

SUPPORTING STATEMENT

EXECUTIVE ORDER 13496 - Notice of Employee Rights Under Federal Labor Laws OMB No. ****

A. JUSTIFICATION

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

President Barack Obama signed Executive Order 13496 (E.O. 13496) on January 30, 2009, requiring certain Government contractors and subcontractors to post notices informing their employees of their rights as employees under Federal labor laws. 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 and subcontractors to post a notice, created by the Secretary of Labor, informing employees of their rights under the National Labor Relations Act. The notice also provides a statement of the policy of the United States to encourage collective bargaining, as well as a list of activities that are illegal under the Act. The notice concludes with a general description of the remedies to which employees may be entitled if these rights have been violated and contact information for further information about those rights and remedies, as well as enforcement procedures.

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 proposed regulatory provisions implementing E.O. 13496 (29 CFR part 471) include the language of the required notices, and they explain posting and contractual requirements, the complaint process, the investigatory process, and sanctions, penalties, and remedies that may be imposed if the contractor or subcontractor fails to comply with its obligations under the Order. Specifically, proposed 29 CFR part 471.11 provides for the Department's acceptance of written complaints alleging that a contractor doing business with the Federal government has failed to post the notice required by this rule. The proposed section establishes that no special complaint form is required, but that complaints must be in writing. In addition, as proposed in § 471.11, written complaints must contain certain information, including the name,

address and telephone number of the person submitting the complaint, and the name and address of the Federal contractor alleged to have violated this rule. This proposed section establishes that written complaints may be submitted either to OFCCP or OLMS, and the contact information for each agency is contained in this subsection.

In accordance with the Government Paperwork Elimination Act (GPEA), the Notice to Employees poster is available for downloading at www.olms.dol.gov or by sending a request to OLMS-Public@dol.gov. Complaints must be submitted to the Department in writing.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

E.O. 13496 advances the Administration's goal of promoting economy and efficiency of Federal government procurement by ensuring that workers employed in the private sector as a result of Federal government contracts are informed of their rights to engage in union activity and collective bargaining. Knowledge of such basic statutory rights promotes stable labor-management, thus reducing costs to the Federal government.

Pursuant to E.O. 13496, the purpose of the proposed regulation is to mandate that government contractors and subcontractors post a notice informing their employees of their rights under Federal labor law. The notice reads:

NOTICE TO EMPLOYEES

**RIGHTS OF EMPLOYEES
UNDER THE NATIONAL LABOR RELATIONS ACT**

It is the policy of the United States to encourage collective bargaining and protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid and protection.

Under federal law, you have the right to:

Organize a union to negotiate with your employer concerning your wages, hours, and other terms and conditions of employment.

Form, join or assist a union.

Bargain collectively through a duly selected union for a contract with your employer setting your wages, benefits, hours, and other working conditions.

Discuss your terms and conditions of employment with your co-workers

or a union; join other workers in raising work-related complaints with your employer, government agencies, or members of the public; and seek and receive help from a union subject to certain limitations.

Take action with one or more co-workers to improve your working conditions, including attending rallies on non-work time, and leafleting on non-work time in non-work areas.

Strike and picket, unless your union has agreed to a no-strike clause and subject to certain other limitations. In some circumstances, your employer may permanently replace strikers.

Choose not to do any of these activities, including joining or remaining a member of a union.

It is illegal for your employer to:

Prohibit you from soliciting for the union during non-work time or distributing union literature during non-work time, in non-work areas.

Question you about your union support or activities.

Fire, demote, or transfer you, or reduce your hours or change your shift, or otherwise take adverse action against you, or threaten to take any of these actions, because you join or support a union, or because you engage in other activity for mutual aid and protection, or because you choose not to engage in any such activity.

Threaten to close your workplace if workers choose a union to represent them.

Promise or grant promotions, pay raises, or other benefits to discourage or encourage union support.

Prohibit you from wearing union hats, buttons, t-shirts, and pins in the workplace except under special circumstances, for example, as where doing so might interfere with patient care.

Spy on or videotape peaceful union activities and gatherings or pretend to do so.

It is illegal for a union or for the union that represents you in bargaining with your employer to: discriminate or take other adverse action against you based on whether you have joined or support the union.

