attributes necessary for successful performance in the position to be filled.”<sup>33</sup> Most positions within the executive branch are competitive service positions unless they are “specifically excepted by statute, Executive Order, or by a determination of” OPM.<sup>34</sup> Excepted service hiring authorities are used to fill special or unusual jobs or when the competitive hiring procedures are considered impractical. These authorities provide agencies with increased hiring flexibility and discretion.<sup>35</sup>

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<sup>29</sup> OPM, “Policy, Data, Oversight: Disability Employment, Student Programs,” <https://www.opm.gov/policy-data-oversight/disability-employment/recruiting/#url=Student-Programs>.

<sup>30</sup> P.L. 88-352, July 2, 1964 (78 Stat. 241).

<sup>31</sup> EEOC, “The LEAD Initiative,” <https://www.eeoc.gov/lead-initiative>.

<sup>32</sup> See CRS Report R45635, *Categories of Federal Civil Service Employment: A Snapshot*, by Jon O. Shimabukuro and Jennifer A. Staman.

<sup>33</sup> OPM, “Competitive Hiring,” <https://www.opm.gov/policy-data-oversight/hiring-information/competitive-hiring/>.

<sup>34</sup> OPM, “Excepted Service Hiring Authorities: Their Use and Effectiveness in the Executive Branch,” July 2018, <https://www.opm.gov/policy-data-oversight/hiring-information/excepted-service/excepted-service-study-report.pdf>.

<sup>35</sup> 5 C.F.R. §302.

## Schedule A

For PWD and PWTD, Schedule A excepted service hiring authorities may streamline the federal hiring process. The *Code of Federal Regulations* (C.F.R.) contains two notable Schedule A authorities.

### Schedule A, 5 C.F.R. §213.3102(u)

This authority is used to hire “on a permanent, time-limited or temporary basis, a person with an intellectual disability, a severe physical disability, or a psychiatric disability.”<sup>36</sup> In order to be hired under this authority, applicants must provide appropriate proof of disability.<sup>37</sup> Acceptable forms of proof of disability include

appropriate documentation (e.g., records, statements, or other appropriate information) issued by a licensed medical professional (e.g., a physician or other medical professional duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine); a licensed vocational rehabilitation specialist (State or private); or any Federal agency, State agency, or an agency of the District of Columbia or a U.S. territory that issues or provides disability benefits.<sup>38</sup>

Agencies may appoint PWD in either a permanent or a temporary capacity. An agency may make a permanent appointment if it determines that the applicant is likely to satisfactorily carry out the duties of the position.<sup>39</sup> The agency may make a temporary appointment if it “determines that it is necessary to observe the applicant on the job to determine whether the applicant is able or ready to perform the duties of the position.”<sup>40</sup> An individual with a disability may be converted noncompetitively to the competitive service if the hiring agency determines that he or she has completed two years of satisfactory service.<sup>41</sup>

### Schedule A, 5 C.F.R. §213.3102(II)

This excepted authority allows agencies to create “positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full-time, part-time, or intermittent basis.”<sup>42</sup>

## Hiring Resources

The EEOC has created five guides to facilitate the use of Schedule A to hire PWD. These five guides are referred to as “The ABCs of Schedule A,” and the various versions are designed for (1) hiring managers, (2) human resources professionals, (3) disability program managers, (4) service providers, and (5) applicants with disabilities.<sup>43</sup> In addition, various federal agencies have created guidance documents for Schedule A hiring authorities within their organizations. For example, the

<sup>36</sup> 5 C.F.R. §213.3102(u)(1).

<sup>37</sup> 5 C.F.R. §213.3102(u)(3)(i). In addition, upon hiring, PWD or the agency human resources office is required to complete the SF-256 *Self Identification of Disability Form* (see “SF-256”).

<sup>38</sup> 5 C.F.R. §213.3102(u)(3)(ii).

<sup>39</sup> 5 C.F.R. §213.3102(u)(4).

<sup>40</sup> 5 C.F.R. §213.3102(u)(5)(i).

<sup>41</sup> 5 C.F.R. §213.3102(u)(6)(i).

<sup>42</sup> 5 C.F.R. §213.3102(II).

<sup>43</sup> EEOC, “The ABCs of Schedule A,” <https://www.eeoc.gov/abcs-schedule>.

U.S. Department of Transportation’s website includes a page titled “Employment of People with Disabilities,” which contains information and guidance for applicants with disabilities, agency managers, and students with disabilities.<sup>44</sup>

In addition, the EEOC issued guidance for federal agencies related to disability-related inquiries and medical examinations of applicants with disabilities.<sup>45</sup> The guidance explains that “an employer may not ask disability-related questions and may not conduct medical examinations until after it makes a conditional job offer to the applicant.”<sup>46</sup> Agencies are permitted to ask about (1) an applicant’s ability to carry out specific job functions, (2) an applicant’s qualifications and skills, and (3) how the applicant would perform job tasks.<sup>47</sup> In addition, the guidance provides examples of acceptable and unacceptable disability-related questions for agencies.<sup>48</sup>

## Retention

Federal agencies also have an interest in improving their retention of employees with disabilities. According to OPM, PWD/PWTD “leave the Federal Government at three times the rate of those without a disability.”<sup>49</sup> For a more detailed discussion of separation trends for federal employees with disabilities, see “Separation Trends” below. A report issued by the Government Accountability Office (GAO) noted that despite increased federal hiring of PWD in recent years, retention of employees with disabilities is significantly lower than that of employees without disabilities: “About 39 percent of individuals with disabilities hired during 2011 through 2017 stayed less than 1 year and approximately 60 percent stayed less than 2 years.”<sup>50</sup> OPM does not track or report retention data for employees with disabilities.<sup>51</sup> OPM outlines a number of strategies to improve retention of employees with disabilities, including improving accessibility for PWD, providing training opportunities, using workplace flexibilities, participating in agency-wide events for PWD, conducting exit interviews, providing reasonable accommodations, and conducting succession planning with PWD in mind.<sup>52</sup>

## Federal Employment of Persons with Disabilities over Time

Federal employment levels, as well as voluntary and involuntary separation levels, for PWD and PWTD have varied over time. The following examines available data on federal hiring and

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<sup>44</sup> U.S. Department of Transportation, “Employment of People with Disabilities,” <https://www.transportation.gov/drc/employment-people-disabilities>.

