

## NOTE TO REVIEWER

OFCCP is requesting OMB approval of 11,949,346 hours in combined recordkeeping, reporting and third party disclosure burden hours for compliance with Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (38 U.S.C. 4212) by non-construction (supply and service) federal contractors. This compares with 10,045,984 hours for the last clearance request and reflects an increase of 11 hours per contractor (1,903,362 hours). This change is primarily due to an increase in the number of supply and service contractor establishments from 99,028 to 171,275 (an addition of 72,247 contractors). The increase in the number of contractors is the result of OFCCP recalculating data in the Equal Employment Data System, FPDS-NG and Dun & Bradstreet to establish the number of Federal contractor establishments for this Information Collection Request.

OFCCP also requests approval for \$129,663,262 annualized operations and maintenance costs for this information collection. This compares with \$120,019 for the last clearance request, an increase of \$1,793 for each contractor. This increase is due to an increase in one time start-up costs related to the new components of this information collection. Specifically, it accounts for contractors or their human resources service providers/vendors developing additional queries or "views" in their human resource information systems.

The authorization for this ICR OMB Control No. 1250-003 expires September 30, 2011. OFCCP published the Information Collection Request in the Federal Register on May 12, 2011. 92 FR 27670. This submission is for OMB Review: Comment Request.

OFCCP summarizes the comments received during the 60-day comment period in numbered paragraph 8, Consultation Outside the Agency.

**SUPPORTING STATEMENT**

**SUPPLY AND SERVICE PROGRAM**

**OMB NO. 1250-0003 (formerly 1215-0072)**

**A. JUSTIFICATION:**

The Office of Federal Contractor Compliance Programs (OFCCP) is responsible for administering three equal opportunity mandates that prohibit employment discrimination based on race, sex, color, national origin, religion, disability, or status as a protected veteran by federal contractors and require affirmative action to provide equal employment opportunities:

- Executive Order 11246, as amended (referred to as "EO 11246"),<sup>1</sup>
- Section 503 of the Rehabilitation Act of 1973, as amended (referred to as Section 503),<sup>2</sup> and
- The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974,<sup>3</sup> as amended, 38 U.S.C. 4212 (referred to as Section 4212 or "VEVRAA").

For purposes of this clearance, OFCCP is dividing its obligations under these authorities into two functional areas: construction and non-construction (also referred to as "supply and service") contractors. This clearance request covers the supply and service aspects of our authority. To view the current supply and service Information Collection, go to [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200804-1215-003](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200804-1215-003). A separate Information Collection Request (ICR), approved by the Office of Management and Budget (OMB) under OMB No. 1250-0001 (formerly 1215-0163), covers the construction aspects of these programs.

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<sup>1</sup> The regulations implementing Executive Order 11246 that applicable to supply and service contractors are published at 41 CFR Parts 60-1, 60-2, 60-3, and 60-20, and 60-50.

<sup>2</sup> The regulations implementing Section 503 are published at 41 CFR Part 60-741.

<sup>3</sup> The regulations implementing Section 4212 are published at 41 CFR Parts 60-250 and 60-300.

EO 11246 prohibits federal contractors from discriminating against applicants and employees based on race, color, religion, sex, or national origin. The EO 11246 applies to federal contractors and subcontractors, and federally assisted construction contractors holding a Government contract of \$10,000 or more, or Government contracts, that have, or can reasonably expect to have, an aggregate total value exceeding \$10,000 in a 12-month period. The EO 11246 also applies to Government bills of lading, depositories of federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds.

Section 503 prohibits employment discrimination against qualified individuals with disabilities, and requires contractors to take affirmative action to hire and promote qualified individuals with disabilities. Its requirements apply to federal contractors and subcontractors with a Government contract in excess of \$10,000.

Section 4212 prohibits employment discrimination against protected veterans and requires contractors to take affirmative action to hire and promote protected veterans. For contracts of \$25,000 or more entered into or modified prior to December 1, 2003, the affirmative action provisions of Section 4212 prohibit employment discrimination against special disabled veterans, Vietnam era veterans, recently separated veterans, and other protected veterans. For contracts of \$100,000 or more entered into or modified after December 1, 2003, the affirmative action provisions of Section 4212 prohibit employment discrimination against disabled veterans, recently separated veterans, Armed Forces Service Medal Veterans, and other protected veterans.

OFCCP promulgated regulations implementing this program consistent with the Administrative Procedure Act. All our regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60 and are accessible on the web at [http://www.dol.gov/dol/cfr/Title\\_41/Chapter\\_60.htm](http://www.dol.gov/dol/cfr/Title_41/Chapter_60.htm).

This ICR addresses recordkeeping and reporting for compliance with EO 11246, Section 4212 and Section 503 which are subject to the Paperwork Reduction Act of 1995 (PRA).

Note: The VEVRAA Notice of Proposed Rulemaking (NPRM), published on April 26, 2011 (Control No. 1250-AA00), proposes strengthening these affirmative action provisions. We will incorporate the anticipated burden hours associated with the requirements of that NPRM into a separate Information Collection Request (ICR).

## 1. Legal and Administrative Requirements

### Executive Order Regulations

#### 41 CFR Part 60-1 -- Obligations of Contractors and Subcontractors.

This regulation sets out the basic nondiscrimination and affirmative action requirements of the EO 11246 enforcement program. It defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, specifies certain reporting and recordkeeping requirements, and establishes the basic requirements for Affirmative Action Programs (AAPs) under the EO 11246. Part 60-1 contains recordkeeping, reporting and third party disclosure requirements for the supply and service program. We discuss specific sections of this Part below.

Section 60-1.4 describes the equal opportunity clause in Government contracts. Section 60-1.4(a)(3) requires a contractor to notify labor organizations of their obligations under EO 11246 and its implementing regulations. We explain third party disclosure requirements in numbered paragraph 12.c below, titled Third Party Disclosure Burden.

Section 60-1.7 requires specified federal prime contractors and subcontractors to file an Employer Information Report EEO-1 (EEO-1 Report) annually. The U.S. Equal Employment Opportunity Commission (EEOC) and OFCCP use EEO-1 Report data to analyze employment patterns for women and minorities and as a civil rights enforcement tool. OMB approved the EEO-1 Report information collection under OMB No. 3046-0007. The EEO-1 Report requires reporting in seven racial and ethnic categories:

- Hispanic or Latino,
- White not Hispanic or Latino,
- Black or African-American not Hispanic or Latino,
- Native Hawaiian or Other Pacific Islander not Hispanic or Latino,

- Asian not Hispanic or Latino,
- American Indian or Alaska Native not Hispanic or Latino, and
- Two or More Races not Hispanic or Latino.

The EEO-1 Report also requires employers to report data for nine job categories; the Officials and Managers category is divided into the subcategories -- Executive/Senior Level Officials and Managers, and First/Mid Level Officials and Managers. To view the information collection, go to [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200901-3046-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200901-3046-001).

Section 60-1.12 requires contractors to preserve any personnel or employment record made or kept for a period of not less than two years. However, if the contractor has fewer than 150 employees or does not have a contract of at least \$150,000, this retention period is one year. Section 60-1.12 provides that the contractor must be able to identify the gender, race and ethnicity of each employee for any record the contractor maintains. Where possible, the contractor must also identify the gender, race and ethnicity of each applicant or Internet applicant.

Section 60-1.20 addresses the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. These methods range from an in-depth comprehensive evaluation of the contractor's employment practices (e.g., a "compliance review") to a narrowly focused analysis of a very limited aspect of a selected employment practice or policy (e.g., a "compliance check"). Annually, OFCCP identifies approximately 2.5%<sup>4</sup> of 171,275<sup>5</sup> contractor establishments for a compliance evaluation.

This section also requires contractors selected for a compliance evaluation to submit their Affirmative Action Programs (AAPs) and supporting documentation to OFCCP within 30 days of the request. OFCCP uses a Scheduling Letter, which includes the Itemized Listing, to make this

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<sup>4</sup>This number is based on the total number of compliance evaluations conducted during FY2010 (4,260) divided by the total number of contractor establishments (171,275).

<sup>5</sup> The number of supply and service contractor establishments reflects 2009 data from OFCCP's Equal Employment Data System, the Federal Procurement Data System - Next Generation, and Dun & Bradstreet.

document request. Because of the nature of their use, OMB considers the Scheduling Letter and the Itemized Listing reporting requirements. We, therefore, include the time contractors spend responding to the Scheduling Letter and Itemized Listing when calculating the reporting burden hours. We also include a burden hour calculation for the time spent collecting records for OFCCP's Compliance Check.

Section 60-1.40 requires the development and maintenance of an EO 11246 AAP. This regulation requires each contractor and subcontractor with 50 or more employees and that meets the following criteria to develop an AAP for each of its establishments:

- has a contract of \$50,000 or more; or
- has Government bills of lading which in any 12-month period total or can reasonably be expected to total \$50,000 or more; or
- serves as a depository of Government funds in any amount; or
- is a financial institution that is an issuing and paying agent for U.S. Savings Bonds and savings notes in any amount.

Detailed instructions for the development of an AAP are in 41 CFR Part 60-2 and are discussed below.

#### **41 CFR Part 60-2**

Part 60-2 defines the scope of the AAP requirements under EO 11246, as well as the purpose and contents of AAPs, and coverage requirements. See also Section 60-1.40.

Specifically, Section 60-2.1 describes which contractors must develop AAPs and provides instructions for including employees in AAPs, requires contractors to develop an AAP for each establishment, and requires that employees be included in the AAP for the establishment at which they work. Section 60-2.1 outlines alternatives for AAP development for establishments with fewer than 50 employees, or where the selection decisions for employees at an establishment are made at a higher-level establishment. Section 60-2.1(d)(4) permits contractors, with the agreement of OFCCP, to develop and maintain AAPs

based on functional or business units rather than establishments.

Section 60-2.11 requires that contractors use either an organizational display or workforce analysis as their organizational profile. An organizational profile depicts an establishment's staffing pattern and contractors use it to determine whether barriers to equal employment opportunity exist in their organizations. The organizational profile also provides an overview of the demographic composition of the workforce at the establishment level; this may help identify organizational units where women and minorities are underrepresented or concentrated.

