

NOTE TO REVIEWER

The reason for the additional burden hours was an increased in the number of supply and service contractors from 83,462 to 99,028, an increase of 15,566 contractors.

SUPPORTING STATEMENT

SUPPLY AND SERVICE PROGRAM

OMB NO. 1215-0072

1. JUSTIFICATION:

The Office of Federal Contractor Compliance Programs (OFCCP) is responsible for the administration of three equal opportunity mandates that prohibit employment discrimination and require affirmative action on the basis of race, sex, color, national origin, religion, or status as a qualified individual with a disability or protected veteran by Federal contractors:

- Executive Order 11246, as amended (EO 11246);
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); and
- The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 U.S.C. 4212.

For purposes of this clearance, OFCCP has divided its administration of these programs along two functional contracting lines of business: (1) construction and (2) non-construction (supply and service). This clearance request covers the non-construction or supply and service aspects of these programs. To view the current supply and service Information Collection, go to http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200510-1215-001.

A separate Information Collection Request (ICR), approved by the Office of Management and Budget (OMB) under OMB No. 1215-0163, covers the construction aspects of these programs.

EO 11246 prohibits Federal contractors from discriminating against applicants and employees on the basis of race, color, religion, sex, or national origin. The EO 11246 Order applies to Federal contractors and subcontractors and to federally assisted construction contractors holding a Government contract of \$10,000 or more, or Government contracts which have, or can reasonably be expected 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. The Section 503 requirements apply to federal contractors and subcontractors with a Government contract in excess of \$10,000.

The affirmative action provisions of VEVRAA prohibit employment discrimination against any qualified protected veteran. For contracts of \$25,000 or more entered into or modified prior to December 1, 2003, the affirmative action provisions of VEVRAA prohibit employment discrimination against qualified 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 VEVRAA prohibit employment discrimination against qualified disabled veterans, recently separated veterans, Armed Forces Service Medal Veterans, and other protected veterans.

The ICR discussed below will address EO 11246, the Supply and Service program, that is subject to the Paperwork Reduction Act of 1995 (PRA), and the VEVRAA and Section 503 changes to the Supply and Service Scheduling Letter.

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 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 specifies basic contents of Affirmative Action Programs (AAPs) required under the EO 11246. The following regulatory sections are those in Part 60-1 that contain recordkeeping, reporting, and/or third party disclosure requirements for the supply and service program.

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 its obligations under the EO 11246 and any implementing regulations. This notification is a third party disclosure requirement, explained in #12c below.

Section 60-1.7 requires specified federal prime contractors and subcontractors to file the Employer Information Report EEO-1 (EEO-1 Report) annually. The U.S. Equal Employment Opportunity Commission (EEOC) and OFCCP use the EEO-1 Report data to analyze patterns of employment of women and minorities and to support civil rights enforcement.

The 2007 EEO-1 Report information collection is approved by OMB under OMB No. 3046-0007. The 2007 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 2007 EEO-1 Report also divides the Officials and Managers job category into two 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=200511-3046-001.

Section 60-1.12 specifies that contractors must 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, the minimum record retention period is one year.

Section 60-1.20 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 (a "compliance evaluation") to a narrowly focused analysis of a very limited aspect of a selected employment practice or policy (such as a "compliance check," an analysis of the OFCCP record retention requirement). OFCCP identifies only a small percentage of all contractor establishments (out of approximately 99,028) for a compliance evaluation each year.

This section also requires contractors to submit their Affirmative Action Program (AAP) and supporting documentation to OFCCP within 30 days of request. The notice OFCCP uses to schedule a compliance evaluation and request the AAP and supporting documentation is the

"Scheduling Letter." OMB considers the Scheduling Letter a reporting requirement. Therefore, this document includes contractor time to respond to the Scheduling Letter in the reporting burden hour calculation. In addition, this document includes a burden hour calculation for contractor time involved in finding records for OFCCP to review during a compliance check.