<sup>45</sup> EEOC, “Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations,” October 10, 1995, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-preemployment-disability-related-questions-and-medical>.

<sup>46</sup> EEOC, “Enforcement Guidance.”

<sup>47</sup> EEOC, “Enforcement Guidance.”

<sup>48</sup> EEOC, “Enforcement Guidance.”

<sup>49</sup> OPM, “Disability Employment: Retention,” <https://www.opm.gov/policy-data-oversight/disability-employment/retention/>.

<sup>50</sup> GAO, *Disability Employment: Hiring Has Increased but Actions Needed to Assess Retention, Training, and Reasonable Accommodation Efforts*, GAO-20-384, June 11, 2020, p. 2, <https://www.gao.gov/assets/gao-20-384.pdf>.

<sup>51</sup> GAO, *Disability Employment*.

<sup>52</sup> GAO, *Disability Employment*.

separation trends for PWD and PWTD. It also analyzes selected agencies as case studies. For the purposes of this report, in a given year:<sup>53</sup>

- *Representation* includes persons currently employed by the individual agencies, which may include those newly hired, whereas
- *Hiring* includes persons newly offered positions by the individual agencies.

Due to the voluntary nature of the disclosure of one’s disability status, please note the data presented below may be under-representative of the employment or hiring of PWD and PWTD by the federal government.

## Equal Employment Opportunity Commission Rule on Affirmative Action for Persons with Disabilities in Federal Employment

On January 3, 2017, the EEOC released a final rule to amend regulations related to Section 501 of the Rehabilitation Act of 1973.<sup>54</sup> It went into effect on March 6, 2017.

The final rule mandates that federal agencies “adopt employment goals for individuals with disabilities, with sub-goals for individuals with targeted disabilities, provide personal assistance services to certain employees who need them because of a disability, and meet a number of other requirements designed to improve the recruitment, hiring, retention, and advancement of individuals with disabilities in the federal workforce.”<sup>55</sup>

Among other items, this rule sets the following goals for federal agencies:

- 12% representation rate for PWD, and
- 2% representation rate for PWTD.<sup>56</sup>

These goals relate to General Schedule grades 1 through 10 and grades 11 through Senior Executive Service or equivalent.<sup>57</sup>

The April 2022 EEOC report, “The EEO Status of Workers with Disabilities in the Federal Sector” (further discussed below), discusses these percentages through the lens of hiring goals: “EEOC regulations establish that all federal agencies covered by 29 C.F.R. 1614.203 must have a 12% permanent hiring goal for PWD and a 2% permanent hiring goal for PWTD representation.”<sup>58</sup> As such, while the rule itself may set goals for representation rates of PWD and PWTD, it appears that in practice the same benchmarks are used for hiring goals.

<sup>53</sup> Note that the collection and reporting of data varies at the agency level.

<sup>54</sup> EEOC, “Affirmative Action for Individuals with Disabilities in Federal Employment,” 82 *Federal Register* 654, January 3, 2017.

<sup>55</sup> EEOC, “Questions and Answers.”

<sup>56</sup> The EEOC states, “The 2% goals are intended to be sub-goals. Disabilities that fall under the term ‘targeted disability’ are a subset of those that fall under the term ‘disability’ as defined under Section 501. Thus, any employee who has a targeted disability, and who therefore counts toward a 2% goal for individuals with targeted disabilities, will necessarily have a condition that meets the Section 501 definition of ‘disability,’ and will therefore also count toward the 12% goal for individuals with disabilities” (EEOC, “Affirmative Action for Individuals with Disabilities in Federal Employment”).

<sup>57</sup> EEOC, “Affirmative Action for Individuals with Disabilities in Federal Employment.”

<sup>58</sup> EEOC, “The EEO Status of Workers with Disabilities in the Federal Sector,” April 2022, <https://www.eeoc.gov/sites/default/files/2022-04/EEO%20Status%20of%20Workers%20with%20Disabilities%20in%20the%20Federal%20Sector.pdf>.

## Management Directive 715 (MD-715)

In October 2003, the EEOC issued Management Directive 715 (MD-715),<sup>59</sup> which serves as the “policy guidance which the EEOC provides to federal agencies for their use in establishing and maintaining effective programs of equal employment opportunity under Section 717 of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.”<sup>60</sup>

The directive requires federal agencies to assess their own efforts in establishing and maintaining continuous programs of equal employment opportunity.<sup>61</sup> They must submit annual reports to the EEOC that demonstrates these efforts and identifies areas for improvement.<sup>62</sup> The six elements an agency must review and report on are:

1. Demonstrated commitment from agency leadership,
2. Integration of equal employment opportunity (EEO) into the agency’s strategic mission,
3. Management and program accountability,
4. Proactive prevention of unlawful discrimination,
5. Efficiency, and
6. Responsiveness and legal compliance.<sup>63</sup>

Although the MD-715 report contains 10 parts (A-J) and two additional sections of tables, the composition of the submissions depends on agency workforce size.<sup>64</sup> However, all agencies that are required to submit reports must submit Part J regardless of workforce size.

In Part J, “the Special Program Plan for the Recruitment, Hiring, Advancement, and Retention of Persons with Disabilities,” agencies must describe (1) efforts to reach regulatory goals; (2) plans to ensure sufficient staff, training, and resources for their disability programs; (3) plans to recruit and hire PWD and PWTD; (4) plans to ensure advancement opportunities for PWD and PWTD; (5) plans to improve retention of PWD and PWTD; (6) EEO complaint and findings data; and (7)

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<sup>59</sup> Section 717 of Title VII, EEOC EEO MD-715, <https://www.eeoc.gov/federal-sector/management-directive/section-717-title-vii>.