An organizational display, used as an organizational profile, is a detailed graphical, tabular chart, text, spreadsheet or similar presentation of a contractor's organizational structure. For each organization unit, the organizational display contains the name of the unit, the job title, gender, race and ethnicity of the unit supervisor, the total number of male and female employees, and the total number of male and female incumbents in each of the below listed groups.

- Black
- Hispanic
- Asian/Pacific Islander
- American Indian/Alaskan Native

By contrast, a workforce analysis is a listing of each job title as it appears in applicable collective bargaining agreements or payroll records ranked from the lowest to highest paid within each department or other similar organizational unit, including departmental or unit supervision. The workforce analysis must show the total number of employees, the total number of male and female employees, and the total number of male and female employees in the specified race or ethnic categories for each job title. The wage rate and salary range for each job title are also required.

Section 60-2.12 describes what is required for a job group analysis. A job group analysis is a method of combining job titles within a contractor's establishment. Contractors with 150 or more employees must group jobs by similarity of content, wage rates, and opportunities.

However, contractors with fewer than 150 employees have the option of using the nine occupational groups used in the EEO-1 Report as job groups. The job group analysis must include a list of job titles that comprise each job group. Generally, all jobs located at an establishment must be reported in its job group analysis. Jobs located at another establishment are annotated to identify their actual location.

Section 60-2.13 addresses incumbency in job groups and requires the contractor to record separately the percentage of minorities and women it employs within each job group.

Section 60-2.14 applies to determining availability, and requires the contractor to estimate the number of qualified minorities or women available for employment in a given job group. Availability is expressed as a percentage of all qualified persons available for employment in that job group.

Section 60-2.15 compares incumbency to availability by requiring the contractor to compare the representation of minorities and women in each job group with their representation among those available for employment in the group. The contractor is required to establish placement goals for any job group with fewer women or minorities than would reasonably be expected by their availability.

Section 60-2.16 requires the contractor to establish placement goals for any job group with fewer women or minorities than would reasonably be expected by their availability. Section 60-2.16 contains the parameters and criteria for setting placement goals.

Section 60-2.17 sets forth additional required elements of an AAP. These elements are the designation of responsible official for implementing equal employment opportunity and the affirmative action program, the identification of problem areas in the employment process, the creation of action-oriented programs designed to correct identified problem areas, and the use of internal auditing and reporting system to measure the effectiveness of the AAP.

Of particular note are the steps required to identify problem areas. The contractor must conduct in-depth analyses of its employment practices to determine whether

impediments to equal employment opportunity exist. As part of these analyses, the contractor must evaluate:

- personnel activity (applicant flow, hires, terminations, promotions and other personnel actions) to determine whether there are selection disparities;
- compensation systems to determine whether there are gender, race, or ethnicity-based disparities; and
- selection, recruitment, referral, and other personnel procedures to see if they result in disparities in the employment and advancement of minorities or women.

Taken together, Sections 60-2.11 through 2.17 describe the required recordkeeping elements of developing, maintaining, and updating an AAP. Numbered paragraph 12a, Estimate of Information Collection Burden - Recordkeeping Burden, reviews the burden associated with complying with the recordkeeping requirements.

#### **41 CFR Part 60-3 -- Uniform Guidelines on Employee Selection Procedures**

The EEOC, the U.S. Office of Personnel Management (OPM), the Department of Labor (DOL), and the Department of Justice (DOJ) adopted the Uniform Guidelines on Employee Selection Procedures (referred to as the "Guidelines") in 1978. The Guidelines apply to tests and other selection procedures used to make employment-related decisions. Under the Guidelines, each contractor maintains records and other information for each job sufficient to permit analyses of the impact of its selection procedures on the employment opportunities of people based on race, sex, or ethnic group.<sup>6</sup> Using this information, the contractor and OFCCP identify and evaluate the contractor's selection procedures for adverse impact.

When a test or other selection procedure is determined to have an adverse impact, the Guidelines require the contractor to validate the test or procedure (41 CFR 60-3.4) and to retain its validation study documentation.

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<sup>6</sup> Section 60-3.4 requires recordkeeping and analyses on the following race and ethnic groups: Black, Hispanic, Asian/Pacific Islander, American Indian, and White. A total is also provided for each group.

Section 60-3.15 requires a contractor with 100 and more employees to keep records for each job that are sufficient to allow the contractor to make an adverse impact determination. The contractor makes this determination at least annually and makes it for each racial or ethnic group constituting at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable workforce.

Section 60-3.15 requires a contractor with less than 100 employees to keep records on the number of persons hired, promoted, and terminated for each job by sex and, where appropriate, by race and national origin. Section 60-3.15 also requires the contractor to keep records showing the number of applicants for hire and promotion by sex and where appropriate by race and national origin, as well as records showing the selection procedures utilized.

The OMB approved the Uniform Guidelines under OMB No. 3046-0017. To view the information collection, go to this web address:

[http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200807-3046-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200807-3046-001).

### **Section 4212 Regulations**

Regulations on the rights and protections provided to veterans, and the related obligations and responsibilities of contractors, are in the below sections of 41 CFR Part 60.

- 41 CFR Part 60-250 Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Recently Separated Veterans, and other Protected Veterans
- 41 CFR Part 60-300 Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans

These regulations establish the basic nondiscrimination and affirmative action requirements of the Vietnam Era Veterans' Readjustment Assistance Act (38 U.S.C. 4212) enforcement program. Together, they define coverage,

specify clauses to be included in contracts, provide procedures to ensure compliance by covered contractors, specify certain reporting and recordkeeping requirements, and specify the basic requirements for Affirmative Action Programs (AAPs) under Section 4212. A discussion of the relevant sections of 60-250 and 60-300 follows.

Sections 60-250.5 and 60-300.5 describe the equal opportunity clause in federal contracts.

Sections 60-250.60 and 60-300.60 identify the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. These methods range from an in-depth comprehensive evaluation of the contractor's employment practices (e.g., a compliance review) to a narrowly focused analysis of a very limited aspect of a selected employment practice or policy (e.g. a "compliance check"). Evaluation of compliance with Section 4212 is concurrent with evaluation of the contractor's compliance with Executive Order 11246. As with the Executive Order, OFCCP annually identifies approximately 2.5% of an estimated 171,275 contractor establishments for a compliance evaluation.

Section 60-250.40 requires contractors with 50 or more employees and a contract of \$25,000 or more entered into prior to December 1, 2003, and not subsequently modified, to develop a Section 4212 AAP.

Section 60-300.40 requires contractors with 50 or more employees and contracts of \$100,000 or more entered into or modified after December 1, 2003 to develop a Section 4212 AAP.

Sections 60-250.44 and 60-300.44 identify required elements of an AAP, including those listed below.

- Develop and include an equal opportunity policy statement in the AAP.
- Review personnel processes to ensure that qualified protected veterans are provided equal opportunity and that the contractor is engaged in outreach to sources.
- Review all physical and mental job qualification standards to ensure they are job-related and are based on business necessity.

- Provide reasonable accommodations for physical and mental limitations.
- Develop procedures to ensure that employees are not harassed because of their veteran status.
- Develop procedures and practices to disseminate affirmative action policies, both internally and externally.
- Establish an audit and reporting system to measure the effectiveness of the AAP.
- Designate a responsible official to implement and oversee the AAP.

Detailed instructions for the development of a Section 4212 AAP are in 41 CFR 60-250 and 60-300.

### **Section 503 Regulations**

41 CFR 60-741 addresses the affirmative action and nondiscrimination obligations of contractors and subcontractors related to individuals with disabilities under Section 503. It defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, specifies certain reporting and recordkeeping requirements, and specifies the basic requirements for Affirmative Action Programs (AAPs) under Section 503.

Section 60-741.5 describes the equal opportunity clause in federal contracts.

Section 60-741.40 requires the development and maintenance of a Section 503 AAP. This regulation requires each contractor and subcontractor that has 50 or more employees, and a contract of \$50,000 or more develop an AAP for each establishment.

Section 60-741.44 establishes the scope of the AAP requirements, including those listed below.

- Develop and include an equal opportunity policy statement in the AAP.

- Review personnel processes to ensure that qualified individuals with disabilities are provided equal opportunity and that the contractor is engaged in outreach to sources.
- Review all physical and mental job qualification standards to ensure they are job-related and are based on business necessity.
- Provide reasonable accommodations for physical and mental limitations.
- Develop procedures to ensure that employees are not harassed because of their disability status.
- Develop procedures and practices to disseminate affirmative action policies, both internally and externally.
- Establish an audit and reporting system to measure the effectiveness of the AAP.
- Designate a responsible official to implement and oversee the AAP.

Section 60-741.60 identifies the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. These methods range from an in-depth comprehensive evaluation of the contractor's employment practices (e.g., a compliance review) to a narrowly focused analysis of a very limited aspect of a selected employment practice or policy (e.g. a "compliance check"). Evaluation of compliance with Section 503 compliance is concurrent with evaluation of a contractor's compliance with Executive Order 11246. Annually, OFCCP identifies approximately 2.5% of 171,275 contractor establishments for a compliance evaluation.

Detailed instructions for the development of a Section 503 AAP are in 41 CFR 60-741.

## **2. USE OF MATERIALS**

**41 CFR 60-1.7 - Reports and other required information.**

The Joint Reporting Committee, comprised of OFCCP and EEOC, promulgates the EEO-1 Report. This report is central to OFCCP's ability to identify and select federal contractors for compliance evaluations and to assess a contractor's equal employment opportunity trends. This is primarily so because contractors self-report using the EEO-1 Report.

The EEO-1 Report data is critical to our ability to evaluate utilization patterns and trends. Trends are determined by comparing utilization patterns over time between contractors within similar industries, and among contractors in a given geographical area. This information plays a vital part in our compliance evaluations and complaint investigations.

Should EEO-1 Report data become unavailable, the agency would have to identify and obtain alternative sources of information. The preferred source remains information obtained directly from contractors; however, indirect sources may be required but may prove to be less reliable.

**41 CFR Part 60-2--Affirmative Action Programs.**

The AAP is the contractor's plan for ensuring nondiscrimination and equal employment opportunity. OFCCP does not impose a detailed master format for AAPs. This approach allows each contractor to design a format that suits its particular business circumstances. The structure and complexity of an AAP may vary considerably depending on the size and complexity of the contractor's organization.

