

NOTE TO REVIEWER

OFCCP is requesting OMB approval of 1,326,320 hours in combined recordkeeping and reporting burden for compliance with EO 11246 by Federal and federally assisted construction contractors. This compares with 2,491,396 hours for the last clearance request, a decrease of 1,165,076 hours. This change is due to an estimated decrease of 164,838 Federal and federally assisted construction contractor respondents. OFCCP used data from the Federal Central Contractor Registration 2010 to calculate the number of Federal and federally assisted construction contractors for this Information Collection Review (ICR).

The authorization for this ICR (OMB Control No. 1250-0001) expires October 31, 2011. The ICR was published in the Federal Register on 8 June 2011, 76 FR 33372. This submission is for OMB Review: Comment Request.

Item 8 reflects the comment that OFCCP received during the 60-day comment period.

SUPPORTING STATEMENT

DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS RECORDKEEPING AND REPORTING REQUIREMENTS, CONSTRUCTION

OMB No. 1250-0001

JUSTIFICATION:

The Office of Federal Contract Compliance Programs (OFCCP) administers three equal opportunity laws prohibiting employment discrimination by Federal contractors and subcontractors, and requiring that they take affirmative action to ensure a diverse workforce. These laws are:

- 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, 38 U.S.C. 4212(Section 4212).

This Information Collection Review (ICR) covers only the construction aspects of the EO 11246 program. To view the current construction Information Collection, go to http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201003-1250-001.

A separate ICR, approved by the OMB under OMB No. 1250-0003, covers the non-construction (supply and service) aspects of these programs.

EO 11246 prohibits Federal contractors and subcontractors from discriminating against applicants and employees on the basis of race, color, religion, sex, or national origin. Its prohibitions apply 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. 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 any employee or applicant for employment because of physical or mental disability and requires affirmative action to ensure that persons are treated without regard to either of these prohibited factors. Section 503 applies to Federal contractors and subcontractors with a contract in excess of \$10,000. Because some construction contractors and subcontractors may be subject to the Affirmative Action Program (AAP) requirements of 41 CFR 60-741.40, the associated burden hours have been included in this ICR.

The affirmative action provisions of Section 4212 prohibit employment discrimination against 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. Because some construction contractors and subcontractors may be subject to the Affirmative Action Program (AAP) requirements of 41 CFR 60-250.40 and 41 CFR 60-300.40, the associated burden hours have been included in this ICR.

OFCCP promulgated regulations implementing this program consistent with the Administrative Procedure Act, and all of OFCCP's regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60. The 41 CFR Chapter 60 regulations can be accessed at the following Web site http://www.dol.gov/dol/cfr/Title_41/Chapter_60.htm.

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

1. Legal and Administrative Requirements

Executive Order Regulations

41 CFR Part 60-1.4(c) - Equal Opportunity Clause

This regulation requires all covered prime construction contractors to include the equal opportunity clause in each of its nonexempt subcontracts.

41 CFR Part 60-4.1 - Scope and application

This regulation applies to all contractors and subcontractors with a Federal or federally assisted construction contract in excess of \$10,000. The regulations in this part are applicable to all of a construction contractor's or subcontractor's construction employees who are engaged in on site construction, including those construction employees who work on a non-Federal or non-federally assisted construction site.

41 CFR Part 60-4.2 - Solicitations

This regulation requires all applicants for construction contracts to include the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in 41 CFR 60-4.3 in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts.

41 CFR Part 60-4.3 - Equal Opportunity Clause

The equal opportunity clause published at 41 CFR 60-1.4(a) is required to be included in, and is part of, all nonexempt Federal contracts and subcontracts, including construction contracts and subcontracts. In addition to the clauses described above, all Federal contracting officers, all applicants and all non-construction contractors, as applicable, shall include the specifications set forth in this section in all Federal and federally assisted construction contracts in excess of \$10,000 to be performed in geographical areas designated by the Director pursuant to Sec. 60-4.6 of this part and in construction subcontracts in excess of \$10,000 necessary in whole or in part to the performance of non-construction Federal contracts and subcontracts covered under the Executive Order 11246.

Further, the contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity (EEO) policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union

affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

This section specifies the nature of records that must be retained and the retention period. Records shall be preserved 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 shall be one year. The purpose of the record retention requirement is to ensure that OFCCP can obtain all relevant documents during investigations or enforcement actions. The records that must be retained are generally retained in the normal course of business due to retention requirements under Title VII of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act. Since this section mirrors existing requirements, it imposes no significant additional burdens on contractors.