<sup>60</sup> EEOC, “Frequently Asked Questions about Management Directive-715,” <https://www.eeoc.gov/federal-sector/management-directive/frequently-asked-questions-about-management-directive-715>.

<sup>61</sup> The MD-715 reporting requirement applies to all executive agencies and military departments (except uniformed members) as defined in Sections 102 and 105 of Title 5 of the *U.S. Code* (including those with employees and applicants for employment who are paid from non-appropriated funds), the U.S. Postal Service, the Postal Rate Commission, the Tennessee Valley Authority, the Smithsonian Institution, and those units of the judicial branch of the federal government having positions in the competitive service (EEOC, “The EEO Status of Workers with Disabilities in the Federal Sector,” p. 39).

<sup>62</sup> The EEOC developed an Agency Self-Assessment Checklist (Part G of MD-715) to assist federal agencies in conducting their annual self-assessments. See EEOC, “MD-715—PART G Agency Self-Assessment Checklist,” <https://www.eeoc.gov/federal-sector/management-directive/md-715-part-g-agency-self-assessment-checklist>.

<sup>63</sup> EEOC, “Instructions to Federal Agencies for MD-715 Section I The Model EEO Program,” <https://www.eeoc.gov/federal-sector/management-directive/instructions-federal-agencies-md-715-section-i-model-eeo>.

<sup>64</sup> More information on which agencies are required to file what parts annually can be found under Section C of “Instructions to Federal Agencies for MD-715: Section III Reporting Requirements and Line-by-Line Instruction,” at <https://www.eeoc.gov/federal-sector/management-directive/instructions-federal-agencies-md-715-section-iii-reporting>.

efforts to identify and remove barriers when a trigger suggests that a policy, procedure, or practice may be impeding the employment of a protected group.<sup>65</sup>

## Equal Employment Opportunity Commission Report

In April 2022, the EEOC released “The EEO Status of Workers with Disabilities in the Federal Sector,”<sup>66</sup> a report analyzing trends among federal employees with disabilities from FY2014 to FY2018 and examining the following topics:

- Participation of PWD and PWTD within the federal government;
- Employment stages of PWD and PWTD within the federal government (including hiring, advancement, separation, and disability-related discrimination complaints); and
- Improvement of accessibility for PWD within the federal government.

As mentioned previously, while the EEOC rule on affirmative action for PWD sets a 12% goal and a 2% goal for representation rates of PWD/PWTD in federal agencies, respectively, this report shows that in practice the same benchmarks appear to be used for hiring goals.

### Hiring Trends

Below, CRS has included a figure directly from the EEOC report (**Figure 1**) to illustrate federal sector permanent hiring trends from FY2014 to FY2018.

**Figure 1** shows the percentage of permanent hires in the federal government reporting having any disability, having a targeted disability, or not identifying their disability status from FY2014 through FY2018 based on agency MD-715 data.<sup>67</sup>

As part of their hiring efforts, agencies within the federal government are continuing their efforts to reach EEOC’s regulatory goals: a 12% permanent hiring goal for PWD and a 2% permanent hiring goal for PWTD. **Figure 1** shows that while the 12% federal sector hiring goal was exceeded in FY2014 and FY2015 but not in the following three years (FY2016-FY2018), the 2% goal of PWTD was reached only in FY2018.

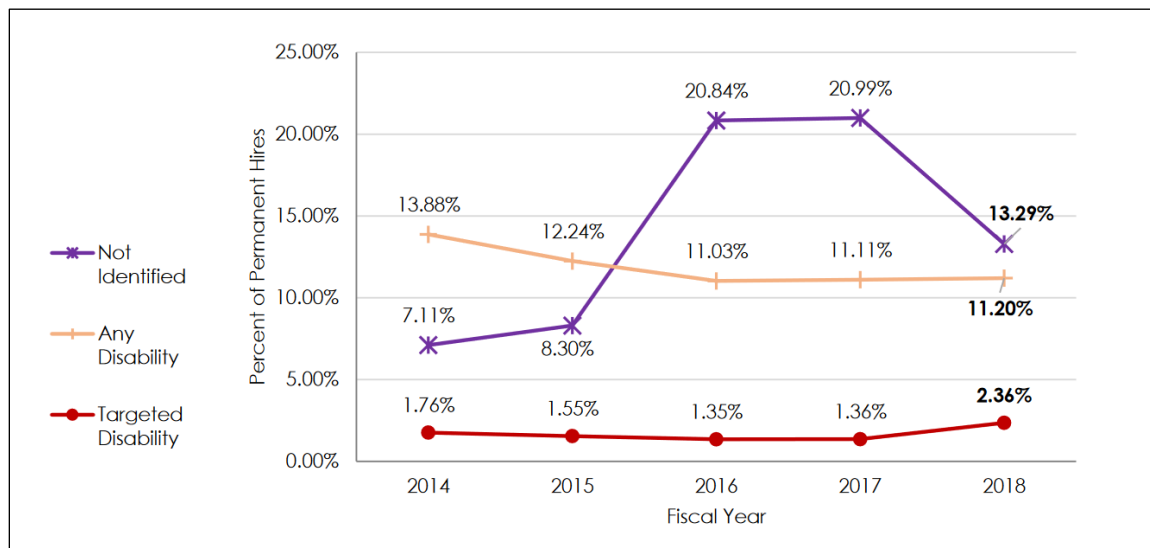
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<sup>65</sup> More information on Part J can be found at EEOC, “MD-715—Part J Special Program Plan for the Recruitment, Hiring, Advancement, and Retention of Persons with Disabilities,” <https://www.eeoc.gov/federal-sector/management-directive/md-715-part-j-special-program-plan-recruitment-hiring>.

<sup>66</sup> EEOC, “The EEO Status of Workers with Disabilities in the Federal Sector,” April 2022, <https://www.eeoc.gov/sites/default/files/2022-04/EEO%20Status%20of%20Workers%20with%20Disabilities%20in%20the%20Federal%20Sector.pdf>.

<sup>67</sup> More information on the EEOC’s methodology can be found at EEOC, “The EEO Status of Workers with Disabilities in the Federal Sector,” p. 39.