Section 60-1.40 requires the development and maintenance of an EO 11246 AAP. This regulation requires each contractor and subcontractor that meets the following criteria to develop an AAP for each establishment:

- (a) the contractor has 50 or more employees and
 - 1) has a contract of \$50,000 or more; or
 - 2) has Government bills of lading which in any 12-month period total or can reasonably be expected to total \$50,000 or more; or
 - 3) serves as a depository of Government funds in any amount; or
 - 4) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

The detailed instructions for the development of an AAP are contained in 41 CFR 60-2 and described below.

41 CFR Part 60-2

Part 60-2 sets out the scope of the EO 11246 AAP requirements, including the purpose and contents of an AAP, and coverage requirements (also set forth in 60-1.40 described above). Required contents of the AAP include the following:

Section 60-2.11 requires that contractors use either a current workforce analysis or an organizational display as their organizational profile. An organizational display is a detailed graphical, tabular chart, text, spreadsheet, or similar presentation of the contractor's organizational structure. The organizational display must contain the total number of employees for each organizational unit by race and sex.

Section 60-2.12 describes the job group analysis requirement. 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. Contractors with fewer than 150 employees have the option of using the nine occupational groups used in the EEO-1 Report as job groups.

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

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

Section 60-2.15: Comparing incumbency to availability, requires the contractor to compare the representation of minorities and women in each job group with their representation among those available to be employed in the group.

Section 60-2.16: Placement goals, 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 the additional required elements of the AAP. These elements are as follows: designation of responsibility; identification of problem areas; action-oriented programs; and internal audit and reporting system.

Taken together, Sections 60-2.11 - 2.17 describe the required recordkeeping elements of developing, maintaining, and updating an AAP. The recordkeeping burden of developing, maintaining, and updating an AAP is explained in #12a below.

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

The EEOC, the Civil Service Commission (now the U.S. Office of Personnel Management), the Department of Labor, and the Department of Justice adopted the Uniform Guidelines on Employee Selection Procedures (Guidelines) in 1978. The Guidelines apply to tests and other selection procedures used as a basis for employment related decisions. The Guidelines require each contractor to maintain records on the impact of its selection procedures upon employment opportunities of persons by race, sex, and ethnic group. The results of the selections are to be evaluated for adverse impact.

Where a test or other selection procedure has adverse impact, the Guidelines require the contractor to validate the test or procedure (41 CFR 60-3.4). Where a test or selection procedure is validated, the contractor must maintain documentation of the validation study.

Section 41 CFR 60-3.15 sets out the required evidence for validation. It contains simplified recordkeeping for contractors with fewer than 100 employees.

The EEOC has cleared the Uniform Guidelines with OMB (OMB No. 3046-0017).

2. USE OF MATERIALS

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

The EEO-1 Report is promulgated by the Joint Reporting Committee, comprised of OFCCP and EEOC. The EEO-1 Report data is used by OFCCP to identify and select Federal contractors for compliance evaluations. OFCCP uses EEO-1 Report data to assess a contractor's equal employment opportunity status by comparing utilization patterns over time, between contractors within similar industries, and among contractors in a given geographical area.

Additionally, since the evaluation of utilization patterns is a vital part of any compliance evaluation or complaint investigation, OFCCP would have to obtain alternative records from contractors if this report were not available.

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

The AAP is the contractor's plan for ensuring nondiscrimination and equal employment opportunity. The AAP includes the following:

- [an] organizational profile;
- job group analysis;
- placement of incumbents in job groups;
- determining availability;
- comparing incumbency to availability;
- placement goals;
- designation of responsibility for implementation;
- identification of problem areas;
- action-oriented programs; and
- periodic internal audits.

The AAP helps to ensure that the contractor will take actions to fulfill its affirmative action and nondiscrimination obligations.

3. IMPROVED INFORMATION TECHNOLOGY

OFCCP has not imposed a detailed master format for the AAP. Thus, each contractor designs its own AAP format to suit 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 thus free to utilize information technology of their choosing when designing their particular methods for developing an AAP, as long as they can retrieve and provide OFCCP with the data required by the agency's regulations.