Contractors are, therefore, free to utilize information technology as they see fit when designing and developing their AAPs. The only requirement is that whatever they use must be capable of retrieving and providing OFCCP the data required by our regulations.

Our regulations as Section 60-2.10(b) outlines the contents of an AAP as listed below.

- Organizational Profile
- Job Group Analysis
- Placement of Incumbents in Job Groups

- Availability Determination
- Comparison of Incumbency to Availability
- Placement Goals
- Designation of Responsibility for AAP Implementation
- Identification of Problem Areas based on an in-depth analysis of personnel activity, compensation systems, recruitment, referral, to determine the existence of sex, race, or ethnicity based disparities
- Action-oriented Programs
- Periodic Internal Audits

During a compliance evaluation, OFCCP examines the contractor's affirmative action programs, supporting documentation, compensation data, and documents related to personnel actions, employment policies and practices to determine whether the contractor is complying with its obligations not to discriminate in employment and to take affirmative action to ensure equal employment opportunity.

### **3. IMPROVED INFORMATION TECHNOLOGY**

As mentioned earlier, contractors are free to use whatever information technology that best suits their needs when designing and developing AAPs as long as they can retrieve and provide OFCCP with the data required by the agency's regulations.

OFCCP provides compliance assistance to all contractors, including smaller contractors, that is, those with fewer than 150 employees, by leveraging information technology. For example, our Internet provides wider access to compliance resources and information. We list several OFCCP Internet resources below.

- Small Business Guide at <http://www.dol.gov/ofccp/TAGuides/sbguide.htm>

- New Contractors' Guide at [http://www.dol.gov/ofccp/TAGuides/new\\_contractors\\_guide.htm](http://www.dol.gov/ofccp/TAGuides/new_contractors_guide.htm)
- Supply and Service Technical Assistance Guide at [http://www.dol.gov/ofccp/TAGuides/ss\\_technical\\_assistance\\_guide.htm](http://www.dol.gov/ofccp/TAGuides/ss_technical_assistance_guide.htm)
- 2000 Census data at <http://www.census.gov/main/www/cen2000.html>
- Sample AAP for Small Employers at <http://www.dol.gov/ofccp/regs/compliance/pdf/sampleaap.htm>

We believe that advances in technology make contractor compliance with our recordkeeping and reporting requirements easier and less burdensome. However, in the absence of empirical data, we are unable to quantify the impact of improved information technology and thus, we do not include it in our calculation of burden hours.

According to the Government Paperwork Elimination Act (GPEA, P.L. 105-277, 1998), by October 2003, Government agencies must generally provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable. OFCCP fulfills its GPEA requirements by permitting electronic transmission, via e-mail or computer disk, of a contractor's AAP and supporting documentation.

#### **4. DESCRIPTION OF EFFORTS TO IDENTIFY DUPLICATION**

The reporting and recordkeeping requirements in this request result exclusively from the implementation of EO 11246, Section 503, and Section 4212. These authorities uniquely empower the Secretary of Labor, and by a Secretary's Order, the OFCCP, to require the collection, analysis, and reporting of data and other information in connection with the enforcement of the laws and regulations requiring Government contractors to take affirmative action to ensure equal employment opportunity. No duplication of effort exists because no other Government agencies have these specific data collection requirements.

Where possible, OFCCP participates in information sharing and standardized requirements. Examples are our joint collaboration on and use of EEOC's EEO-1 Report, and our use of the Uniform Guidelines on Employee Selection Procedures created with EEOC, OPM, DOJ and DOL. See 41 CFR 60-3.4.

While contractors maintain other employment data as a normal course of business, AAPs are unique in that contractors create them specifically to meet the requirements of OFCCP regulations. These AAPs are not available from any other source.

## **5. COLLECTION BY SMALL ORGANIZATIONS**

OFCCP's information collection does not have a significant economic impact on a substantial number of small entities. We minimize the information collection and recordkeeping burden on a significant number of small businesses by exempting contractor establishments with fewer than 50 employees from the AAP requirement. However, once OFCCP's authority covers one contractor's establishment, all of its employees must be accounted for in an AAP whether or not each of the contractor's establishments meet the minimum 50 employees threshold.

Based on EEO-1 data from 2009, we identified 3,821 establishments with fewer than 50 employees; these establishments are represented by an estimated 2,111 individual parent companies.

## **6. CONSEQUENCES FOR FEDERAL PROGRAMS IF THIS INFORMATION IS COLLECTED LESS FREQUENTLY**

Contractors and subcontractors file EEO-1 Reports annually. Less frequent collection could negatively affect OFCCP's civil rights enforcement activities because the agency would no longer have access to the most current data. As mentioned previously, EEO-1 Data informs our compliance evaluation selection process that typically occurs twice a year, and underpins our analyses of employment trends and patterns. Presently, data resulting from annual filing of the EEO-1 Report is one year old by the time OFCCP receives it; it can be 2 years old by the time OFCCP obtains new or

updated data. If contractors were allowed to file EEO-1 Reports in alternate years, OFCCP would receive and use data that is between 2 to 4 years old.

The older the data the greater the chances are that more qualified workers are victims of discrimination and that the discrimination continues for a longer period. A consequence may be that damages or make whole remedies and the overall burden of contractor compliance are greater.

**7. SPECIAL CIRCUMSTANCES FOR THE COLLECTION OF INFORMATION**

There are no special circumstances for the collection of this information.

**8. CONSULTATION OUTSIDE THE AGENCY**

OFCCP published a Federal Register notice on May 12, 2011 (92 FR 27670) soliciting comments from the public on the proposed revisions to the Scheduling Letter, Itemized Listing and Compliance Check Letter. OFCCP analyzed each of the 20 submissions it received from various contractors, industry organizations and associations, consultants, advocacy and non-profit groups and others during the 60-day comment period. In general, six of the commenters support OFCCP's proposed revisions to the Scheduling Letter and Itemized Listing and fourteen oppose or are critical of the revisions. The majority of the comments focus on the request in the Itemized Listing for compensation data. OFCCP also received generally supportive comments on the proposed revisions to the Compliance Check Letter. Thereafter, most of the comments concern requests for information related to contractor employment activity, leave policies, and anticipated adjustments that contractors may need to make to their human resources information systems (HRIS). We also received comments on the calculation of burden, the collection of documents elaborating on collective bargaining agreements, and the request for supporting documents related to Section 503 and Section 4212 compliance. We summarize the comments, and OFCCP's responses to them, later in this section.

OFCCP seriously considered the comments we received and the calculation of burden that our proposed changes would create for contractors. After doing so, we determined that the benefits associated with receiving improved data from

contractors and the net reduction of 1.34 hours in the total burden hours spent by contractors in supplying OFCCP with that data are the "best most innovative and least burdensome tasks for achieving regulatory ends."<sup>7</sup>

Moreover, our assessment finds societal benefits result from finalizing the proposed changes to the Scheduling Letter and Itemized Listing. Among them are the:

- inclusion of more qualified workers in the nation's workforce,
- ability to provide America's returning veterans and wounded warriors meaningful employment opportunities as they transition from the military,
- opportunity to develop a workforce that reflects the diversity of the nation, and
- strengthening of our ability to compete effectively in a global economy based on the diversity and skill of America's workforce.

OFCCP did identify a few alternatives to this information collection that would be as effective in assessing contractor compliance with their nondiscrimination and affirmative action obligations that are less burdensome. Therefore, we made several changes to the original proposal in response to the comments we received.

OFCCP believes that finalizing the Scheduling Letter, Itemized Listing and Compliance Check Letter, as revised, enhances our ability to monitor contractor compliance with Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act.

Below is a discussion of the comments OFCCP received, including those proposing alternatives to OFCCP's proposed changes, and our responses to them. We organize the discussion according to the item numbers listed in the Scheduling Letter and Itemized Listing to which the comments apply.

A. **Item 8: Contractor Employment Leave Policies**

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<sup>7</sup> See Executive Order 13563.

OFCCP received 12 comments on the proposed changes outlined in the new Item 8 of the Itemized Listing on leave policies. This item seeks copies of employment leave policies including, but not limited to, policies related to implementing the Family Medical Leave Act (FMLA), pregnancy leave, and accommodations for religious observances and practices. In the absence of these policies, OFCCP would accept a contractor's employee handbook or manual.

Some commenters support this proposal noting that the documents are necessary to effectively determining if these policies, as applied, have a disparate impact on specific groups. One commenter specifically asserts that documentation on employment leave policies enables OFCCP to identify indicators of discrimination that might otherwise go undetected. Other commenters urge OFCCP to go even further by requiring federal contractors to submit information about policies relating to pay secrecy. Although we may request additional policies during the course of the compliance evaluation, we believe the policies identified in the Itemized Listing are sufficient for desk audit purposes.

Other commenters oppose the request for leave policies asserting that the requirement is unnecessary and places unfair burdens on contractors because copies of the policies have no connection to other statistical information requested in the Itemized Listing. These commenters fail to acknowledge that an OFCCP desk audit is not limited to statistical analysis. A full desk audit not only looks at statistical data but also includes a review of the contractor's affirmative action program and relevant policies and practices. OFCCP does this to determine whether indicators are present that may merit an onsite review. OFCCP believes that the submission of policies related to leave and religious accommodations and observances will help it focus its investigations as it proceeds through the compliance evaluation process. As one commenter indicates, these items are not new in the compliance evaluation process, and OFCCP frequently asks to see these policies and this information at either the desk audit or the onsite phase of the evaluation.

Others assert that many contractors no longer maintain current versions of the employee handbook or manual in hardcopy because the most recent versions are on their

Intranets. Commenters suggest that it would be more efficient and less burdensome to make copies of the relevant leave policies rather than print the entire handbook. Some commenters suggest that, even if contractors maintain hardcopies of the handbook or manual, it is more efficient to photocopy and send the relevant pages rather than sending the entire handbook. Furthermore, four commenters state that requiring the submission of the entire employee handbook would be burdensome and that contractors would be submitting irrelevant information with no utility to OFCCP. These commenters recommend that OFCCP either completely eliminate this proposal or change it to require contractors to submit only relevant leave policies. OFCCP does not agree that the request for a manual or handbook containing leave policies is burdensome; nonetheless, we revised Item 8 to provide the option of submitting the manual or handbook, or submitting only relevant pages (including the front cover of the manual or handbook, the Table of Contents, and those pages with the leave policies).