**Figure I. Federal Sector Permanent Hiring Trends**  
FY2014-FY2018



**Source:** Equal Employment Opportunity Commission, “The EEO Status of Workers with Disabilities in the Federal Sector,” April 2022.

**Notes:**

The “Any Disability” category above refers to disabilities inclusive of targeted disabilities and non-targeted disabilities.

The “Not Identified” category above refers to those who selected “I do not wish to identify my disability or serious health condition” on OPM’s SF-256 (revised October 2016), those who selected “I do not wish to identify my disability status” on OPM’s SF-256 (revised July 2010), or those who were otherwise coded as such by federal personnel officers or OPM.

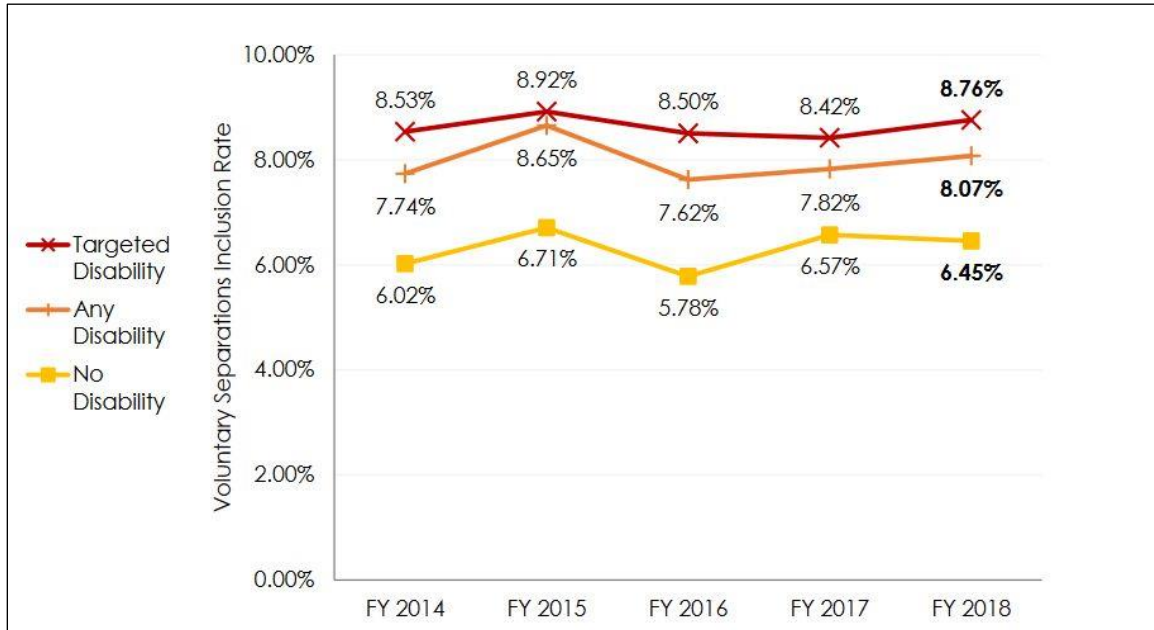
## Separation Trends

Below, CRS has included two figures directly from the EEOC report (**Figure 2** and **Figure 3**) to illustrate federal sector voluntary and involuntary separation trends from FY2014 to FY2018.

**Figure 2** shows the voluntary separations inclusion rates by disability status from FY2014 through FY2018 based on agency MD-715 data. Voluntary separations are “actions that end employment with an agency that are initiated by the employee such as voluntary resignation and non-mandatory retirement.”<sup>68</sup> **Figure 2** also shows that those with targeted disabilities and any disability were more likely to voluntarily separate from federal employment than were persons with no disability from FY2014 to FY2018.

<sup>68</sup> EEOC, “The EEO Status of Workers with Disabilities in the Federal Sector,” p. 38.

**Figure 2. Federal Sector Voluntary Separations Inclusion Rates by Disability Status  
FY2014-FY2018**



**Source:** Equal Employment Opportunity Commission, “The EEO Status of Workers with Disabilities in the Federal Sector,” April 2022

**Notes:**

The “Any Disability” category above refers to disabilities inclusive of targeted disabilities and non-targeted disabilities.

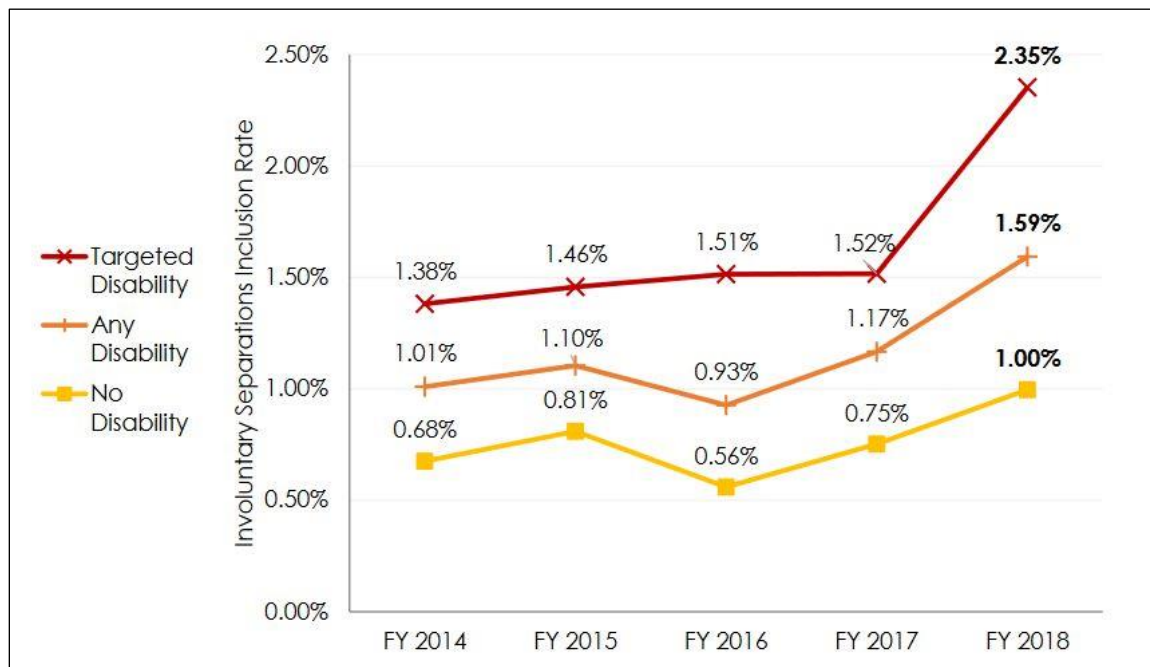
The EEOC calculated the inclusion rate by dividing the number of people who separated within a disability status group by the number of people in the permanent workforce in that disability status group.