OFCCP provides compliance assistance for smaller contractors, that is, those with fewer than 150 employees, using improved information technology in the following ways:

- Job Group Availability Determinations at <http://www.dol.gov/esa/ofccp/scaap.htm>
- 2000 Census data at <http://www.dol.gov/esa/ofccp/regs/compliance/censuseo.htm> and
- Sample AAP for Small Employers at <http://www.dol.gov/esa/ofccp/regs/compliance/pdf/sampleaa.pdf>.

We assume that technological changes, such as the above compliance assistance, have made complying with OFCCP's recordkeeping and reporting requirements easier and less

burdensome. However, in the absence of empirical data, OFCCP is unable to quantify the impact of improved information technology and thus, it is not included in our burden hours calculation.

According to the Government Paperwork Elimination Act (GPEA, P.L. 105-277, 1998), government agencies must generally provide for the optional use and acceptance of electronic documents and signatures, and electronic record-keeping, where practicable, by October 2003. OFCCP has fulfilled 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 contained in this request result exclusively from the implementation of the EO 11246, Section 503, or the affirmative action provisions of VEVRAA which uniquely empower the Secretary of Labor, and by Secretary's Order, the OFCCP, to collect information on government contractors' affirmative action requirements. Therefore, no duplication of effort exists.

Where possible, OFCCP participates in information sharing (e.g., the EEO-1 Report) and standardized requirements (e.g., Uniform Guidelines on Employee Selection Procedures, Part 60-3). Contractors maintain other employment data as a normal course of business. AAPs are unique in that contractors create them for OFCCP. AAPs are not available from any other source.

5. COLLECTION BY SMALL ORGANIZATIONS

This information collection does not have a significant economic impact on a substantial number of small entities. OFCCP minimizes the information collection/recordkeeping burden on small businesses. Contractors with fewer than 50 employees are exempt from the AAP requirement. They are also exempt from filing the EEO-1 Report.

6. CONSEQUENCES TO FEDERAL PROGRAMS IF THIS INFORMATION WERE COLLECTED LESS FREQUENTLY

The only periodic reporting that OFCCP requires of contractors is the EEO-1 Report. Contractors and subcontractors file these reports annually. Less frequent collection could negatively impact civil rights enforcement activities where the currentness of the data is important.

Presently, data resulting from annual filing of the EEO-1 Report is one year old by the time OFCCP receives it; it is 2 years old by the time it is replaced by the new data. If the EEO-1 Report was filed on alternate years, the data would be at least one a year old and often between 2 to 4 years old.

7. SPECIAL CIRCUMSTANCES FOR THE COLLECTION OF INFORMATION

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

8. CONSULTATION OUTSIDE THE AGENCY

All OFCCP regulations containing recordkeeping or reporting requirements are published in the Federal Register for public comment before agency adoption. In addition, OFCCP maintains an ongoing dialogue, through compliance assistance, with contractor groups on a number of compliance issues, among them reporting and recordkeeping.

The Federal Register Notice for this "Proposed Extension of the Approval of Information Collection Requirements" was published on May 6, 2008, 73 FRN 25032. OFCCP received three comments within the 60-day comment period, which ended on July 7, 2008. These comments came from one employers association and two consulting firms.

The employers association stated that the current OFCCP Scheduling Letter is acceptable, for the most part, in its current form. They emphasized that Affirmative Action, compensation, and other personnel activity data sent to OFCCP in electronic format should remain optional and would prefer OFCCP revise the Scheduling Letter to clarify what contractors must do.

- As we have stated previously, in section three (3) of this document, contractors have the option of providing their AAPs and supporting data in electronic format. The Supply and Service letter itself states that "We encourage you to submit as much information as possible in electronic format as doing so can reduce the amount of time it takes us to complete an initial review of your submission." OFCCP prefers receiving the information in electronic format, to ease burden on itself and on contractors that already store and process their data in this manner.