41 CFR Part 60-4.5 - Hometown Plan

This section requires contractors participating, either individually or through an association, in an approved Hometown Plan to comply with the affirmative action obligations under EO 11246 by complying with its obligations under the plan.

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

The Uniform Guidelines on Employee Selection Procedures (UGESP) were adopted in 1978 by the U.S. Equal Employment Opportunity Commission (EEOC), the U.S. Department of Labor, and the U.S. Department of Justice. The UGESP apply to tests and other procedures used as a basis for making employment decisions. The UGESP state that selection procedures having an adverse impact constitute discrimination unless their use is justified. The UGESP require each contractor to maintain records on the impact of its tests and other selection procedures upon employment opportunities of persons by race,

sex, or ethnic group. The results of the selections are to be evaluated for adverse impact.

Where a test or procedure has adverse impact, the UGESP require the contractor to justify its use (41 CFR 60-3.3). One method of justification is to perform a validity study. The UGESP outline standards for such validity studies. 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 documentation of impact and validity evidence. It contains simplified recordkeeping for contractors with less than 100 employees.

The EEOC has cleared the UGESP with OMB (OMB No. 3046-0017). To view the Information Collection, go to http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200807-3046-001.

Section 503 Regulations

41 CFR Part 60-741 - Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors regarding Individuals with Disabilities

These regulations require the contractor to refrain from discrimination and to take affirmative action to employ and advance in employment individuals with disabilities.

The contents of the AAP under 60-741.44 includes a policy statement, a review of personnel processes, a schedule for the periodic review of all physical and mental job qualification standards, reasonable accommodation to known physical and mental limitations, a non-harassment policy, appropriate external dissemination of policy, outreach and positive recruitment activities, adequate internal support and dissemination of policy, an audit and reporting system, an official assigned responsibility for implementation, and training. The AAP must be reviewed and updated annually pursuant to 60-741.40(c). The recordkeeping requirements are found at 60-741.80.

Section 4212 Regulations

41 CFR Part 60-250 - Affirmative Action Obligations of Contractors and Subcontractors for Special Disabled Veterans and Veterans of the Vietnam Era

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 set forth the obligations of contractors and subcontractors under the affirmative action provisions of Section 4212.

The affirmative action provisions of Section 4212 prohibit employment discrimination against any protected veteran. 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.

The contents of the AAP under 60-250.44 and the regulations at 60-300.44 includes a policy statement, a review of personnel processes, a schedule for the periodic review of all physical and mental job qualification standards, reasonable accommodation for known physical and mental limitations, a non-harassment policy, appropriate external dissemination of policy, outreach and positive recruitment activities, adequate internal support and dissemination of policy, an audit and reporting system, an official assigned responsibility for implementation, and training. The AAP must be reviewed and updated annually. The recordkeeping requirements are found at 60-250.80 and 60-300.80. In addition, contractors are to collect and maintain the data prescribed by 41 CFR 61-300 regulations and report the data in the VETS-100A Report to be filed annually.

2. INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED

E0 11246

41 CFR Part 60-1.4(c) - Equal Opportunity Clause

All covered prime construction contractors must include the equal opportunity clause in each of their nonexempt subcontracts.

This requirement ensures that all nonexempt subcontractors are aware of the nondiscrimination and affirmative action obligations under EO 11246.

41 CFR Part 60-4.2 - Solicitations

Contractors must include the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in 41 CFR 60-4.3 in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts.

This requirement ensures that all contractors and subcontractors are aware of the affirmative action obligations under 41 CFR 60-4.3.

41 CFR 60-4.3(a) - Equal Opportunity Clauses

Contractors must implement the affirmative action standards listed in the *Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)* located in 60-4.3(a). These *Standards* include 16 affirmative action steps related to the work environment, outreach and recruitment, training, EEO policies, selecting and testing procedures, promotion practices, non-segregated facilities, and subcontracting.

The recordkeeping requirements associated with executing the 16 steps are critical to the final evaluation and assessment of a contractor's good faith efforts, which is the primary basis for a determination of compliance. The records, therefore, are beneficial to contractors and OFCCP. The recordkeeping requirements for construction contractors can be found at 41 CFR 60-4.3(a)(7a-p), to view go to <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=3b71cb5b215c393fe910604d33c9fed1&rgn=div5&view=text&node=41:1.2.3.1.4&idno=41#41:1.2.3.1.4.0.6.3>.