Although not objecting to the revised Item 8, one commenter posits that an additional burden is associated with this item where contractors do not have such policies. OFCCP is only requesting copies of existing policies or guidance. We are not requiring or requesting the creation of new policies where contractors do not already have policies in place.

Commenters also posit that the request is beyond the scope of OFCCP's authority and is an attempt to enforce the FMLA. OFCCP, under its existing authority, can review leave and other personnel policies to determine whether they, as they are applied or by virtue of their absence, have a discriminatory impact on women, minority groups, and others protected by the laws OFCCP enforces. This review does not constitute FMLA enforcement. Nonetheless, we revised Item 8 to clarify the scope of leave policies OFCCP is requesting.

**B. Item 9: Collective Bargaining Agreement and Related Documents**

Several commenters criticize our proposal to obtain documents that explain or elaborate on their collective bargaining agreements (CBAs). The explanation given is that OFCCP is underestimating the volume of documents that

contractors can be produce in multi-year contract environments. The commenters propose narrowing this request to issues related to specific activities such as bidding, hiring, promotions, transfers, terminations, training, and compensation. Other commenters suggest that OFCCP request only the collective bargaining agreement for the desk audit and request additional documentation later if the collective bargaining issue becomes relevant to a compliance issue.

OFCCP concludes that limiting the scope of the request, as suggested by some, has the effect of limiting its ability to examine the entire contract in context for EEO policy, seniority, educational benefits, concentrations, job classifications, and other personnel related activities covered by the agreement. Moreover, by obtaining all the relevant documents early in the process, OFCCP is likely to make fewer follow-up document requests. Any requests made by OFCCP will be better informed and more relevant to the evaluation. The result is a more efficiently managed compliance evaluation that saves the contractor time and expense.

C. **Item 11: Employment Activity**

This item seeks information on contractor employment activity such as applicants, hires, promotions, and terminations by job group and by job title, as well as by sex and five racial/ethnic categories. OFCCP received 16 comments on this item and they fall into three categories:

- the burden associated with providing data by both job title and job group,
- the use of racial/ethnic categories, and
- the utilization of "applicant pools".

Generally, commenters supporting the proposed changes believe the changes provide several enforcement benefits. They identify three clear benefits of the proposed changes:

- OFCCP will be able to give consideration to more factors that potentially influence personnel decisions,

- OFCCP will be able to conduct more precise inquiries, and
- OFCCP will have the data necessary to conduct more sophisticated data analysis that reasonably ensure equal employment opportunity for workers and applicants.

Requiring contractors to submit data by job group and job title will enable OFCCP to identify similarly situated employees with the same job title or within the same job group, and will enhance the accuracy of OFCCP's analysis of indicators of sex and race discrimination. Supporters also note that the request for specific demographic information related to applicants, hires, promotions, and terminations are integral to OFCCP's ability to conduct accurate and useful analyses. This information will also better equip the agency to identify potential adverse impact early in the course of a compliance evaluation.

Commenters critical of the proposed new item believe that the current practice of allowing contractors to exercise the option of providing information by job title or job group is sufficient. They assert that the proposed change imposes a significant paperwork burden because it requires reporting the same data in two different ways, doubling and not minimizing the burden on contractors for collecting, analyzing, and reporting.

OFCCP believes that obtaining data by job group and job title will decrease a contractor's ability to mask discrimination by manipulating the data within either job groups or job titles. Moreover, contractors are already required to collect data on applicants, hires, promotions and terminations for each job title by gender, race, and ethnicity. The general record retention provisions at 41 CFR 60-1.12(c) provide that, for any record the contractor maintains, the contractor must be able to identify the gender, race, and ethnicity of each employee, and where possible, the gender race, and ethnicity of each applicant or Internet applicant.

Further, the Uniform Guidelines on Employee Selection Procedures (UGESP), found at 41 CFR Part 60-3, require contractors to maintain and have available data and other information for each job that show the impact of tests and other selection procedures upon employment opportunities of

persons by identifiable race, sex, or ethnic group. While smaller contractors, those with fewer than 100 employees, are not required to make adverse impact determinations for each job they are required to maintain records showing the number of applicants, persons hired, promoted, and terminated for each job by sex and where appropriate, by race and ethnicity. At least two commenters -- an association of employers and a consultant that prepares affirmative action programs and assists clients with compliance evaluations -- recognize that the request for applicant and hire data for each job by sex, race, and ethnicity is consistent with UGESP.

Because contractors are already required to collect and maintain applicant, hire, promotion, and termination data for each job title by sex and by particular race or ethnic groups, OFCCP continues to believe that asking contractors to submit data by job group and job title will not significantly increase reporting burdens. At least one commenter agrees with OFCCP's assessment. In his comments on Item 11.a, the consultant states, "that the submission of data by job title does not significantly add to the burden of the submission for desk audit."

Commenters opposing the proposal to collect the information by job group and job title assert that information collection by job group and job title could readily indicate a statistical misrepresentation because small sample sizes would lead to skewed results. Likewise, they claim that analyzing the same information by job title could show misleading indicia of discrimination due to the sample sizes. As alternatives, commenters suggest either maintaining the current policy in Item 11 of requesting data by job group or job title, or that OFCCP offer more substantial guidance regarding the analysis of data by job title. One commenter suggests only asking for information by minority subgroup in situations where there are at least 30 minority applicants to ensure there is a sufficient sample size.

OFCCP believes that these commenters fail to consider that collecting the data in the manner proposed by OFCCP gives the agency maximum flexibility when conducting various statistical analyses. Compliance evaluations include an analysis of personnel activity for ensuring that nondiscrimination policies are appropriately implemented. Where the data analyses show adverse impact or other

problem areas, OFCCP investigates to determine whether discrimination occurred. The provision of the data by job group and job title creates a fuller picture of the employment practices of contractors. Even where a job title has insufficient data to test for statistical significance, there may be enough data to suggest potential discrimination. Improved data collection and analysis should reduce the number of requests for additional and more detailed information by OFCCP thus saving time and reducing contractor burden.

Commenters opposing the proposed changes in Item 11 also express concern that reporting data by separate racial or ethnic categories instead of "minorities" in the aggregate imposes an unnecessary burden upon contractors. These commenters maintain that while some contractors routinely include information on minority subgroups, others do not have HR systems that can produce the statistical summaries for separate race or ethnic groups. Presenting data for "minorities" in the aggregate is useful for the utilization analyses and goal setting components of the contractor's affirmative action programs. However, to determine whether the contractor has discriminatory employment practices requires analyzing data by sex, and by separate racial or ethnic groups. To the extent that contractors may be required to adjust HR systems to provide data by job group for separate race or ethnic groups, OFCCP revised its burden estimates to reflect these start-up costs.

One commenter expresses concern that requiring contractors to identify in their analysis the total number of applicants, hires, individuals promoted and terminated by racial or ethnic group would create a reporting difficulty when applicants refuse to self-identify and the contractor is required to track or otherwise obtain such data. At least three commenters note that the racial categories proposed do not allow individuals to self-identify as a member of more than one race and do not align with the categories used by EEOC on the EEO-1 Report. Some commenters raise concerns about a perceived shift away from allowing contractors to report race/ethnicity data by either current EEO-1 categories or other categories. Others oppose the changes based on concerns that contractors will be required to collect multiple sets of demographic data pertaining to an applicant or employee's racial/ethnic background because the racial/ethnic categories used by

OFCCP are different from the ones used by the EEOC on the current EEO-1 Report.

In response to these comments we note that our regulations clearly require the consideration and analyses of race and gender data (see e.g., 41 CFR 60-2.11, 60-3.4, and 60-3.15). Tracking data by race or ethnicity does not impose a burden on contractors because this information will be available to contractors through invitations to applicants and hires to self-identify as a member of a particular racial or ethnicity group. This is the same invitation that contractors currently use. If an applicant declines to self-identify observer identification may be used. OFCCP's Directive 265, *Contractor Data Tracking Responsibilities*, issued on April 21, 2004, provides guidance on recording sex and race data when the applicant declines to self-identify. This Directive allows a contractor to record race or gender as "unknown" in its applicant flow logs when the contractor is unable to elicit or ascertain this information after making reasonable efforts to do so. We note that a commenter questions OFCCP's reasons for requesting data on applicants for whom race and/or sex is unknown. In addition to finding that this information provides a more complete picture of the full applicant pool, OFCCP believes that where there are substantial numbers of applicants for whom sex and race are unknown it may be prudent to investigate the contractor's procedures for soliciting this information.

OFCCP Directive 283, *Contractor Obligations to Maintain and Analyze Race and Ethnicity Data of Applicants and Employees in AAPs*, issued in August 2008, allows contractors using the current EEO-1 Report race/ethnicity categories, which are different from the those used by OFCCP pursuant to 41 CFR Part 60-2.11 (using the original EEO-1 categories). Thus, contractors should not experience any additional burden. In the absence of new or additional guidance, OFCCP will continue to accept data that reflects the race and ethnicity categories outlined in either 41 CFR Part 60-2 or required by EEOC in the EEO-1 Report.

OFCCP received several comments criticizing the proposal to require data on the "actual pool of candidates" for promotions and terminations. As proposed, Itemized Listing 11(b) would require contractors to provide, for each job group and job title, the total number of promotions by gender and race/ethnicity, as well as the actual pool of

candidates who applied or were considered for promotion by gender and race/ethnicity. Contractors would also have to include the company's definition of promotion. Itemized Listing 11(c) would require contractors, for each job group and job title, to provide the total number of employee terminations by gender and race/ethnicity, as well as the actual pool of candidates who were considered for terminations by gender and race/ethnicity. Contractors must list terminations as voluntary or involuntary, if available. There are currently no similar requirements that contractors provide the "actual pool of candidates" for promotions or terminations. We combine the analysis of the comments on Item 11(b) and (c) because they raise similar issues.