If your rights are violated:

Illegal conduct will not be permitted. The National Labor Relations Board (NLRB), an agency of the United States government, will protect your right to a free choice concerning union representation and collective bargaining and will prosecute violators of the National Labor Relations Act. The NLRB may order an employer to rehire a worker fired in violation of the law and to pay lost wages and benefits and may order an employer or union to cease violating the law. The NLRB can only act, however, if it receives information of unlawful behavior within six months.

If you believe your rights or the rights of others have been violated, you must contact the NLRB within six months of the unlawful treatment. Employees should seek assistance from the nearest regional NLRB office, which can be found on the Agency's website:

www.nlr.gov.

Click on the NLRB's page titled "About Us," which contains a link, "Locating Our Offices." You can also contact the NLRB by calling toll-free:

1-866-667-NLRB (6572) or
(TTY) 1-866-315-NLRB (1-866-315-6572) for hearing impaired.

This is an official Government Notice and must not be defaced by anyone.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burdens.**

As stated in Item 1, proposed part § 471.11 requires employees to submit complaints in writing, and such complaints must contain certain information, including the name, address and telephone number of the person submitting the complaint, and the name and address of the Federal contractor alleged to have violated this rule. This proposed section establishes that written complaints may be submitted either to OFCCP or OLMS, and the contact information for each agency is contained in this subsection. To reduce burdens, the Department will allow complaints to be submitted via email.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item A.2 above.**

Information reported pursuant to this information collection is not available from other government agencies and no duplication is possible, as only the Department can receive complaints pursuant to E.O. 13496 or otherwise enforce the Order. To avoid duplication, the regulations implementing the Order do not include contractors that employ workers exclusively governed by the Railway Labor Act (RLA), as it requires a similar posting of employee labor rights under that Act.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

This information collection does not have a significant economic impact on a substantial number of small entities.

6. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

There is no specified frequency to this collection of information. As explained in item 10 below, the only information collection involves the receipt of complaints from employees of Federal contractors and subcontractors involving violations of E.O. 13496 and proposed part 471. These potential violations could occur at any given time, and, as such, the Department could receive employee complaints at any time. The collection of information, however, is vital to ensure that the Department can effectively enforce proposed part 471 and E.O. 13496.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

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. If applicable, provide a copy and identify the data and page number of publication in the *Federal Register* of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

On August 3, 2009, the Department published a notice and comment rulemaking proposing 29 C.F.R. part 471, which would implement E.O. 13496 (74 FR 38488). The comment period closed on September 2, 2009, and the Department is currently reviewing comments. Additionally, the Department published a proposed information collection, which would implement the proposed 29 C.F.R. part 471. The Department published the proposed information collection on September 8, 2009 (74 FR 46236), and the comment period closed on November 9, 2009. The Department did not receive any comments.

- 9. Explain any decision to provide any payment or gift to respondents, other than re-numeration of contractors or grantees.**

No payments or gifts are provided to respondents.

- 10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. (Note: If the submission will serve as Joint ICR and Privacy Impact Assessment per OMB Memorandum 03-22, Section II.D, the relevant justification shall be included as part of the agency's response to this Item)**

Although it is agency policy not to comment on any investigation, no assurances of confidentiality are provided.

- 11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

There are no sensitive questions pertaining to attitudes, beliefs, or sexual behavior.

- 12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form.**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

The proposed part 471 requires contractors and subcontractors to post notices and cooperate with any investigation into a failure to comply with the requirements of proposed part 471 as the result of a complaint or a compliance evaluation. It also permits employees to file complaints with the Department alleging that a contractor or

subcontractor has failed to comply with those requirements. As discussed below, the burden hours for this collection of information were determined by estimating the time required to perform the filing of complaints under the proposed regulation.

The proposed regulation imposes certain minimal burdens associated with the posting of the employee notice poster required by the Executive Order and proposed part 471.2(a). As noted in proposed part 471.2(d), the Department supplies the poster and permits contractors and subcontractors 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.