**Figure 3** shows the involuntary separations inclusion rates by disability status from FY2014 through FY2018 based on agency MD-715 data. Involuntary separations are “actions that end employment with an agency that are not initiated by the employee such as reduction-in-force, removals based on misconduct, delinquency, suitability, unsatisfactory performance, or failure to qualify for a conversion to a career appointment, or mandatory retirement.”<sup>69</sup> **Figure 3** also shows that those with targeted disabilities and any disability were more likely to involuntarily separate from federal employment than were persons with no disability from FY2014 to FY2018.

<sup>69</sup> EEOC, “The EEO Status of Workers with Disabilities in the Federal Sector,” p. 36.



**Figure 3. Federal Sector Involuntary Separations Inclusion Rates by Disability Status  
FY2014-FY2018**



**Source:** Equal Employment Opportunity Commission, “The EEO Status of Workers with Disabilities in the Federal Sector,” April 2022

**Notes:**

The data used here do not delineate the exact causes of the involuntary separations, such as reduction in force, removal, mandatory retirement, etc.

The “Any Disability” category above refers to disabilities inclusive of targeted disabilities and non-targeted disabilities.

The EEOC calculated the inclusion rate by dividing the number of people who separated within a disability status group by the number of people in the permanent workforce in that disability status group.

## Case Studies

As the EEOC report above relies on data from FY2014 to FY2018, CRS searched government websites and examined publicly available MD-715 reports from Cabinet agencies in an attempt to identify more recent data regarding PWD in the federal government. The below data sets involve hiring and separation trends of PWD and PWTD in select areas of the federal workforce from FY2018 to FY2020.

### Caveats

It appears to be at the individual agency’s discretion whether to make annual MD-715 reports and tables publicly available. In some cases, agencies did not make their reports available publicly, while others have made only their most recent reports public.<sup>70</sup> Additionally, some agencies have

<sup>70</sup> For example, while we did not locate public versions of FY2018 and FY2019 MD-715 reports for the Office of the Director of National Intelligence, we did locate a FY2020 MD-715 in which the reported percentage of PWD among its permanent new hires was 1.77% and for PWTD it was 0%. For more information, see Office of the Director of

released several years of recent MD-715 reports, but it appears they did not note the percentage of new hires of PWD or PWTD in each year's submission, so these percentages could not be included in the below data sets.<sup>71</sup>

### Hiring Trends

The information presented below is a sample of hiring data identified by CRS within publicly available MD-715 forms on individual Cabinet agency websites and, as such, should not be considered comprehensive or exhaustive.

These data have been compiled from a select set of federal agencies to illustrate recent hiring trends of PWD and PWTD from FY2018 to FY2020:

**Table 1. Hiring of Persons with Disabilities for the Federal Government Permanent Workforce (Percentage of New Hires)**

FY2018-FY2020

Department	FY2018	FY2019	FY2020	EEOC Regulatory Goal
Department of Commerce	13.40%	13.40%	13.40%	12.0%
Department of Homeland Security (DHS)	11.03%	10.97%	14.28%	12.0%
Department of Housing and Urban Development	11.30%	20.08%	17.81%	12.0%

**Source:** Agency MD-715 Reports, Part J, Section III, C-1

**Notes:**

DHS disability workforce data includes (1) employees who self-identify as having disabilities, (2) employees appointed under Schedule A, and (3) 30 percent or more disabled veterans who do not otherwise identify as having a disability.

When excluding law enforcement and transportation security officer occupations, DHS reports that it surpassed the 12% hiring goal for PWD in FY2019, representing 19.97% of hires.

**Table 2. Hiring of Persons with Targeted Disabilities for the Federal Government Permanent Workforce (Percentage of New Hires)**

FY2018-FY2020

Department	FY2018	FY2019	FY2020	Regulatory Goal
Department of Commerce	2.67%	2.67%	2.67%	2.0%

National Intelligence, "Affirmative Action Plan for the Recruitment, Hiring, Advancement, and Retention of Persons with Disabilities," Part J, Section III, C-1, p. 4, [https://www.dni.gov/files/EEOD/documents/ODNI\\_AAP\\_FY2020\\_Report.pdf](https://www.dni.gov/files/EEOD/documents/ODNI_AAP_FY2020_Report.pdf).

<sup>71</sup> For example, the Department of Treasury does not list the percentage of PWD or PWTD new hires in its FY2019 or FY2020 MD-715 reports. See Department of the Treasury, "Management Directive 715," Part J, Section III, C-1, p. 61, <https://home.treasury.gov/system/files/261/FY-2020-Treasury-MD-715-Report-%28ASM-Signed-Final%29.pdf>. However, the hiring percentages are listed in its FY2018 report in Part J, Section III, C-1, p. 57.

Department	FY2018	FY2019	FY2020	Regulatory Goal
Department of Homeland Security (DHS)	1.03%	1.08%	1.20%	2.0%
Department of Housing and Urban Development	Not available	4.44%	3.11%	2.0%

**Source:** Agency MD-715 Reports, Part J, Section III, C-1

**Notes:**

DHS disability workforce data includes (1) employees who self-identify as having disabilities, (2) employees appointed under Schedule A, and (3) veterans rated 30 percent or more disabled who do not otherwise identify as having disabilities.