Commenters opposing these two requirements raise a variety of issues. They highlight distinctions between different kinds of promotion and termination decisions. In many cases, they assert that there may not be an "actual pool of candidates," especially if the employment decision is a noncompetitive promotion or individualized promotion or termination. One commenter requested clarification of the terms "voluntary" and "involuntary" terminations. These commenters also express concern about OFCCP's calculation of the administrative burden related to providing the "actual pool of candidates" for promotion and termination. One commenter, a law firm, states that a client company had over 2,000 promotions in 2010. The commenter alleges that reviewing the "actual pool of candidates" for each promotion would require many hours of review. Another industry group commenter stated that a member company estimated that analyzing a reduction in force would take between 25 and 50 hours annually. We respond to these objections and concerns below.

As to objections related to the actual pool of candidates, OFCCP concurs with the commenters supporting the proposed change. One comment in particular emphasized the overall importance of requesting the demographic make-up of the "actual pool of candidates" for hirings, promotions, and terminations. The commenter noted that the demographic makeup of an application pool contains valuable information as to whether there is discrimination in an employer's hiring, firing, or promotion decisions. Further, citing the Supreme Court's reasoning in *Dothard v. Rawlinson*, the commenter asserts that if the data does not reveal discrimination in hiring or firing, it might be useful in

highlighting other discriminatory employment practices. In *Dothard*, the Court noted that a homogeneous applicant pool might indicate that there is some discriminatory standard or process occurring in the workplace that discourages a certain demographic from applying.<sup>8</sup> Supportive commenters also acknowledge that there may be some benefit to receiving data on the "actual pool of candidates" for terminations during a reduction in force. One commenter states that this is the "one situation" where there might actually be a meaningful pool of candidates considered for termination.

Commenters noting that we do not define the terms "voluntary" and "involuntary" termination are correct. OFCCP does not currently provide a blanket definition of "voluntary" or "involuntary" termination but, instead, gives contractors the discretion to develop and use their own business definition of the terms.

As mentioned, commenters believe that OFCCP's assessment of one additional burden hour for all changes made to Itemized Listing 11 is unrealistic. In light of commenters' concerns, OFCCP doubled its estimated burden, adding an hour for compliance with the new Itemized Listing 11. This is in addition to the additional hour that OFCCP originally allotted for compliance with the proposed revision. OFCCP believes that two additional hours is a reasonable estimate of the additional time for compliance with the new Itemized Listing 11. The majority of establishments in OFCCP's jurisdiction have fewer than 150 employees. It is unlikely that they would have a large number of hires, promotions and terminations. The proposed Itemized Listing 11 would require specific demographic information, data by job title and by job group, as well as the new requests for "actual pool of candidates" for promotion and termination decisions. This will require some additional investment of time from contractors.

OFCCP received several alternative recommendations for Item 11. Some commenters suggest giving contractors the flexibility to provide promotion pool data if they choose. Another commenter suggests allowing contractors to provide comparisons of promotions to the most appropriate employee population that it selects. An industry group recommends limiting this request to situations where contractors are

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<sup>8</sup> *Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977).

currently required to identify a group decisional unit, like under the Older Workers Benefit Protection Act. Another commenter request that OFCCP make a distinction between "voluntary" and "involuntary" termination pools.

After careful consideration of the comments we received, OFCCP plans to move forward with the proposal to require the "actual pool of candidates" for promotion and termination decisions. As noted by some commenters, data on the demographic makeup of candidate pools will provide valuable information regarding whether discrimination exists. Further, OFCCP regulations currently require supply and service contractors to maintain a variety of personnel records, including, but not limited to, those that are related to hiring, assignment, promotion, demotion, transfer, and lay off or termination. As such, contractors should already have some kind of established mechanism for maintaining this information. In response to commenter concerns regarding personnel actions where there may be a progression track or an individualized move, it is also important to note that OFCCP would accept a candidate pool of one.

We believe that allowing contractors to tell us how they define "voluntary" and "involuntary" terminations allows us to assess the data based on how the contractors represent that they actually use or consider it when making decisions.

We also note that a few commenters request that OFCCP clarify its request that the information sought in Item 11(a) through 11(c) in the Itemized Listing be provided for "at least the first six months of the current AAP year" if the contractor is six months or more into the current AAP year when the Scheduling Letter and Itemized Listing are received. One commenter notes that the language could be interpreted as meaning "no less than six months" or "from the beginning of the current AAP year until the present date." In response to the comments, OFCCP revised the introductory paragraph to reads as follows: "If you are six months or more into your current AAP year when you receive this listing, provide the information in 11(a) through (c) below for the first six months of the current AAP year."

D. **Item 12: Compensation Data**

OFCCP received 18 comments to the proposed changes outlined in the new Item 12 in the Itemized Listing. This item requests compensation data for all employees (including but not limited to full-time, part-time, contract, per diem or day labor, temporary) as of February 1. The information should include gender and race/ethnicity, and hire date for each employee by job title, EEO-1 Category and job group.

Compensation data and its analyses is a routine component of a compliance evaluation. As a part of its internal audit and reporting, contractors are required to perform an analysis of its compensation systems to determine if gender, race, or ethnicity-based disparities exist. The data requested in the proposed Item 12 are reflective of what is normally collected during the course of a compliance evaluation.

Commenters supporting the proposal highlight that the changes, if implemented, will be more effective in identifying pay discrimination. They explained that individual compensation data allows OFCCP to identify differences in pay and examine whether or not there are legitimate reasons for the differences. As noted by these commenters, access to individualized compensation data will produce the below positive results.

- Better-informed assessments of contractors' compliance with EO 11246.
- Detailed information about potentially discriminatory practices, both systemic and individualized, which may otherwise be concealed when data is aggregated.
- Clearer information about, and an understanding of, a contractor's potentially discriminatory compensation system, (the how and why employees are being compensated).
- Properly classified workers who receive appropriate protections and benefits as the result of requiring compensation information for all employees, including full-time, part-time, contract, per diem, or day labor and temporary workers.

Not all commenters support the proposed changes. Most prominently, those opposing them argue that the February 1 reporting date is arbitrary and does not take into account

the employer's AAP start date or pay practices. Others contend that the February 1 date for taking a snapshot of employee compensation means that contractors may be analyzing compensation on a different set of employees than those included in the AAP analyses. The selection of February 1 is not arbitrary but is chosen because it is the date by which contractors would have completed their W-2's and other compensation data analysis for their employees, pursuant to the January 31 deadline mandated by the U.S. Internal Revenue Service (IRS). By the end of January, employers must furnish Copies B, C, and 2 of Form W-2 to employees. See <http://www.irs.gov/businesses/small/article/0,,id=172179,00.html>. OFCCP selected this date because we believe it is less burdensome for contractors if relevant compensation information is already available, in whole or in part, for tax purposes.

Others oppose the proposed changes based on their concerns with the definition of "employee." Specifically, employers argue that the definition of "employee" in the proposal is broader than the definition in the current regulations. For example, some commenters suggest that the term "employee" refer only to full-time staff. Another commenter suggests changing the term "employee" to "worker" in order to include every individual who performs duties for the contractor. We note that some commenters mistakenly believe that the definition of "employee" found in the instructions for completing the EEO-1 Report applies to the regulations implementing the Executive Order. For purposes of the EEO-1 Report, the term "employee" does not include persons hired on a casual basis, or persons temporarily employed in any industry other than construction. However, the definition of "employee" included in the EEO-1 Report Instruction Booklet is limited to that report.

OFCCP broadly defines "employee" as a person employed by a federal contractor, subcontractor or federally assisted construction contractor or subcontractor. Moreover, the current regulation at 41 CFR §60-2.1, which describes who is included in an AAP, does not refer to particular categories of employees, but rather refers generally to "employees." Accordingly, in sub-regulatory guidance OFCCP states that the term "employee," as used in the AAP regulations in Part 60-2, is broad enough to include part-time, temporary and full-time employees. Therefore, OFCCP requires contractors to include part-time and temporary

employees in their AAPs. The proposed language in Item 12 does not change this longstanding requirement. Item 12 does, however, seek compensation data for "contract, per diem, or day laborers" as categories of temporary employees on the contractor's payroll. This is not an expansion but a clarification of covered employees for reporting compensation data that supports enhanced data analysis.

Still others argued that OFCCP underestimated the cumulative effect that reporting compensation data will have on contractors. They believe that the time required to prepare the compensation data for desk audit review will triple. Some commenters recommend that OFCCP request that contractors provide a summary or general explanation of their compensation scheme or general philosophy.

OFCCP believes that the cumulative effect of changes in Item 12 will be a net reduction in hours required to prepare the compensation data for a desk audit based on information submitted to OFCCP from contractors responding to the 2003 Compensation Questionnaire. The Compensation Questionnaire, the most recent relevant information currently available to us, indicates that contractors spent an average of 5.23 hours submitting compensation data requested in the previous Itemized Listing. The time accounted for gathering, grouping and analyzing the data before submitting it to OFCCP. The survey also showed that the time needed to report data by individual was 1.87 hours. The reporting by individual was a follow-up data requested. Thus, OFCCP believes that by switching to a requirement for submission of individual data Item 12 eliminates the need to gather, group, and analyze data. In short, the proposed change simplifies the requirement and reduces the burden. The new compensation submission (Itemized Listing Item 12) takes 1.87 hours and we anticipate limited additional data requests.

Additionally, some commenters express confidentiality concerns surrounding the production of the compensation data. The disclosure of information obtained from a contractor will be evaluated pursuant to the public inspection and disclosure provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR Part 70. OFCCP will adhere to the requirements of the Privacy Act, as applicable.

OFCCP requires that contractors be notified in writing when a FOIA request is made for contractor data. OFCCP will make no decision to disclose such documents until the contractor has an opportunity to submit objections to the release of the record or data. Moreover, OFCCP does not release data obtained during the course of a compliance evaluation until the investigation is complete. Furthermore, if the contractor is concerned with the confidentiality of such information as lists of employee names, reasons for termination, or pay data, then alphabetic or numeric coding or the use of an index of pay and pay ranges, consistent with the ranges assigned to each job group, are acceptable for purposes of the compliance evaluation. 41 CFR § 60-1.20 (f) In light of privacy concerns raised by commenters, we revised this item to include a disclosure/confidentiality statement.