Additionally, the proposed rule would also impose certain burdens on the contractor associated with cooperating with an investigation into failure to comply with the requirements of part 471 as the result of a complaint or in connection with a compliance evaluation. The regulations implementing the PRA exempt 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. 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. *Id.* Therefore, this exemption would apply to the Department's investigation of complaints alleging violations of the Order or this proposed rule as well as compliance evaluations.

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 the Department. This number is also consistent with the burden estimate for filing a complaint under E.O. 13201 and the now-revoked part 470 regulations.

As a result of its experience implementing E.O. 13201, the Department has estimated it would receive a total of 50 employee complaints in any given year, which is significantly larger than the estimate contained in its most recent PRA submission for E.O. 13201. In that submission, the Department estimated it would receive 20 employee complaints. This number itself had been revised downwards because the Department never received any employee complaints pursuant to the now-revoked 29 CFR part 470 regulations. Because the applicability of the proposed rule and E.O. 13496 is greater in scope than the now-revoked part 470 and E.O. 13201 in terms of geography (the now-revoked part 470 regulations only applied to states without right-to-work laws, whereas the proposed rule applies nationwide), the Department has revised upwards its estimate of employee complaints under the proposed rule from 20 to 50. In addition, E. O. 13201 required the posting of a notice containing information

of interest to only a few – employees who may have objected to paying union dues or fees for non-representational activities – while the information in the poster required by this regulation should be of interest to all employees.

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

REPORTING AND RECORDKEEPING BURDEN for PROPOSED PART 471

	RESPONSES	HOURS PER RESPONDENT	TOTAL HOURS
EMPLOYEE COMPLAINTS	50	1.28	64

The Department calculated the estimates of annualized cost to respondents for the hour burdens for this collection of information. Specifically, it used the data from the Bureau of Labor Statistics (BLS) National Compensation Survey: Occupation Wages in the United States (NCS), 2007 (Bulletin 2704), to calculate the cost of these burden hours for the employee complaints. The NCS Bulletin indicates that the average hourly wage for all workers during 2007, the most recent year available, was \$19.88 per hour. We therefore estimate that the cost to a complainant for the 1.28 hours necessary to file a complaint under E.O. 13496 will be \$25.45 (\$19.88 x 1.28). We further estimate, as stated above, that 50 individual complaints will be filed each year. Therefore, we project that this collection of information will impose on employees for the 1.28 hours necessary to file a complaint a total annual cost burden of \$1,272.50 (\$25.45 per complaint x 50 complaints).

RESPONDENT COST ESTIMATES

	Respondents	Burden Cost	Total Cost
EMPLOYEE COMPLAINTS	50 x	\$25.45	= \$1,272.50

- 13. Provide an estimate of the total annual cost burden to respondents or record-keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items A.12 and A.14).**

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

In addition to the hour burden calculated in Item 12 above, a complainant filing a complaint pursuant to E.O. 13496 must incur the costs associated with acquiring an envelope (\$0.03) and postage (\$0.44). The capital and start-up cost then is therefore \$0.47 per complainant, and the total for the estimated 50 complainants is \$23.50. There are no other capital/start-up or ongoing operation/maintenance costs associated with this information collection.

14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items A.12, A.13, and A.14 in a single table.

The cost to the Department to implement this information collection is the burden required to process each employee complaint. The Department estimates that it will take a staff member (at GS-12, Step 10) approximately 20 minutes to process each employee complaint. Utilizing the 2009 DCB Salary Table from the Office of Personnel Management (http://opm.gov/oca/09tables/pdf/dcb_h.pdf), the Department took one third of the average hourly rate for GS-12, Step 10 (\$45.53), which results in \$15.18 per complaint filed (note: this number is rounded). This also results in an agency total cost of \$759.00 (\$15.88 multiplied by the estimated 50 complaints received per year).

The PRA does not cover the costs to the Federal government for the submission of waiver requests by contracting agencies or departments or for the processing of waiver requests by the Department of Labor. 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 the submission of waiver requests by contracting agencies and departments need not be taken into consideration.

15. Explain the reasons for any program changes or adjustments.

This item is not applicable, as this is a new information collection.

16. For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This item is not applicable to this information collection request.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

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

18. Explain each exception to the certification statement in ROCIS.

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

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.