41 CFR 60-4.3 - Compliance Evaluations

The construction compliance review is an evaluation of the contractor's compliance with the 16 affirmative action steps detailed in the above Standard Federal Equal Employment Opportunity Construction Contract Specifications and employee/management interviews.

41 CFR Part 60-4.5 - Hometown Plan

Contractors that are participating, either individually or through an association, in an approved Hometown Plan must comply with the affirmative action obligations under EO 11246 by complying with its obligations under the plan.

Hometown Plans are agreements between contractors, unions, and the local minority community. The three groups develop a plan for EO 11246 compliance that is ultimately approved by OFCCP. The information provided in the Hometown Plans serves as evidence that covered Federal contractors are meeting their obligations under EO 11246.

SECTION 503 REGULATIONS

41 CFR Part 60-741 - Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors regarding Individuals with Disabilities

The regulation at 41 CFR 60-741-80 states the recordkeeping obligations of contractors and subcontractors under Section 503. These requirements are necessary to implement Section 503 and should also be used by the construction contractor in assessing the results of its employment policies and practices as they impact individuals with disabilities.

Section 4212 Regulations

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

This regulation states the affirmative action and nondiscrimination obligations of contractors and subcontractors under Section 4212.

Complaint procedures and reporting requirements of all complaints are found at 41 CFR 60-250/300.61. Preservation of personnel and employment records made or kept by a contractor are found in recordkeeping requirements at 41 CFR 60-250/300.80.

The local employment service offices have responsibilities to refer certain veterans to fill employment openings listed by contractors pursuant to the mandatory listing requirements of the equal opportunity clause pursuant to 60-250/300.84.

3. DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER COLLECTION TECHNIQUES OR FORMS OF INFORMATION TECHNOLOGY

Each contractor designs a format and information technology system that is suited to its particular business circumstances. OFCCP does not require the use of any specific electronic format for meeting the affirmative action requirements established in part 60-4. Neither does OFCCP require contractors to submit information collected under part 60-4 in a specific electronic format. However, any electronic format used by contractors must be accessible by OFCCP.

4. DESCRIPTION OF EFFORTS TO IDENTIFY DUPLICATION

The reporting and recordkeeping requirements contained in this request result exclusively from the implementation of EO 11246 which uniquely empowers the Secretary of Labor, and by Secretary's Order, OFCCP, to collect information on government contractors' affirmative action requirements. Therefore, no duplication of effort exists because there are no other government agencies with these specific data collection requirements.

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.

Further, OFCCP makes a concerted effort to coordinate with other agencies to avoid duplicate information collections. For example, Federal contractors meet OFCCP's requirements to inform minority and female recruitment sources and schools of apprenticeship programs by complying with 29 CFR Part 30. 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State Apprenticeship Agencies. Therefore, OFCCP does not impose an additional collection burden on covered Federal contractors.

5. COLLECTION OF INFORMATION IMPACT ON SMALL BUSINESSES OR OTHER ENTITIES

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

OFCCP conducted an analysis of construction firms by revenue and sector to determine the total number of construction firms categorized as a "small business" by the Small Business Administration (SBA). SBA sets the industry size standards for construction based on average annual receipts. OFCCP reconciled data from the Federal Central Contractor Registration (CCR) 2010 on Federal contractors by number of employees with the SBA data to determine the mid point for each SBA grouping and CCR grouping. OFCCP then conducted a regression analysis to develop a formula to predict the Number of Employees Midpoint from Average Annual Receipts. Applying the derived prediction formula to the Average Annual Receipts, OFCCP determined that 13,205 of the 75,696 contractor respondents are considered small construction contractors as defined by the SBA.

The estimated costs associated with this information collection are detailed, herein. Below is a summary of those costs that will affect small Federal construction contractors, as defined in this section.

Mgmt. Prof. 230,780¹ hours x .52 x \$50.47 = \$6,056,683

Adm. Supp. 230,780 hours x .48 x \$22.86 = \$2,532,302

Total annualized cost estimate = \$8,588,985

Estimated average cost per establishment is: \$8,588,985/13,205 = \$650

The total estimated annual cost to small contractors nationwide is \$8,588,985, or approximately \$650 per small contractor. The cost of this ICR is not likely to have a significant economic impact for any (or a substantial number) of these small construction contractors. OFCCP concludes that

¹ This figure comes from taking the total burden for all contractors in the ICR (1,326,320 hours) and multiplying it by 17.4%, which is our calculation of the number of contractors which can be classified as "small Federal contractors" as detailed in this section. The percentage of small construction contractors is 13,205/75,696=17.4%.

the economic impact on individual construction contractors is not significant.

