

SUPPORTING STATEMENT

EXECUTIVE ORDER 13201 - Notice of Employee Rights Concerning Payment of Union Dues or Fees OMB No. 1215-0203

A. JUSTIFICATION

1. President George W. Bush signed Executive Order 13201 (EO 13201) on February 17, 2001 to require non-exempt Government contractors and subcontractors to post notices informing their employees that under Federal law those employees have certain rights related to union membership and use of union dues and fees. The Order also provides the text of contractual provisions that Federal Government contracting departments and agencies must include in every Government contract, except for collective bargaining agreements and contracts for purchases under the Simplified Acquisition Threshold.

The contractual provisions require contractors to post a notice, the exact language of which is included in the contract clause, informing employees that they cannot be required to join a union or maintain membership in a union as a condition of employment and that portions of dues or fees not used for collective bargaining, contract administration, and grievance adjustment may be refunded to the employee. The notice also provides a general description of the remedies to which employees may be entitled if these rights have been violated, and provides contact information for further information about those rights and remedies.

The clause also requires contractors to include the same clause in their nonexempt subcontracts and purchase orders, and describes generally the sanctions, penalties, and remedies that may be imposed if the contractor fails to satisfy its obligations under the Order and the clause.

The regulatory provisions implementing Executive Order 13201 (29 CFR Part 470) include the language of the required notices, and explain posting and contractual requirements, waiver request procedures, the complaint process, the investigatory process, sanctions, penalties, and remedies that may be imposed if the contractor or subcontractor fails to comply with its obligations under the Order.

2. Pursuant to EO 13201, the purpose of the regulation is to mandate that government contractors and subcontractors post a notice informing their employees that they cannot be required to be members of a union to keep their jobs; that the law permits a union and an employer to enter into a union-security agreement that requires employees to pay dues or fees to the union; and that, even where such agreements exist, employees who are not union members can be required to pay only their share of union costs relating to activities that are germane to the union's representational purposes. The

notice also provides a general description of the remedies to which employees may be entitled if these rights have been violated, and provides contact information for further information about those rights and remedies. The information collection encompasses two aspects of the regulations. The first provision is section 470.11 which provides that an employee of a covered contractor may file a written complaint alleging that the contractor has failed to post the employee notice as required by the Executive Order and/or has failed to include the employee notice clause in nonexempt subcontracts or purchase orders. The second provision is section 470.4(d) which provides that contractors may make a written request to the Deputy Assistant Secretary for Labor-Management Programs for a waiver to the posting requirements with respect to any of the contractor's facilities that are in all respects separate and distinct from activities of the contractor related to the performance of a contract.

- 3.** In accordance with the Government Paperwork Elimination Act (GPEA) the Notice to Employees poster is available for downloading at <http://www.olms.dol.gov> or by sending a request to OLMS-Public@dol.gov. Complaints and waiver requests must be submitted in writing.
- 4.** Information reported pursuant to this information collection is not available from other government agencies and no duplication is possible.
- 5.** This information collection does not have a significant economic impact on a substantial number of small entities.
- 6.** If this information collection is not conducted, Executive Order 13201 could not be enforced through the complaint procedure and contractors would not be able to avail themselves of the process for obtaining a waiver from the posting requirements in appropriate circumstances.
- 7.** There are no special circumstances for the collection of this information. The rule is consistent with the general guidelines in 5 CFR 1320.6.
- 8.** A Federal Register Notice inviting public comment was published on June 20, 2007. No comments were received.
- 9.** No payments or gifts are provided to respondents.
- 10.** No assurances of confidentiality are provided.
- 11.** There are no sensitive questions pertaining to attitudes, beliefs, or sexual behavior.
- 12.** The burden hours for this collection of information were determined by estimating the time required to perform each information collection function associated with the filing of complaints under the regulation and contractor requests for a waiver from the posting requirement, including the time needed for new contractors to familiarize themselves with the waiver requirement and to determine whether it is applicable to

their circumstances, as well as the estimated number of complaints and waiver requests that the Department will receive.