Given that a majority of contractors maintain their compensation data in electronic format, (See http://edocket.access.gpo.gov/cfr_2002/janqtr/pdf/5cfr1320.4.pdf) submitting compensation data to OFCCP electronically would be less burdensome for those contractors and for OFCCP than would submitting the same information on paper. In addition, OFCCP has authority under 41 CFR 60-1.43 to copy computerized records as part of an onsite compliance evaluation. Submitting computerized records to OFCCP earlier in the compliance evaluation would improve the overall process. However, if a contractor prefers submitting its information to us in paper format, OFCCP will not object.

Further, the employers association asked OFCCP to revise "compliance coordination" language to clarify what contractors must do.

- OFCCP has explained in the *Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance With Nondiscrimination Requirements of Executive order 11246 With Respect to Systemic Compensation Discrimination, Notice*. 75 Fed. Reg. 35114 (June 16, 2006) what contractors must do, and we will repeat that information here:
 - o Under the final voluntary self-evaluation guidelines, a contractor that desires the compliance coordination incentive--and, therefore, has attempted to develop and implement a self-evaluation program that reasonably comports with the voluntary guidelines--will not be required to submit compensation data in response to Item 11. Instead, the contractor should respond to the Item 11 request by noting that the contractor "seeks compliance coordination under the OFCCP voluntary compensation self-evaluation guidelines." OFCCP staff will then call the contractor to discuss the contractor's self-evaluation program and, based on that initial discussion, OFCCP will determine what documents and information it will review in the particular case.

The two consulting firms asked OFCCP to remove Item #11 (request for Compensation Information) from the OFCCP Scheduling Letter because:

- Request is onerous or overly burdensome on contractors;
- OFCCP overreaches its authority after receiving compensation information to request more data;

- OFCCP requests data in a format not consistent with how most private companies keep their data;
- OFCCP then makes additional requests for more detailed data in a mini-regression analysis. These additional requests not approved by OMB as they do not occur on site;
- Using Similarly Situated Employee Groups (SSEG) is faulty as OFCCP often combines non-similar job groups to find compensation discrimination;
- Requested data in Item #11 does not provide for meaningful analysis;
- OFCCP should revise Scheduling Letter rather than extend it in its current form; and
- Follow-up request does not meet requirements of the decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S.Ct. 2162 (2007).

Compensation Information - In reviewing the above remarks by the two consulting firms, it appears that their major concern is OFCCP's request for additional compensation information and that OFCCP's follow-up compensation requests may be in violation of the Paperwork Reduction Act (PRA). On the contrary, as explained below, because OFCCP requests follow-up compensation information "during the conduct of an administrative action, investigation, or audit, involving an agency against specific individuals or entities" this collection of information is exempt from the PRA requirements and OMB approval under 5 CFR 1320.4 (a) (2). (See http://edocket.access.gpo.gov/cfr_2002/janqtr/pdf/5cfr1320.4.pdf)

Under OFCCP's regulations, its compliance evaluations follow several investigative procedures. The most common is outlined in 60-1.20(a)(1). In this investigative process, OFCCP will use the Scheduling Letter to request the federal contractor's Affirmative Action Program and other personnel activity data. Upon receipt, OFCCP will initiate its desk audit by analyzing the data to determine if it meets agency standards of reasonableness and acceptability. Where the data is sufficient to determine compliance, OFCCP will issue a Notice of Compliance and close the case. Where the AAP and other personnel activity data are not reasonable or acceptable, OFCCP will continue its investigation by requesting additional data.

These additional requests for information, whether concerning compensation or any other aspect of a contractor's policies, are exempt under the PRA.