When excluding law enforcement and transportation security officer (TSO) occupations, DHS reports that the percentage increases to 1.7% for PWTD in FY2018.

When excluding law enforcement and TSO occupations, DHS reports that it met the 2% hiring goal for PWTD in FY2019, representing 2.02%.

When excluding law enforcement and TSO occupations, DHS reports that it met the 2% hiring goal for PWTD in FY2020, representing 2.0%.

For DHS, it appears there has been a general increase in hiring of PWD and PWTD. Commerce's hiring, on the other hand, appears static based on this data. The Department of Housing and Urban Development (HUD) had a significant increase in PWD in FY2019 and then a modest decrease in FY2020, as well as a decrease of hiring PWTD from FY2019 to FY2020.

Differences in recent federal agency hiring data could be due to a few different reasons, including:

- Some agencies may be attempting new recruiting and hiring practices.<sup>72</sup>
- Some new hires may be more willing to self-report disabilities than others are.
- In 2016, OPM modified the definition of PWD to include additional categories and descriptors.<sup>73</sup> As such, some new hires may now fall under these new categories.

### *Separation Trends*

The information below is a sample of separation data identified by CRS within publicly available MD-715 forms on individual Cabinet agency websites and, as such, should not be considered comprehensive or exhaustive.

<sup>72</sup> As mentioned in the "Recruiting" section of this report, agencies have several avenues to recruit PWD and PWTD. Some federal agencies note that they nurture partnerships with "non-traditional partners" with a higher demographic representation of PWD and PWTD, including but not limited to Gallaudet University, the National Technical Institute for the Deaf, Operation Warfighter's program for disabled veterans, state vocational rehabilitation centers, etc. Others participate in career fairs specifically for PWD and PWTD, host hiring webinars that target PWD and PWTD, maintain partnerships with national disability advocacy groups, and use USAjobs.gov or the OPM Chief Human Capitol Officers' Shared List of People with Disabilities to search for resumes of applicants with disabilities. Additionally, not all reporting agencies conduct the activities mentioned above. For more information, see Section IV: "Plan to Recruit and Hire Individuals with Disabilities," Part A of a variety of FY2020 agency MD-715 reports, including Commerce, DHS, HUD, and others.

<sup>73</sup> OPM, "Resources for Disability Self-Identification Efforts," October 23, 2018, [https://chcoc.gov/sites/default/files/resources-disability-self-identification-efforts\\_508.pdf](https://chcoc.gov/sites/default/files/resources-disability-self-identification-efforts_508.pdf).

These data have been compiled from a select set of federal agencies to illustrate recent separation trends of PWD from FY2018 to FY2020. The percentages below in **Table 3** display the following for PWD, PWTD, and those with no disability at each selected agency: (1) overall separation rates, (2) voluntary separation rates, and (3) involuntary separation rates. Note that numbers were reported on these specific MD-715 reports only if the percentage of PWD or PWTD separating exceeded that of persons without disabilities. If numbers were not reported, N/A was used below.

**Table 3. Separation Rates of Persons from the Federal Government**  
FY2018-FY2020

Departments	FY2018	FY2019	FY2020
Department of Commerce	<b>Overall Separations</b>	<b>Overall Separations</b>	<b>Overall Separations</b>
	PWD: 9.5%	PWD: 7.5%	PWD: 7.5%
	PWTD: 8.6%	PWTD: 8.1%	PWTD: 8.1%
	No disability: 6.0%	No disability: 5.1%	No disability: 5.1%
	<b>Voluntary Separations</b>	<b>Voluntary Separations</b>	<b>Voluntary Separations</b>
	PWD: 8.2%	PWD: 6.8%	PWD: 6.8%
	PWTD: 7.6%	PWTD: 7.3%	PWTD: 7.3%
	No disability: 5.5%	No disability: 4.7%	No disability: 4.7%
	<b>Involuntary Separations</b>	<b>Involuntary Separations</b>	<b>Involuntary Separations</b>
	PWD: 1.5%	PWD: 0.8%	PWD: 0.8%
	PWTD: 1.1%	PWTD: 0.9%	PWTD: 0.9%
	No disability: 0.6%	No disability: 0.4%	No disability: 0.4%
Department of Homeland Security (DHS)	<b>Overall Separations</b>	<b>Overall Separations</b>	<b>Overall Separations</b>
	PWD: 8.49%	PWD: 9.07%	PWD: 8.68%
	PWTD: 9.40%	PWTD: 10.57%	PWTD: 9.88%
	No disability: 6.61%	No disability: 7.43%	No disability: 6.53%
	<b>Voluntary Separations</b>	<b>Voluntary Separations</b>	<b>Voluntary Separations</b>
	PWD: 7.60%	PWD: 5.94%	PWD: 5.20%
	PWTD: 7.99%	PWTD: 7.60%	PWTD: 6.78%
	No disability: 5.95%	No disability: 5.61%	No disability: 4.59%
	<b>Involuntary Separations</b>	<b>Involuntary Separations</b>	<b>Involuntary Separations</b>
	PWD: 0.89%	PWD: 3.13%	PWD: 3.48%
	PWTD: 1.41%	PWTD: 2.97%	PWTD: 3.10%
	No disability: 0.66%	No disability: 1.82%	No disability: 1.94%
Department of Housing and Urban Development (HUD) <sup>b</sup>	N/A	N/A	N/A

**Source:** CRS analysis of agency MD-715 reports, Part J, Section V(A).

**Notes:** The Department of Commerce's overall separation percentages are listed as they appear in the agency's MD-715 reports. As DHS did not list overall separation rates in its MD-715 reports, the percentages listed above are the sum of the agency's voluntary and involuntary separation rates.

- a. For DHS reporting purposes, resignation and retirement are counted as voluntary separations. Reduction in force, removal, and other separations are counted as involuntary separations.
- b. Per its MD-715 reports, HUD did not list its specific separation percentages because the percentage of voluntarily or involuntarily separating PWD or PWTD did not exceed that of persons without disabilities between FY2018 and FY2020.