The regulation imposes certain minimal burdens associated with the posting of the employee notice poster required by the Executive Order and Section 470.2(a) of the regulation. As noted in Section 470.2(d), the Department supplies the poster and permits contractors to make and post exact duplicate copies thereof. Under the regulations implementing the Paperwork Reduction Act (PRA), "[t]he public disclosure of information originally supplied by the Federal government to [a] recipient for the purpose of disclosure to the public" is not considered a "collection of information" under the Act. 5 CFR 1320.3(c)(2). Therefore, the posting requirement is not subject to the PRA.

As for the burden hour estimate for employees filing complaints, we estimate, based on the experience of the Office of Federal Contract Compliance Programs (OFCCP) administering other laws applicable to Federal contractors, that it will take an average of 1.28 hours for such a complainant to compose a complaint containing the necessary information and to send that complaint to DOL. This estimate derives from the final rule, in which the Department received no comments challenging the figure. We have updated our estimate for the number of expected complaints, based upon the Department's experience enforcing EO 13201. The Department has to date not received any employee complaints under EO 13201. Therefore, the Department has lowered its estimate of annual employee complaints from 1,046 to 20.

The Department analyzed the burden on contractors of preparing a request for a waiver from the posting requirement for "separate and distinct" facilities in the same fashion as it did in the final rule implementing section 470.4(d) and in the Supporting Statement for the initial PRA submission for this regulation. This analysis resulted in an estimate that contractors would spend 15 hours developing a letter requesting a waiver from the obligations of EO 13201 for facilities not involving work on a Federal contract. Additionally, the respondents may need to review the waiver requirements to determine if they apply to their circumstances. The Department did accept an NPRM commenter's estimate that such a review, if necessary, will require approximately 40 minutes – 66 percent of one hour – of total managerial time per contractor. Thus, each contractor filing a waiver request would spend a total of 15.66 hours completing all of the obligations necessary to complete and submit a waiver request. As for the total number of expected waiver requests, the Department previously estimated in the final rule and its prior PRA submission that 200 contractors would request waiver exemptions. However, the Department has to date not received any Federal contractor waiver requests. Therefore, the Department has lowered its estimate of annual contractor requests to 10.

For purposes of this calculation, as stated above, the Department does factor the time that contractors and subcontractors will need to determine whether the waiver requirements are applicable to their circumstances. However, despite the current estimate by OFCCP that the total Federal contractor universe is 28,000, the Department

believes that most of the 28,000 contractors will not need to refamiliarize themselves with the waiver requirements and filing process each year, as the Department has to date not received any Federal contractor waiver requests and few questions regarding the requirements. Further, contractors in states that forbid union security agreements are not required to post the notice and have no need to familiarize themselves with the waiver provisions. The Department's experience therefore suggests that it previously overstated the number of contractors that will need to familiarize themselves with the waiver procedure. Moreover, those new contractors who need to familiarize themselves with the reporting requirements are not respondents for purposes of this collection of information until they file a waiver request. As a result, the time that they expend reading the waiver requirements does not constitute respondent burden hours. The time required to review the applicability of the waiver requirements is included in the total reporting burden for the estimated ten annual respondents.

Below is a summary of the reporting and recordkeeping burden hours associated with this collection of information.

REPORTING AND RECORDKEEPING BURDEN for EO 13201

	RESPONSES	HOURS PER RESPONDENT	TOTAL HOURS
EMPLOYEE COMPLAINTS	20	1.28	25.6
CONTRACTORS PREPARING WAIVER REQUEST	10	15.66	156.6
TOTALS	30		182.2 (ROUNDED TO 182)

The Department calculated the estimates of annualized cost to respondents for the hour burdens for this collection of information as we did in the final rule and in our prior Supporting Statement for the PRA submission. Specifically, we used the data from the Bureau of Labor Statistics (BLS) National Compensation Survey: Occupation Wages in the United States (NCS), 2005 (Summary 01-02), to calculate the cost of these burden hours for the employee complaints. The NCS Summary indicates that the average hourly wage for union workers during 2005 was \$22.65 per hour. We therefore estimate that the cost to a complainant of filing a complaint under EO 13201 will be \$29.43, or \$28.99 ($\$22.65 \times 1.28$) + \$0.44 for postage and envelope (\$0.41 postage and \$0.03 for the envelope). We further estimate, as stated above, that 20 individual complaints will be filed each year. Therefore, we project that this collection

of information will impose on employees who file complaints a total annual cost burden of \$588.60 (\$29.43 per complaint x 20 complaints).