It is OFCCP's position, therefore, that additional requests for information, whether concerning compensation or any other aspect of a contractor's policies "during the conduct of an administrative action, investigation, or audit" are exempt from the PRA requirements and OMB approval under 5 CFR 1320.4 (a) (2). (See http://edocket.access.gpo.gov/cfr_2002/janqtr/pdf/5cfr1320.4.pdf)

Revision to Scheduling Letter - OMB has approved OFCCP's Scheduling Letter for the past several years. Revising the Scheduling Letter would be counterproductive based on OFCCP record results in protecting workers from discrimination. In FY 2007, over 22,000 workers who had been subject to unlawful employment discrimination by government contractors received more than \$51 million in back pay, annualized salary, and benefits.

Contractor Burden Hours - Regarding the burden on federal contractors, OFCCP gathered information from its Compensation Questionnaire and submitted this data to OMB in the 2004 ICR documentation. In 2003, OFCCP conducted a Compensation Survey, the results of which were summarized in a Federal Register Notice published on March 24, 2004 (available on our web site at <http://www.dol.gov/federalregister/HtmlDisplay.aspx?DocId=9255&AgencyId=10&DocumentType=3>). Based on the Compensation Questionnaire data, OFCCP estimates that, on average, a contractor expends 28.35 hours on this data assembling and submission activity.

Ledbetter Decision - The *Ledbetter* decision does not affect OFCCP's right to seek compensation data. In *Ledbetter*, the Supreme Court held that an allegation of pay discrimination under Title VII by a single employee is a discrete employment action that must be challenged within 180 (or 300) days of the allegedly discriminatory pay decision. It is OFCCP's view that *Ledbetter* does not invalidate the standards under which it pursues compensation cases: the Interpretative Standards for Systemic Compensation Discrimination under E.O. 11246 ("Standards"). Nor does *Ledbetter* impact the agency's use of statistical analysis, including multiple regression techniques, to discover class-wide salary disparities of a systemic nature. The agency uses these techniques to gather all relevant data regarding the factors that actually influenced the contractor's compensation systems or pay decisions as a whole and supplement any statistical analyses with anecdotal evidence of discrimination, as discussed in the Standards. Thus, *Ledbetter* has no bearing on the continued use of Item #11.

9. GIFT GIVING

OFCCP provides neither payments nor gifts to respondents.

10. ASSURANCE OF CONFIDENTIALITY

Much of the employment data that OFCCP collects as a result of the requirements within this activity is viewed by the contractors who submit it as extremely sensitive. The disclosure of information obtained from a contractor will be evaluated pursuant to the public inspection and copying 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 impacted contractors be notified in writing when a FOIA request has been made for contractor data. OFCCP makes no decision to disclose such documents until the contractor has had an opportunity to submit objections to the release of the document.

Furthermore, it is OFCCP's position that none of the data obtained during the course of a compliance evaluation is required to be released under FOIA until the agency action has been completed.

11. SENSITIVE QUESTIONS

OFCCP does not generally 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 employment discrimination is alleged, 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 minority group in their EO 11246 AAPs (see 41 CFR 60-2.11, 2.12, and 2.16). Race, sex, and ethnicity data are required by both the contractor and the government 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. 1215-0131 - "Complaint of Discrimination in Employment Under Federal Government Contracts" form (Form CC-4). The Form CC-4 requires a description of an individual's disability and, may, therefore, be 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, Privacy Act compliance is assured.

12. ESTIMATE OF INFORMATION COLLECTION BURDEN

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.

a. Recordkeeping Burden

OFCCP regulations impose a recordkeeping burden to develop, update, and maintain AAPs for minorities and women. Using contractor estimates of the hours required to update an AAP annually, we have calculated recordkeeping hours for these three functions as follows:

1) Initial Development of an AAP

OFCCP estimates that only one percent of contractors in the contractor universe (99,028) are first-time contractors required to develop their initial AAPs. However, for that one percent (990), OFCCP estimates that the development time is more than 2 1/2 times greater than the time required for the annual update. OFCCP bases the contractor universe on the EEO-1 Report of Government contractors. To calculate the burden hours for one percent of total contractors, we first calculate the hours for all contractors, and then take 1% of the total.