For the Department of Commerce since FY2018, it appears there has been a decrease of separations as a whole. Though DHS’s overall separation numbers fluctuate from FY2018 to FY2020, it appears the agency’s voluntary separation numbers declined for PWD, PWTD, and persons with no disabilities. However, the department’s involuntary separation numbers increased each year for each category of personnel from FY2018 to FY2020, with PWD being the highest percentage (3.48%) of personnel to involuntarily separate from the department in FY2020.

Differences in recent federal agency separation rates could be due to a few different reasons:

- The EEOC reported in a 2021 press release that disability was the second most frequently cited claim in workplace discrimination charges filed against federal agencies in 2020. In that release, for FY2020, 24,324 discrimination claims cited disability, which represented 36.1% of all 67,448 federal workplace discrimination claims.<sup>74</sup>
- The COVID-19 pandemic beginning in FY2020 may have had an influence on federal employees’ decisions to stay with or separate from their jobs.

## Considerations for Congress

Congress and various presidential Administrations have taken actions to increase the recruitment, hiring, and retention of PWD and PWTD in federal agencies. Related topics may present opportunities for congressional oversight and legislative action. Potential areas of congressional interest may include:

- availability and quality of disability employment data,
- the EEOC’s final rule on affirmative action for PWD and PWTD in federal employment, and
- federal agencies’ retention rates for employees with disabilities.

## Disability Employment Data

The SF-256 *Self Identification of Disability Form* captures information about a new hire’s disability under the Schedule A hiring authority or may be used to identify an employee’s disability for data collection purposes. PWD and PWTD hired under Schedule A are required to complete the SF-256 upon their appointment.<sup>75</sup> The submission of the self-identification

<sup>74</sup> Claims citing disability are one of 10 different categories available as the basis for discrimination. Note that for each discrimination claim, it is possible for claimants to allege multiple bases for discrimination. EEOC, “EEOC Releases Fiscal Year 2020 Enforcement and Litigation Data,” press release, February 26, 2021, <https://www.eeoc.gov/newsroom/eeoc-releases-fiscal-year-2020-enforcement-and-litigation-data>. More information on related statistics can be found at EEOC, “Americans with Disabilities Act of 1990 (ADA) Charges (Charges filed with EEOC) (includes concurrent charges with Title VII, ADEA, EPA, and GINA) FY 1997-FY 2021,” <https://www.eeoc.gov/statistics/americans-disabilities-act-1990-ada-charges-charges-filed-eeoc-includes-concurrent>.

<sup>75</sup> While the SF-256 form is required for those hired under Schedule A, the EEOC notes, “Agencies should assure the appointee that every precaution is taken to ensure the information provided is confidential and explain the importance of keeping accurate data to determine an agency’s progress in meeting the requirements set forth in the Rehabilitation Act of 1973. Employees should not be reprimanded or removed from service for declining to identify their disability status.” That said, OPM notes that if a person hired under Schedule A does decline to identify his or her disability status, “their correct disability code will be obtained from medical documentation used to support their appointment.” For more information, see EEOC, “The ABCs of Schedule A Disability Program Managers and Selective Placement Program Coordinators,” <https://www.eeoc.gov/publications/abcs-schedule-disability-program-managers-selective-placement-program-coordinators>; and OPM, SF-256, [https://www.opm.gov/forms/pdf\\_fill/sf256.pdf](https://www.opm.gov/forms/pdf_fill/sf256.pdf).

information is voluntary for other federal employees. Individuals may also note that they have disabilities or medical conditions without identifying the specifics of their conditions.

The data collected by the SF-256 is self-reported and voluntary for individuals with disabilities who are not hired using the Schedule A authority, which may raise questions regarding the accuracy of disability employment data. Federal employees with disabilities may choose not to disclose their disability statuses, which may cause an underestimation of the number of PWD in the federal workforce. In addition, federal employees with disabilities may choose to disclose that they have disabilities but choose not to disclose the specifics of their disabilities. This may lead to a lack of information regarding the number of federal employees with specific types of disabilities. Congress may wish to consider whether the current methods of disability employment data collection are sufficient for oversight purposes.

## Affirmative Action for People with Disabilities in Federal Employment

The EEOC released a final rule to amend regulations related to Section 501 of the Rehabilitation Act of 1973 on January 3, 2017.<sup>76</sup> This rule sets a goal of a 12% representation rate for PWD and a 2% representation rate for PWTD for federal agencies.<sup>77</sup> These benchmarks are also used as hiring goals. According to an EEOC report that was released in April 2022, “Among permanent hires, the Federal government exceeded its 2% goal for hiring of PWTD (2.36% of permanent appointments), but agencies failed to meet the 12% goal for PWD (11.20%).”<sup>78</sup> The EEOC includes PWTD who count towards the 2% goal in the counting of the broader 12% goal for PWD.

If Congress wishes to consider options for legislation that may increase hiring of PWD and PWTD, it could require the participation/hiring goals to be increased from their current levels. In addition, Congress may consider implementing a penalty for agencies that do not meet the set goals. There are currently no consequences for agencies that fail to meet these goals. Congress might also consider whether the PWTD who are counted toward both the 2% hiring goal for PWTD and the 12% hiring goal for PWD should continue to be double counted. Congress could statutorily require agencies to meet a 12% hiring goal for PWD without counting those considered PWTD toward that goal.

## Retention of Federal Employees with Disabilities

Despite the fact that PWD and PWTD separate from employment with the federal government at approximately three times the rate of those without disabilities,<sup>79</sup> OPM does not track or report

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<sup>76</sup> EEOC, “Affirmative Action for Individuals with Disabilities in Federal Employment,” 82 *Federal Register* 654, January 3, 2017.

<sup>77</sup> The EEOC states, “The 2% goals are intended to be sub-goals. Disabilities that fall under the term ‘targeted disability’ are a subset of those that fall under the term ‘disability’ as defined under Section 501. Thus, any employee who has a targeted disability, and who therefore counts toward a 2% goal for individuals with targeted disabilities, will necessarily have a condition that meets the Section 501 definition of ‘disability,’ and will therefore also count toward the 12% goal for individuals with disabilities.” (EEOC, “Affirmative Action for Individuals with Disabilities in Federal Employment”).