With regard to the burdens for the contractor, the regulations implementing the PRA exempt from the requirements of the Act any information collection requirements imposed by an administrative agency during the conduct of an administrative action against specific individuals or entities. See 5 CFR 1320.4(a)(2). Once the agency opens a case file or equivalent about a particular party, this exception applies during the entire course of the investigation, before or after formal charges or complaints are filed or formal administrative action is initiated. 5 CFR 1320.4(c). Therefore, this exemption will apply to the Department's investigation of complaints alleging violations of the Order or section 470.

However, section 470.4(d) of the regulation implementing EO 13201 permits a contractor to apply in writing for a waiver from the requirement to post the employee notice at any of the contractor's facilities that are in all respects separate and distinct from activities of the contractor related to the performance of a Government contract. As stated previously, the Department estimates that it will take 15 hours per contractor to apply for a waiver, with 90% of this time performed by management, professional and related staff and the other 10% by office and administrative support. As for the hourly compensation rates used in the calculation of this cost for contractors, the Department continues to use the BLS publication "Employer Costs for Employee Compensation" (USDOL 07-0453). We have updated our estimates of contractor costs associated with applying for the waiver based upon the most recent edition of this publication (2007). Below is a summary of the Department's analysis.

Total Time Expended:	10 waivers a year x 15.66 hours = 156.6 hours
Executive, Managerial, & Professional Time:	.90 x 156.6 hrs = 140.94 hours
Executive, Managerial, & Professional Time:	140.94 hrs x \$46.96 = \$6,618.54
Administrative Support Time:	.10 x 156.6 hours = 15.66 hours
Administrative Support Cost:	15.66 hours x \$22.28 = \$348.90
Postage and Envelope:	10 x .44 = \$4.40
Total waiver request annualized cost estimate:	\$6,971.84

Dividing the total annualized cost estimate for waiver applications of \$6,971.84 by the estimated number of waivers (10), we calculate that the estimated average cost of separate-waiver requests per Federal contractor establishment filing a waiver request will be \$697.18. Please see the table below for total respondent cost estimates.

RESPONDENT COST ESTIMATES

	Respondents		Postage and Envelopes	Burden Cost	Total
EMPLOYEE COMPLAINTS	20	x	.44 = \$8.80	+ \$579.80	= \$588.60
CONTRACTOR WAIVERS	10	x	.44 = \$4.40	+ \$6,967.44	= \$6,971.84
TOTAL COST					\$7,560.44.

13. There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

14. There is no cost to the Federal government, within the meaning of the PRA, for processing waiver requests. The regulations implementing the PRA define the term "burden," in pertinent part, as "the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency." 5 CFR 1320.3(b)(1). The definition of the term "person" in the same regulations includes "an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision." 5 CFR 1320.3(k). It does not include the Federal government or any branch, political subdivision, or employee thereof. Therefore, the cost to the Federal government for processing waiver requests need not be taken into consideration.

15. There is a an adjustment in the agency estimate due to a decrease of 4,157 annual burden hours, which represents the difference between the previously approved 4,339 hours and the 182 hours requested in this package. The decrease to 182 hours occurred because neither employee complaints nor contractor waiver requests have been received under this program. Therefore, the number of projected employee complaints was reduced from 1,046 to 20 and the number of projected contractor waiver requests was reduced from 200 to 10. Since the employee complaints have an individual burden estimate of 1.28 hours and the contractor waiver requests have an individual burden estimate of 15 hours, the total decrease was 4,157 annual burden hours. Additionally, there is a decrease of \$730,000 in capital/startup costs that was associated with the implementation of the new information collection. The Department incorrectly included the familiarization burden as capital/startup costs in the previous PRA Submission.

16. This information is not published for statistical use.

17. There are no forms associated with this information collection on which to display expiration date.

18. The Department of Labor is not seeking any exceptions to the certification requirements.