We calculate the burden hours as follows:

<u>Size Group</u>	<u>Prof. Hours</u>	<u>Cler. Hours</u>	<u>Total Hours</u>	<u>Contractor Sites**</u>	<u>Total Hours</u>
1-100	49	24	73	40,467	2,954,091
101-149	59	32	91	19,120	1,739,920
150-500	95	49	144	30,235	4,353,840
501-1000	128	58	186	5,637	1,048,482
1000+	168	70	238	3,312	788,256
(Average 110.20 hours per contractor)				98,771	10,884,589

**Data from FY 2006 Equal Employment Data System.

University campus data is compiled from the Federal Procurement Data System. We are using the same 2005 PRA estimate of 257 post-secondary institutions under OFCCP's jurisdiction.

$$257 \times 110.20 = 28,321$$

10,884,589	EE0-1 Report Contractor Hours
<u>28,321</u>	University hours
10,912,910	Total Supply & Service Hours

98,771	EE0-1 Report Contractor Sites
<u>257</u>	University Contractors
99,028	Total Supply & Service Contractors

Since OFCCP estimates that only one percent of contractors (990) are first-time developers of AAPs annually, we calculate the burden hours as:

$$110.20 \times 990 = 109,098$$

2) Annual Update of an AAP

The following table shows the estimate of professional and clerical time required for contractors to accomplish the annual update of their AAPs. The hours vary by size of the contractor's workforce, with the larger workforce requiring significantly more time to perform this task.

<u>Size Group</u>	<u>Prof. Hours</u>	<u>Cler. Hours</u>	<u>Total Hours</u>	<u>Contractor Sites**</u>	<u>Total Hours</u>
1 - 100	10	8	18	40,467	728,406
101 - 149	21	14	35	19,120	669,200
150 - 500	52	26	78	30,235	2,358,330
501 - 1000	61	44	105	5,637	591,885
1000+	89	64	153	3,312	506,736
(Average 49.15 hrs. per contractor)				98,771	4,854,557

**Data from FY 2006 Equal Employment Data System.

University campus data is compiled from the Federal Procurement Data System. We are using the same 2005 PRA estimate of 257 post-secondary institutions under OFCCP's jurisdiction

$$257 \times 49.15 = 12,632$$

4,854,557 EEO-1 Report contractor hours data

12,632 University hours data

4,867,189 Total Supply & Service hours

98,771 EEO-1 Report Contractors

257 University contractors

99,028 Total Supply & Service contractors

The above is the basic calculation for the annual update. However, the total annual update figure is reduced somewhat because the one percent of the contractors developing their initial AAP should not also be counted as having update time. Therefore, we have calculated the recordkeeping burden imposed by the annual update as follows:

4,867,189	Total hours	99,028	Total contractors
<u>-48,672</u>	One percent	<u>-990</u>	Initial contractors
4,818,517	99% hours for updating contractors	98,038	updating contractors

Total annual update burden hours: 4,818,517

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, 4,867,189 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 four agencies other than the OFCCP. However, nearly all of the burden hours are associated with three agencies: OFCCP, EEOC, and the Department of Justice. 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 in meeting this obligation. OFCCP estimates that approximately 5,750 employers are contractors with 1 - 14 employees. This recordkeeping requirement is $5,750 \times 2.18 = 12,535$ hours.

Recordkeeping Total

	(initial development of AAP by one percent of
109,098	contractors)
4,818,517	(annual update by 99 percent of contractors)
4,867,189	(maintenance by 100 percent of contractors)
<u>12,535</u>	(Uniform Guidelines)
9,807,339	(Total recordkeeping burden hours)

b. Reporting Burden

OFCCP's reporting of burden hours are 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 will no longer include EEO-1 Report hours as part of its reporting burden.

1) Scheduling Letter

The Scheduling Letter provides the contractor with notice of its selection for a compliance evaluation and requests 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 Compensation Questionnaire and submitted this data to OMB in the 2004 ICR documentation.

Based on the Compensation Questionnaire data, OFCCP estimates that, on average, a contractor expends 28.35 hours on this data assembling and submission activity.