Related to compensation data, as well as other reporting requirements, commenters believe that the proposal to require data electronically is unrealistic because their systems for managing compensation are varied. OFCCP, however, allows contractors to provide all data electronically via email or computer disc in Excel or PDF format, if available. We are revising the Itemized Listing accordingly to clarify this issue. We state a preference for a single file with this data; however, we do not mandate or require a single file.

Finally, one commenter asserts that the burden of producing compensation data under Item 12 falls unevenly on small employers. OFCCP defines small employers as contractors with fewer than 50 employees. We minimize the information collection and/or recordkeeping burden on small businesses by exempting contractors with fewer than 50 employees from the AAP requirement and from filing the EEO-1 Report.

**E. Item 13 - 503/4212 Supporting Documents**

As proposed, this item would require contractors to submit copies of their Veterans' Employment Report (VETS-100 and/or VETS-100A) for the last three years. Few commenters oppose this requirement. However, some question the need for such a requirement, as VETS only requires contractors to keep the forms for two years. In fact, contractors must retain their VETS 100 form for three years while the VETS 100A form is required for one year. After considering the comments, and assessing the practicality

and utility of the proposed requirements of this item, OFCCP is changing the proposed request that contractors submit their VETS-100 and/or 100A forms from the last three years to requesting that they submit such forms for two years (the current year and the previous year).

One commenter expresses concern about the proposal to require that contractors provide copies of accommodation policies and records of accommodations granted under Section 503 and Section 4212. The concern is that providing information on accommodations may present a violation of an employee's right to privacy. Another commenter explains further that companies are reluctant to develop databases regarding accommodations because of concerns about protecting medical information and the privacy rights for employees with disabilities. Item 13 as proposed by OFCCP does not require that contractors provide personal information on individuals requesting accommodation; however, it does seek records of accommodations and copies of accommodation policies. Proof that a contractor provides reasonable accommodations upon request is a traditional component of OFCCP's compliance evaluations. Documentation of these accommodations is used to determine compliance with the Section 503 and Section 4212 requirements.

Furthermore, one commenter asserts that contractors are not legally required to record afforded accommodations and as a result, most do not have a process in place to track this information. At least two commenters state that requiring contractors to provide records reflecting granted accommodations will necessitate the development of an automated process that is integrated into their Human Resources Information System (HRIS). This, they say, will be both costly and time consuming. Another commenter believes that in the absence of a centralized database that tracks accommodations granted to persons with disabilities, gathering this data will require several hours of work and recommends that OFCCP ask for information on specific accommodations at the time the compliance review opens, rather than immediately prior to the time an onsite review or at some other problematic time for the company. OFCCP emphasizes that it currently requires federal contractors to maintain records of requests for reasonable accommodations. Pursuant to 41 CFR 60-741.80, a federal contractor is required to preserve, for one or two years, any personnel or employment record, including requests

related to reasonable accommodations. Therefore, contrary to what these commenters assert, no additional burden is imposed upon them to supply data in response to this item. Contractors should have an existing process in place to track the requested data.

F. **Burden Analysis**

Commenters believe that OFCCP underestimates the time required to collect and analyze compensation data by job group and job title, and that the proposed changes produce what they view as voluminous CBA supporting or explanatory documents. They also assert that we rely too much on technology as a burden reducer. Although concerns are raised, none of the commenters specifically provides alternatives or a means to accomplish the task with a lesser burden.

We assessed the burden of contractor compliance with the revised Scheduling Letter and Itemized Listing and determined that despite requesting additional information in several key areas, the burden hours decreased from 28.35 hours to 27.01 hours per contractor. The primary reason for the decrease is changing the request for compensation data included in the Itemized Listing from aggregated data to individual data. Once the burden of all aspects of compliance is calculated, the total burden actually increased by approximately 19 percent (from 10,045,984 to 11,949,346 hours). The individual increase for each contractor is approximately 11 hours, and is primarily a result of an increase in the number of supply and service contractors.

Another commenter suggests delaying the implementation of the Scheduling Letter and Itemized Listing to allow contractors time to develop procedures for collecting and analyzing data. OFCCP believes that much of the data and analyses that are requested in the Itemized Listing are already required in its regulations. Further, OFCCP believes that the amount of time needed by contractors or their human resources service providers/vendors to modify data tracking and data analyses tools is not excessive. OFCCP believes that for those contractors with existing systems, the modifications needed is the development or modification of a database query. Thus, OFCCP declines to delay the implementation of the Scheduling Letter and Itemized Listing.

In addition to the comments on the time required to collect and analyze data, one commenter states that OFCCP underestimates the number of first time contractors; specifically, health care providers were not included in the count of covered federal contractors. In response, the count of contractors was re-examined. This ICR relies on the same estimate of the affected number of contractors and contractor establishments used in VEVRAA and Section 503. Because of the objections to the number used in the NPRMs, we worked with the Data Integrity Team to reexamine how the original number of contractors and establishments was developed. In the absence of a documented process for the original data run, we were not able to verify their information; however, we do know the data sources they likely relied upon. In short, because of the second data run, we initially identified a slightly smaller contractor establishment pool. After combining the results of the EEO-1 data of 87,013 contractor establishments with 50 or more employees and the FPDS-NG data with 10,518 such establishments, the result is 97,531 establishments. Covered contractors must develop AAPs for all establishments, even those with fewer than 50 employees. If we add those estimated 73,744 establishments to this number, the adjusted total is 171,275 establishments.

**G. HUMAN RESOURCES INFORMATION SYSTEM CAPABILITIES**

Comments about the possible cost and burden of updating or revising Human Resource Information Systems (HRIS) cut across several of the proposed changes to the Scheduling Letter and Itemized Listing. Several commenters argue that their (HRIS) must be changed in order to provide the new information requested in the Itemized Listing. Specifically, they contend the proposed requests in some items will require contractors to develop new systems, implement new processes and revise existing data and collection methods, while other items will require contractors to collect, manually enter and synthesize information from multiple sources.

OFCCP wants to emphasize that the information it would ask contractors to submit in response to the Scheduling Letter and Itemized Listing is information that they are already required to maintain. As noted in Section B, covered contractors are already required to preserve personnel or employment records made or kept by the contractor for a

defined period. Pursuant to this requirement, contractors are required to preserve this data, analyze it, use it to identify problem areas and develop action-oriented programs. Some commenters assert that they do not have to maintain some of the requested data, specifically on accommodations. However, requests for accommodation are considered part of a personnel or employment record and thus, should be maintained. In response to commenters' concerns regarding additional burden to provide the requested information, OFCCP added additional start-up costs to reflect time needed to adjust current reporting or create additional reports. The additional burden is reflected in numbered paragraph 13, below, ANNUAL OPERATION AND MAINTENANCE COST BURDEN TO RESPONDENTS.

**9. GIFT GIVING**

OFCCP provides neither payments nor gifts to respondents.

**10. ASSURANCE OF CONFIDENTIALITY**

As explained in Item 8 above, contractors who submit the required information may view it as extremely sensitive information. OFCCP will evaluate all information pursuant to the public inspection and disclosure provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR Part 70. OFCCP requires that contractor affected by a FOIA disclosure request be notified in writing and no decision to disclose information is made until the contractor has an opportunity to submit objections to the release of the information.

Furthermore, it is OFCCP's position that it does not release any data obtained during the course of a compliance evaluation until the matter is completed.

**11. SENSITIVE QUESTIONS**

Generally, OFCCP does not collect information of a personal nature, such as marital status, religious beliefs, or other matters commonly considered private during the course of a compliance evaluation. Where allegations of employment discrimination are present, such evidence may become

relevant. Under such circumstances, OFCCP may seek evidence concerning the attitudes or biases of selecting officials regarding race, sex, color, religion, national origin, disability or veteran status, as appropriate. OFCCP has no set of standardized questions and the gathering of such data is unique to each investigation.

OFCCP regulations require contractors to list employees by sex and by race or ethnicity in their EO 11246 AAPs (see 41 CFR 60-2.11, 2.12, and 2.16). The contractor and the government require race, sex, and ethnicity data to evaluate the results of the contractor's affirmative action efforts. The data are also required to investigate for indicators of potential employment discrimination. No equal employment opportunity program could operate without such data. Generally, a contractor informs its employees that it collects and maintains race, sex, and ethnicity data strictly for purposes of meeting its nondiscrimination and affirmative action obligations.

A separate ICR covers employee complaint investigations approved by the OMB under OMB No. 1250-0002 - "Complaint of Discrimination in Employment Under Federal Government Contracts" form (Form CC-4). Form CC-4 requires a description of an individual's disability and, therefore, this question is considered a sensitive question. The disability information is necessary to establish jurisdiction under Section 503 of the Rehabilitation Act of 1973, as amended. As noted in number 10, it assures compliance with the Privacy Act.

## **12. ESTIMATE OF INFORMATION COLLECTION BURDEN**

OFCCP identifies the contractor establishments affected by this proposal based on an analysis of the EEO-1 Report data from "Question 3" where contractors and subcontractors self-identify and indicate whether they meet the 50 employees and \$50,000 contract value threshold.<sup>9</sup> This data is cross-checked against the FPDS-NG, the Central Contractor Registration (CCR) and Dun & Bradstreet (D&B). Typically, only contractor establishments with 50 or more employees are included in the final count and any duplicate entries are eliminated. However, this final number

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<sup>9</sup> The term "contractor" includes both contractors and subcontractors unless otherwise noted.

includes contractor establishments with 1 to 49 employees because covered contractors must develop AAPs for all establishments, even those with fewer than 50 employees.

Finally, the count does not specifically exclude construction establishments, as many construction contractors may also be supply and service contractors.

The estimate of the information collection burden is broken down into recordkeeping and reporting. The following is a summary of the methodology for the calculation of the recordkeeping and reporting requirements and changes based on the revisions to the Scheduling Letter, Itemized Listing and Compliance Check Letter.

**a. Recordkeeping Burden**

OFCCP's regulations impose a recordkeeping burden for developing, updating, and maintaining AAPs for minorities and women. OFCCP has no program changes in recordkeeping burden for this ICR. Using contractor estimates of the hours required to update an AAP annually and information provided by OFCCP Field Staff, we calculated recordkeeping hours for Professionals (Prof.) and Support Staff (Cler.) for the following three functions.