<sup>78</sup> EEOC, “The EEO Status of Workers with Disabilities in the Federal Sector,” p. 31.

<sup>79</sup> OPM, “Disability Employment: Retention.”

retention data for employees with disabilities.<sup>80</sup> GAO published a report in June 2020 that made a number of recommendations related to disability employment. One of these recommendations was as follows:

The Director of OPM should routinely track and report retention data for employees with disabilities and make such data available to federal agencies, including EEOC, through a centralized web portal—such as MAX.gov. For example, OPM could track and report such data by General Schedule level pay groupings, which could help pinpoint root causes that contribute to retention rates, inform assessments of government-wide progress on employee retention, and identify needed improvements.<sup>81</sup>

According to OPM, retention data for PWD is routinely tracked and made available to federal agencies via the MAX.gov website.<sup>82</sup> If Congress wishes to identify the causes of retention issues for PWD and PWTD, it could statutorily require OPM to track and publicly report disability employment retention data with more specific criteria.

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<sup>80</sup> GAO, *Disability Employment*.

<sup>81</sup> GAO, *Disability Employment*.

<sup>82</sup> OPM's response as quoted in GAO, *Disability Employment*.

## Appendix. Historical Overview of Executive Initiatives to Advance Hiring of Persons with Disabilities in the Federal Government

Over the years, Presidents have issued E.O.s that detail initiatives or support for the federal government to hire, employ, and advance PWD.

The table below includes E.O.s identified by CRS on the matter. This list may not be comprehensive.

**Table A-1. Executive Orders**

President	Date	Federal Register Citation	Executive Order Number	Executive Order Title
President Joe Biden	June 25, 2021	Vol. 86, No. 123, p. 34593	E.O. 14035	“Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce”
President Barack Obama	August 18, 2011	Vol. 76, No. 163, p. 52847	E.O. 13583	“Establishing a Coordinated Government-Wide Initiative to Promote Diversity and Inclusion in the Federal Workforce”
President Barack Obama	July 26, 2010	Vol. 75, No. 146, p. 45039	E.O. 13548	“Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government”
President Bill Clinton	January 10, 2001	Vol. 66, No. 11, p. 3857	E.O. 13187	“The President’s Disability Employment Partnership Board”
President Bill Clinton	October 25, 2000	Vol. 65, No. 209, p. 64577	E.O. 13172	“Amendment to Executive Order 13078, To Expand the Role of the National Task Force on Employment of Adults with Disabilities to Include a Focus on Youth”



<b>President</b>	<b>Date</b>	<b>Federal Register Citation</b>	<b>Executive Order Number</b>	<b>Executive Order Title</b>
President Bill Clinton	July 26, 2000	Vol. 65, No. 146, p. 46565	E.O. 13164	“Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation”
President Bill Clinton	July 26, 2000	Vol. 65, No. 146, p. 46563	E.O. 13163	“Increasing the Opportunity for Individuals With Disabilities To Be Employed in the Federal Government”
President Bill Clinton	February 8, 2000	Vol. 65, No. 28, p. 6877	E.O. 13145	“To Prohibit Discrimination in Federal Employment Based on Genetic Information”
President Bill Clinton	June 4, 1999	Vol. 64, No. 110, p. 31103	E.O. 13124	“Amending the Civil Service Rules Relating to Federal Employees with Psychiatric Disabilities”
President Bill Clinton	March 13, 1998	Vol. 63, No. 52, p. 13111	E.O. 13078	“Increasing Employment of Adults with Disabilities”
President Ronald Reagan	May 10, 1988	Vol. 55, No. 92, p. 16996	E.O. 12640	“The President’s Committee on Employment of People with Disabilities”
President Richard Nixon	September 9, 1969	Vol. 34, No. 174, p. 14273	E.O. 11480	“The President’s Committee on Employment of the Handicapped”
President John F. Kennedy	February 14, 1962	Vol. 27, No. 33, p. 1447	E.O. 10994	“The President’s Committee on the Employment of the Handicapped”
President John F. Kennedy	April 27, 1962	Vol. 27, No. 84, p. 4143	E.O. 11018	“Increasing From Three to Four the Number of Vice Chairmen of the President’s Committee on Employment of the Handicapped”

President	Date	Federal Register Citation	Executive Order Number	Executive Order Title
President Dwight D. Eisenhower	October 10, 1955	Vol. 20, No. 201, p. 7717	E.O. 10640	“The President’s Committee on the Employment of the Physically Handicapped”
President Harry S. Truman	October 19, 1945	Vol. 10, No. 208, p. 13095	E.O. 9644	“Authorizing the Civil Service Commission to Confer a Competitive Classified Civil-service Status Upon Certain Disabled Veterans”
President Franklin D. Roosevelt	November 27, 1944	Vol. 9, No. 239, p. 14119	E.O. 9503	“Appointment of Disabled Veterans Completing Courses of Instruction Prescribed Pursuant to the Act of March 24, 1943”

**Source:** *Federal Register*.

**Notes:** EO titles are listed as they appeared when issued.

This list does not include the following:

1. Presidential proclamations.
2. E.O.s related to PWD but not related to the hiring, employment, or advancement of PWD in the federal workforce, such as E.O. 11914, “Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs;” E.O. 12994, “The President’s Committee for People with Intellectual Disabilities;” or E.O. 13217, “Community-Based Alternatives for Individuals with Disabilities.”
3. E.O.s related to employment that do not mention PWD. For example, though President Johnson’s E.O. 11246 (and its subsequent amendments) prohibits employment discrimination at the federal level on the basis of race, color, religion, sex, gender identity, and national origin, this series of E.O.s does not mention disability as a protected class.
4. E.O.s related to more administrative matters, such as E.O. 10555, “Establishing a Seal for the President’s Committee on Employment of the Physically Handicapped.”

## Author Information

Taylor N. Riccard  
Analyst in Government Organization and  
Management

Kathleen E. Marchsteiner  
Senior Research Librarian

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