OFCCP published a Notice on June 16, 2006, that granted contractors an option to develop a compensation self-evaluation program based on guidelines in the Notice. See 71 FR 35114.

Contractors are not required to develop their compensation analysis in accordance with the OFCCP guidelines. They may continue to choose whatever form of self-evaluation they deem appropriate in order to comply with OFCCP regulations. OFCCP estimates that the voluntary guidelines burden hours will be the same as identified by the Compensation Questionnaire.

Therefore, OFCCP estimates that contractors will expend 28.35 hours developing their self-evaluation program.

OFCCP completed 4,923 compliance evaluations in FY07, and we estimate the same number for FY08. The reporting burden therefore is $4,923 \times 28.35 = 139,567$ hours.

OFCCP is revising the Supply and Service Scheduling Letter in 2008 to incorporate references to the compliance review procedures in the new 41 CFR 60-300.50(a)(1) and 41 CFR 60-741.60(a)(1) regulations. In addition, OFCCP is adding text to the Scheduling Letter that encourages contractors to submit to OFCCP as much desk audit and compliance review information as possible in electronic format and a statement that

notifies contractors about OFCCP's voluntary guidelines for self-evaluation of compensation practices.

No changes to the Scheduling Letter will affect its burden 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.

The OFCCP final rule published in the Federal Register on June 22, 2005 (70 FR 36262) changed § 60-1.20(a)(3) as described above. In the previous ICR submission, OFCCP requested 1,250 compliance check hours, but that figure was not reflected in the published ICR. As a matter of enforcement discretion, OFCCP is reducing the projected number of annual Compliance Checks from 2500 to 100 per year. OFCCP queried its field staff and estimates that a contractor will take approximately .5 hours to find and make available the necessary material. The reporting burden is $100 \times .5 \text{ hours} = 50 \text{ hours}$.

OFCCP is revising the Compliance Check Letter in 2008 to incorporate references to the compliance review procedures in the new 41 CFR 60-300 regulations.

No changes to the Compliance Check Letter will affect its burden hours.

Reporting Total

0	SF-100/EEO-1 Report
139,567	Scheduling Letter_
50	Compliance Check
<hr/>	
139,617	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, FAX, or e-mail. Assuming it takes 30 minutes to compose and 30 minutes to distribute a written notification to unions, OFCCP estimates an average of 1 hour per contractor or 99,028 hours for notifying labor organizations.

Third Party Disclosure Total

99,028	Annual total
99,028	Total Third Party Disclosure burden hours

The sum of the recordkeeping, reporting, and third party disclosure burden in the Burden Change Summary is 10,045,984 hours.

9,807,339	Total Recordkeeping burden hours
139,617	Total Reporting burden hours
99,028	Total Third Party Disclosure burden hours
10,045,984	Total Recordkeeping, Reporting, and Third Party Disclosure burden hours

d. Annualized Cost of the Burden Hours to Respondents

The estimated annualized cost to respondents is based on Bureau of Labor Statistics data in the publication, "Employer Costs for Employee Compensation - September 2007, which lists total compensation for management, professional, and related occupations as \$46.82 per hour and administrative support as \$22.13 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. 10,045,984 hours x .52 x \$46.82 = \$244,583,545

Adm. Supp. 10,045,984 hours x .48 x \$22.13 = \$106,712,460

Total annualized cost estimate = \$351,296,005

Estimated average cost per establishment is: \$351,296,005 / 99,028 = \$3,547

13. ANNUAL OPERATION AND MAINTENANCE COST BURDEN TO RESPONDENTS

To the best of our knowledge, there are no capital or start-up costs associated with this collection of information. The information that contractors provide OFCCP is generally maintained in the normal course of their businesses.

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 \$.07 per page.