**1) Initial Development of an AAP**

OFCCP estimates that only 1% of its contractor establishments are first-time contractors developing initial AAPs. However, for that 1% we estimate that the development time is more than 2 1/2 times greater than the time required for the annual update. To calculate the burden hours for 1% of total contractors, we first calculate the hours for all contractor establishments and take 1% of the total.

Below we calculate the burden hours based on FY 2009 EEO-1 and FPDS-NG report data for contractor establishments.<sup>10</sup>

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<sup>10</sup> The EEO-1 Report data used to calculate the number of establishments includes those from contractors and subcontractors answering "yes" to the contractor self-identification question referred to as "Question 3." The FPDS-NG report is used to identify contractors who answered "no" or who failed to submit an EEO-1 form. Further, the CCR and D&B information is used to refine the above information.

<u>Size Group</u>	<u>Prof. Hours</u>	<u>Cler. Hours</u>	<u>Total Hours</u>	<u>Contractor Establishments</u> <u>11</u>	<u>Total Hours</u>
1-100	49	24	73	109,450	7,989,850
101-150	59	32	91	28,483	2,591,953
151-500	95	49	144	25,777	3,711,888
501+	128	58	186	7,565	1,407,090
Average is 91.67 hours/contractor				171,275	15,700,781

Since OFCCP estimates that only 1% of contractors (1,713) are first-time developers of AAPs annually, below we calculate the total burden hours.

$$1713 \quad \times \quad 91.67 \quad = \quad 157,031$$

## 2) Annual Update of an AAP

The table below shows the estimate of professional and clerical time required for contractors to complete an annual update of their AAPs. The hours vary by size of the contractor's workforce, with the larger workforce requiring more time to perform this task. As in the previous table, we calculate the burden hours based on FY 2009 EEO-1 and FPDS-NG report data for contractor establishments.<sup>12</sup>

<u>Size Group</u>	<u>Prof. Hours</u>	<u>Cler. Hours</u>	<u>Total Hours</u>	<u>Contractor Establishments</u> <u>13</u>	<u>Total Hours</u>
1 - 100	10	8	18	109,450	1,970,100
101 - 150	21	14	35	28,483	996,905
151 - 500	52	26	78	25,777	2,010,606
501+ 14	61	44	105	7,565	794,325

<sup>11</sup> In previous submissions, we separated University data as it was counted separately in EEO-6 and IPEDS. University data is now included in the EEO-1 Report data. The total number of Universities in the EEO-1 Database is 51.

<sup>12</sup> In previous submissions, we included only EEO-1 Data to calculate the size of the contractor universe, for those contractors that answered "yes" stating that they were a federal contractor.

<sup>13</sup> In previous submissions, we separated University data as it was counted separately in EEO-6 and IPEDS. University data is now included in the EEO-1 Report data. The total number of Universities in the EEO-1 Database is 51.

<sup>14</sup> In previous submissions, this table included rows for "501-1000" and "1001+" contractors. We have combined those two rows into one row. Due to increased efficiencies in technology, we believe that a contractor of 1001 or more employees will expend no more hours than a contractor of 501 employees.

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(Average 33.70 hrs. per contractor)	171,275	5,771,936
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The above is the basic calculation for the annual update. However, the total annual update figure is reduced somewhat because 1% of the contractors developing their initial AAP should not also be counted as having update time. Therefore, below we calculate the recordkeeping burden imposed by the annual update.

			Total # of
5,771,936	Total hours	171,275	Contractors
	Less One		
	Percent for		
	New		Less New or Initial
-57,719	Contractors	-1,713	Contractors
5,714,217	Hours for the	169,562	# of Contractors
	99% of		Updating
	Contractors		
	Annually		
	Updating		

Total annual update burden hours for annual updates is 5,714,217.

**3) Maintenance of an AAP**

OFCCP estimates that the time required for maintenance of an AAP is the same as the amount necessary to accomplish the annual update, 5,771,936 hours (without subtracting the 1% for new contractors) (see #12a(2) above).

**4) Uniform Guidelines on Employee Selection Procedures**

The Uniform Guidelines on Employer Selection Procedures are used by OFCCP and four other agencies but nearly all of the burden hours are associated with OFCCP, EEOC, and the Department of Justice (DOJ). The EEOC, under OMB Number 3046-0017, accounts for all employers with 15 or more employees. Federal contractors with 1 - 14 employees are subject to OFCCP's recordkeeping requirements. Based on the figures used by EEOC, OFCCP estimates that, on average, contractors expend 2.18 hours meeting this obligation. OFCCP estimates that approximately 9,094

employers are contractors with 1 - 14 employees. This recordkeeping requirement is  $9,094 \times 2.18 = 19,825$  hours.

### **Recordkeeping Total**

157,031	Contractors Developing an Initial AAP
5,714,217	Contractors Conducting Annual Updates
5,771,936	AAP Maintenance by All Contractors
<u>19,825</u>	Uniform Guidelines Recordkeeping Hours
11,663,009	Total Recordkeeping Burden Hours

### **b. Reporting Burden**

OFCCP is reporting burden hours on the Compliance Evaluation Letters (Scheduling Letter and Compliance Check Letter). Although OFCCP previously included an estimate of burden hours for the filing of the EEO-1 Report by contractors with 50 or more employees, the Information Collection submitted by EEOC and approved under OMB No. 3046-0007 accounts for all burden hours associated with the filing of the EEO-1 Report. Therefore, OFCCP no longer includes EEO-1 Report hours as part of its reporting burden.

#### **1) Scheduling Letter**

The Scheduling Letter and Itemized Listing provide the contractor with notice of its selection for a compliance evaluation and request the submission of its AAPs and supporting personnel activity and compensation data.

OMB considers the assembling of the requested material and its submission to be a reporting requirement subject to the burden hour calculation required by the Paperwork Reduction Act. To determine burden hours reported, OFCCP gathered information from its 2003 Compensation Questionnaire and submitted this data to OMB in the 2004 ICR documentation. OFCCP sent the Compensation Questionnaire to contractors and measured the executive and administrative hours used to respond to data requested on the OFCCP Itemized Listing.

Based on the Compensation Questionnaire data, OFCCP estimated that, on average, a contractor expends 28.35 hours on data assembly and submission activity. Changes to the revised Scheduling Letter and Itemized Listing reduce contractor burden hours to 27.01

primarily due to changes in compensation data requirements outlined in Item 12.

OFCCP revised the Scheduling Letter and Itemized Listing. The revisions reduce overall burden hours on contractors and enhance OFCCP's desk audit and data analysis abilities. The revisions in the body of the Scheduling Letter were made for clarity and do not affect overall burden hours. The changes to the Itemized listing are the following:

1. A new Item 8: Submission of employment leave policies including, but not limited to, sick leave, medical leave, personal leave, leave for pregnancy, leave for pregnancy-related conditions, leave for religious holidays and observances, Family Medical Leave, and other leaves of absence; and policies on accommodations for religious holidays and observances. Receipt of these policies would assist OFCCP in better determining the existence of sex or religious discrimination indicators within contractor organizations. Additionally, the policy requirements would enhance OFCCP's broad authority under Executive Order 11246 to prohibit sex and religious discrimination in employment and its share enforcement responsibilities with the EEOC under Title VII. OFCCP estimates that 1% of contractors will have no religious accommodation policy in place. For that 1% of contractors we estimate 2 hours to prepare a religious accommodation policy, or .02 hours overall increase per contractor.

2. Changes to new Item 9 (currently Item 8) -- OFCCP further defined "other information" in contractor collective bargaining agreements (CBA) to clarify for contractors the specific information requested during compliance evaluations. Previously, this item sought the CBA and information on the contractor's "mobility system(s), e.g., promotion, etc." No change in burden hours for this item.

3. Changes to new Item 10 (currently Item 9) -- AAP reporting requirements changed from preceding year to immediate preceding year to clarify specific AAP reporting timelines for contractors. No change in burden hours for this item.

4. Changes to new Item 11 (currently Item 10) -- OFCCP included more specific demographic information related to applicants, hires, promotions, and terminations by eliminating the "minority" and "non-minority" terminology used in the current Itemized Listing. This change to the use of separate racial and ethnic categories is required for conducting more statistical analysis on discrimination. In addition, contractors would be required to submit data by job group and job title, instead of job group or job title in the current Scheduling Letter. This revised submission would result in OFCCP obtaining more accurate reporting data for its analyses related to identifying sex and race discrimination indicators. To provide this data, OFCCP acknowledges that some HRIS systems may need to generate additional or different reports. OFCCP understands that contractors or their human resources service providers/vendors will need to develop or modify existing queries of personnel tracking systems. The additional burden of creating those queries is included as start-up costs in the discussion of Annual Operation and Maintenance Costs to the Respondent. It is OFCCP's understanding that once the queries are created, reports can be run as needed. We also estimate 2 additional burden hours per contractor after the initial start-up investment.

5. Changes to new Item 12 (currently Item 11) -- The changes would require a contractor to submit more precise data for OFCCP's compensation analysis. The more precise data is individual employee data rather than the aggregate data requested in the current Scheduling Letter. A submission of the data would allow OFCCP to perform specific analyses, and pinpoint possible discrimination based on race or sex. We will no longer ask for aggregate compensation data, which required contractors to summarize the data themselves, thereby increasing their burden. In addition, the aggregate data was less effective in allowing OFCCP to analyze compensation. The Compensation Questionnaire indicated that contractors spend an average of 5.23 hours to submit compensation data, and an average of 1.87 hours to submit additional compensation data (after the initial request and prior to an onsite review). The new compensation submission replaces the initial request with the follow up request, meaning

that a contractor's burden would decrease on average to 3.36 hours (5.23 - 1.87 = 3.36).

6. New Item 13 -- A copy of the Veterans' Employment Report VETS-100 and/or VETS-100A for the last three years. These documents are required reporting for federal contractors and include information on their hiring on disabled and other protected veterans under VEVRAA. This information supports OFCCP's efforts to prohibit discrimination based on an individual's status as a protected veteran. The burden for complying with the VETS-100/100A reports is covered under OMB Control Number 1293-0005 under the Department of Labor's Veterans' Employment Training Service. Therefore, there is no increased burden for this item.