We estimate the average size of an AAP to be 33 pages. The estimated total copying cost to contractors will be: 33 pages x \$.07 x 4,923 = \$11,372. In addition, we estimate an average mailing cost of \$10.00 per contractor. The total mailing cost for contractors will be \$10.00 x 4,923 = \$49,230. Moreover, we estimate an average mailing cost of \$.60 per contractor for notifying labor organizations. The total mail cost to labor organizations would be \$.60 x 99,028 = \$59,417.

The total estimated costs would be \$11,372 + \$49,230 + \$59,417 = \$120,019.

14. ESTIMATE OF COST TO FEDERAL GOVERNMENT

We have estimated the cost to the Government as follows:

12 Hours per compliance check	X	100 compliance checks	=	1,200 Hours
32 Hours per desk audit	X	4,923 compliance evaluations	=	157,536 Hours
				<u>TOTAL HOURS = 158,736</u>

We have estimated the hourly rate at \$31.30 (GS-12, step 1, annual salary of \$65,315, based on the 2008 Salary Table for the Rest of the U.S.). The total cost would be \$31.30 per hour x 158,736 hours = \$4,968,437. 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 10,045,984 burden hours. The present clearance contains approval of 9,223,921 hours. The new estimate represents a net increase of 822,063 hours due primarily to an increase number of contractor establishments from 83,462 to 99,028. The sum of the recordkeeping, reporting, and third party disclosure burden is 10,045,984. This change is analyzed below.

a. Recordkeeping Burden Hours

1) Initial Development of AAP:

The previous submission included 95,073 hours. The current request is 109,098, for an adjustment increase of 14,025 hours.

2) Annual Updating of AAP:

The previous submission included 4,308,663 hours. The current request is 4,818,517, for an adjustment increase of 509,854 hours.

3) Maintenance of AAP:

The previous submission included 4,352,185 hours. The current request is 4,867,189, for an adjustment increase of 515,004 hours.

4) Uniform Guidelines on Employee Selection Procedures:

The previous submission included 12,535 hours. We have no changes to this entry.

b. Reporting Burden Hours

1) Standard Form 100

The number of report filers chargeable to OFCCP decreased from 30,632 to zero. Therefore, total burden hours decreased from 113,338 to zero, for an adjustment decrease of 113,338 hours.

2) Scheduling Letter

The burden hours estimate decreased from 175,203 hours to 139,567 hours because of a decrease in the number of compliance evaluations requiring the use of the

Scheduling Letter, from 6,180 to 4,923. The adjustment decrease is 35,636 hours.

3) Compliance Check Letter

The previous submission included 1,250 hours but these hours were not included in the current inventory. This submission requests 50 hours, for an adjustment increase of 50 hours.

c. Third Party Disclosure Burden Hours

The burden hours estimate decreased from 166,924 hours to 99,028 since the one-time burden hours from the previous PRA package no longer applies. The adjustment decrease is 67,896 hours.

BURDEN CHANGE SUMMARY

	<u>CURRENT INVENTORY</u>	<u>CURRENT REQUEST</u>	<u>ADJUSTMENT CHANGES</u>
AAP Development	95,073	109,098	14,025
AAP Updating	4,308,663	4,818,517	509,854
AAP Maintenance	4,352,185	4,867,189	515,004
Uniform Guidelines	<u>12,535</u>	<u>12,535</u>	<u>0</u>
Total Recordkeeping Burden	8,768,456	9,807,339	1,038,883
 SF-100 Compliance Evaluation	 113,338	 0	 (113,338)
Scheduling Letter	175,203	139,567	(35,636)
Compliance Check Letter		<u>50</u>	<u>50</u>
<hr/> Total Reporting Burden	288,541	139,617	(148,924)
 Total Third Party Disclosure Burden	 166,924	 99,028	 (67,896)
TOTAL ANNUAL BURDEN	9,223,921	10,045,984	822,063
ADJUSTMENT INCREASE			822,063
PROGRAM CHANGE		N/A	
NET INCREASE		822,063	
 Current Operations and Maintenance Costs(approx)		\$110,000	
Total Annualized cost requested (approx)		\$120,019	
Net Adjustment Change (approx)		\$10,019	

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.