The overall burden hour changes per contractor are as follows:

Hours per contractor	
28.35	Current Burden
.02	New Item 8
2.00	New Item 11
<u>(3.36)</u>	New Item 12
27.01	New Burden

Therefore, OFCCP estimates that contractors will expend an average of 27.01 hours responding to the Scheduling Letter.

OFCCP completed 4,260 compliance evaluations in FY10, and we estimate the same number for FY11. The reporting burden therefore is 4,260 x 27.01 = 115,062 hours.

## **2) Compliance Check Letter**

The Compliance Check Letter is a limited purpose evaluation of the contractor's establishment to determine whether the contractor has maintained records consistent with Section 60-1.12. At the contractor's option, the documents may be provided either on-site or off-site.

OFCCP has not scheduled any Compliance Checks for FY 2011; therefore, the burden hours will be zero.

**Reporting Total**

0	SF-100/EEO-1 Report
115,062	Scheduling Letter
0	Compliance Check
<hr/>	
115,062	Total Reporting Burden Hours

**c. Third Party Disclosure Burden**

OFCCP's third party disclosure burden hours are composed of the following contractor requirements:

- Section 60-1.4(a)(3), which specifies the required notification to labor organizations, provides that a contractor may notify labor organizations by any one of several methods, such as mail, telephone, facsimile, or e-mail. Assuming it takes 30 minutes to compose and 30 minutes to distribute written notification to unions, OFCCP estimates an average of 1 hour per contractor establishment or 171,275 hours for notifying labor organizations.

**Third Party Disclosure Total**

171,275	Annual Total
<hr/>	
171,275	Total Third Party Disclosure Burden Hours

The sum of the recordkeeping, reporting and third party disclosure burden in the Burden Change Summary is 11,949,346 hours.

11,663,009	Total Recordkeeping Burden Hours
115,062	Total Reporting Burden Hours
	Total Third Party Disclosure Burden Hours
<hr/>	
11,949,346	Total Recordkeeping, Reporting, and Third Party Disclosure Burden Hours

**d. Annualized Cost of the Burden Hours to Contractors**

The estimated annualized cost to contractors is based on Bureau of Labor Statistics data in the publication, "Employer Costs for Employee Compensation" - March 2011, which lists total compensation for management,

professional, and related occupations as \$ 49.81 per hour and administrative support as \$ 22.54 per hour. OFCCP estimates that 52% percent of the burden hours will be management, professional, and related occupations and 48% percent will be administrative support. We have calculated the total estimated annualized cost as follows:

Mgmt. Prof. 11,949,346 hours x .52 x \$49.81 = \$309,502,400

Adm. Supp. 11,949,346 hours x .48 x \$ 22.54 = \$129,282,364  
=

Total annualized cost estimate = \$438,784,764

Estimated average cost per establishment is:

\$438,784,764/171,275 = \$2,562

### **13. ANNUAL OPERATION AND MAINTENANCE COST BURDEN TO RESPONDENTS**

While the information that contractors provide OFCCP is generally maintained in the normal course of business, OFCCP acknowledges that some contractors will need to modify their current information systems to produce the requested data. OFCCP believes that modifications to personnel tracking systems involve the creation of a new search query or report. The contractors or their human resources service providers/vendors will need their technical experts or programmers to create this report or query. OFCCP estimates a start-up cost for collecting information to account for the time it would take a professional with technical expertise to modify a personnel-tracking system to respond to the new requests in the Scheduling Letter and Itemized Listing. The estimated annualized start-up cost to contractors is based on the Bureau of Labor Statistics data in the publication, "Employer Costs for Employee Compensation" - March 2011, which lists total compensation for professional and related occupations. OFCCP estimates that it will take a professional 16 hours at a rate of \$47.23 per hour to develop the necessary programs to produce this data. We have calculated the total estimated start-up costs as follows:

Estimated average cost per establishment is:

Prof. 16 hours x \$47.23 = \$756

Total start-up cost estimate is:

$$\$756 \times 171,275 \text{ (contractors)} = \$129,483,900$$

OFCCP estimates that contractors will have some operations and maintenance costs associated with this collection. For Supply & Service compliance evaluations, contractors copy their AAPs and mail the AAPs to OFCCP. We estimate an average copying cost of \$0.08 per page.

We estimate the average size of an AAP and supporting documentation to be 37 pages, an increase in 4 pages from the prior submission. This increase is due to the changes in the Scheduling Letter. The estimated total copying cost to contractors is \$12,610 (37 pages x \$.08 x 4,260 = \$12,610).

In addition, we estimate an average mailing cost of \$11.00 per contractor. The total mailing cost for contractors will be \$11.00 x 4,260 = \$46,860. Moreover, we estimate an average mailing cost of \$.70 per contractor for notifying labor organizations. The total mailing cost to labor organizations would be \$.70 x 171,275 = \$119,892.

The total estimated costs would be \$129,483,900 + \$12,610 + \$46,860 + \$119,892 = \$129,663,262.

**14. ESTIMATE OF COST TO FEDERAL GOVERNMENT**

We have estimated the cost to the Government as follows:

12 Hours per Compliance Check	X	0 Compliance Checks	=	0 Hours
32 Hours per Desk Audit	X	4,260 Compliance Evaluations	=	136,320 Hours
		<b>TOTAL HOURS</b>	=	<u>136,320</u>

We estimate the hourly rate at \$32.97 (GS-12, step 1, annual salary of \$68,809, based on the Office of Personnel Management's 2011 Salary Table (rates frozen at 2010 levels) for the Rest of the U.S consisting of the portions of the lower 48 United States not located within another locality pay area as defined by the Office of Personnel

Management. The total cost would be \$32.97 per hour x 136,320 hours = \$4,494,470. This dollar amount is part of the normal cost of OFCCP's enforcement work at the field level.

## **15. CHANGES IN BURDEN HOURS**

We are requesting OMB approval of 11,949,346 burden hours. The present clearance contains approval of 10,045,984 hours. The new estimate represents a net increase of 11 hours per contractor (1,893,394). The increase is primarily caused by an increase in the number of contractor establishments from 99,028 to 171,275, and a program decrease in hours due to changes in the Scheduling Letter and Itemized Listing. The sum of the recordkeeping, reporting and third party disclosure burden is 70 hours per contractor.<sup>15</sup> The change is analyzed below.

### **a. Recordkeeping Burden Hours**

#### **1) Initial Development of AAP:**

The previous submission included 109,098 hours. The current request is 157,031, for an adjustment increase of 47,933 hours.

#### **2) Annual Updating of AAP:**

The previous submission included 4,818,517 hours. The current request is 5,714,217, for an adjustment increase of 895,700 hours.

#### **3) Maintenance of AAP:**

The previous submission included 4,867,189 hours. The current request is 5,771,936, for an adjustment increase of 904,747 hours.

#### **4) Uniform Guidelines on Employee Selection Procedures:**

The previous submission included 12,535 hours. The current request is 19,285, for an adjustment increase of 7,290 hours.

### **b. Reporting Burden Hours**

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<sup>15</sup> The hours of burden for each contractor is determined by dividing the total hours 11,949,346 by the contractor pool 171,275.

**1) Standard Form 100**

The number of report filers chargeable to OFCCP was zero in the previous submission and remains at zero. Therefore, we have no changes in this category.

**2) Scheduling Letter**

The burden hours estimate decreased from 139,567 hours to 105,094 hours for two reasons. First, the number of compliance evaluations requiring the use of the Scheduling Letter decreased by 663 (from 4,923 to 4,260). Thus, fewer contractor establishments received Scheduling Letters. In addition, the changes to the Scheduling Letter and Itemized Listing, specifically in requesting changes to Item 12, decreased the estimate of burden from 28.35 hours to 27.01.

The burden hours associated with those contractor establishments receiving Scheduling Letters, therefore, decreases by 24,505 hours. Because the number of contractor establishments receiving Scheduling Letters decreased, the number of hours OFCCP requires to conduct evaluations is reduced by 9,968 hours. Thus, the total decrease is 34,473 hours.

**3) Compliance Check Letter**

The previous submission included 50 hours. This submission requests 0 hours, for an adjustment decrease of 50 hours.

**c. Third Party Disclosure Burden Hours**

The burden hours estimate increased from 99,028 hours to 171,275 hours. The adjustment increase is 72,247 hours, which reflects the increase in the number of supply and service contractor establishments.

**BURDEN CHANGE SUMMARY**

	<u>CURRENT</u> <u>INVENTORY</u>	<u>CURRENT</u> <u>REQUEST</u>	<u>ADJUSTMENT</u> <u>CHANGES</u>	<u>PROGRAM</u> <u>CHANGES</u>
AAP Development	109,098	157,031	47,933	0
AAP Updating	4,818,517	5,714,217	895,700	0
AAP Maintenance	4,867,189	5,771,936	904,747	0
Uniform Guidelines	<u>12,535</u>	<u>19,825</u>	<u>7,290</u>	<u>0</u>
Total Recordkeeping Burden	9,807,339	11,663,009	1,855,670	0
 SF-100	 0	 0	 0	 0
Compliance				
Evaluation				
Scheduling				
Letter	139,567	115,062	(24,505)	(9,968)
Compliance				
Check Letter	<u>50</u>	<u>0</u>	<u>(50)</u>	<u>0</u>
Total Reporting Burden	139,617	115,062	(24,455)	(9,968)
 Total Third Party	 99,028	 171,275	 72,247	 0
Disclosure Burden				
<b>TOTAL ANNUAL BURDEN</b>	<b>10,045,984</b>	<b>11,949,346</b>	<b>1,903,362</b>	<b>(9,968)</b>
<b>ADJUSTMENT INCREASE</b>	<b>1,903,362</b>			
<b>PROGRAM CHANGE</b>	<b>(9,968)</b>			
<b>NET INCREASE</b>	<b>1,893,394</b>			

Current Operations and Maintenance	\$120,019
Costs(approx)	
Total Annualized cost requested (approx)	\$129,663,262
Net Adjustment Change (approx)	\$129,543,243

**16. STATISTICAL USES AND PUBLICATION OF DATA**

OFCCP will not publish the data collected as a result of the items contained in this request as statistical tables.

**17. APPROVAL TO NOT DISPLAY THE EXPIRATION DATE**

OFCCP does not seek approval to not display the expiration date.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

OFCCP is able to certify compliance with all provisions.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This information collection does not employ statistical methods.