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

Less frequent collection could negatively affect civil rights enforcement activities because the data should reflect the contractors' existing workforce. Current information is imperative if OFCCP's compliance officers are to accurately assess contractors' good faith efforts to employ a diverse workforce relative to the demographics of the local population.

Likewise, less frequent collection could undermine the success of Federal contractors' affirmative action programs because the demographics of their workforce would not be accurately reported. As a result, contractors' efforts to recruit, hire, and retain minority and female employees could be inadequate or misdirected.

Currently, no standardized information is reported to or collected by OFCCP. Construction contractor information is initially reviewed onsite during the compliance evaluation process.

7. SPECIAL CIRCUMSTANCES FOR THE COLLECTION OF INFORMATION

41 CFR 60-4.3(a) requires contractors and subcontractors to immediately notify the Director in writing when the union or unions with which the company has a collective bargaining agreement has not referred a woman or minority individual that was sent by the contractor or subcontractor. Similarly, contractors and subcontractors must notify OFCCP when they may have other information that the union referral process has impeded the contractor's efforts to meet its EEO and affirmative action obligations.

This requirement is necessitated by Section 207 of EO 11246. Pursuant to this section, OFCCP is required to take actions to ensure that any union or other agency referring workers on Government contracts cooperates with the implementation of the order. Further, when appropriate, OFCCP must notify the EEOC, U.S. Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices

of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

In order to comply with the requirements of EO 11246, OFCCP must receive timely notice when unions are not referring women or minority individuals sent by the contractor or subcontractor.

8. CONSULTATION OUTSIDE THE AGENCY

All OFCCP ICRs containing recordkeeping or reporting requirements are published in the Federal Register for public comment before agency adoption. This ICR was published on June 8, 2011 for a sixty day notice and comment period (76 FR 33372).

OFCCP received one comment on this ICR. The responder stated that the current regulations promulgated under EO 11246 should be amended so that they are neutral with regard to race, ethnicity, and sex. The commenter then referenced the link to an article entitled "Unfinished Business: The Bush Administration and Racial Preferences" which is available at <http://www.harvard-jlpp.com/wp-content/uploads/2009/05/CleggFinal.pdf>.

The purpose of this ICR is to reauthorize the recordkeeping and reporting requirements for the construction aspects of the EO 11246 program. The ICR is not a rulemaking activity and does not make any substantive changes to the implementing regulations of EO 11246. As such, OFCCP cannot incorporate the responders' comments into the reauthorization.

9. GIFT GIVING

OFCCP makes no payments nor gives gifts to respondents.

10. ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS

Much of the employment data collected as a result of the requirements within this activity are viewed as sensitive by the contractors who submit them. While data may be subject to public release under the Freedom of Information Act or the Privacy Act, OFCCP follows a policy of advising contractors when there has been a request for their documents.

No decision to disclose such documents is made until the contractor has had an opportunity to submit objections to the release of the documents. The contractor's objections are fully considered before a final disclosure decision is made. The contractor may appeal the decision to the Solicitor of Labor and, as a last resort, seek judicial review of the matter. Until the evaluation has been completed, it is OFCCP policy that the data obtained during the course of a compliance evaluation is exempt from disclosure.

11. QUESTIONS OF SENSITIVE NATURE

During the course of a compliance evaluation, OFCCP does not collect information of a personal nature, such as marital status, religious beliefs, or other matters commonly considered private, unless alleged employment discrimination becomes an issue. If alleged employment discrimination becomes an issue, then such information may be sought if it is relevant to a particular case.

Race, ethnicity, and sex data are required by both the contractor and the government to evaluate the results of the contractor's affirmative steps. Such data are also required to investigate for indicators of potential employment discrimination. Contractors' employees are informed that race, ethnicity, and sex data are collected and maintained strictly for evaluation of compliance with equal employment opportunity laws and that such information will not be used improperly.

12. ESTIMATE OF INFORMATION COLLECTION BURDEN

The estimate of the information collection burden is divided into two categories: "recordkeeping" and "reporting." The following is a summary of the methodology for the calculation of each of these burdens.

a. Recordkeeping Burden

(1) Maintaining Records - Executive Order Regulations

41 CFR Part 60-1.4(c) - Equal Opportunity Clause

This regulation requires all covered prime construction contractors to include the equal opportunity clause in each of its nonexempt subcontracts.

Bid requirements for construction subcontracts. Contractors must include the Notice in § 60-4.2(c) above in their solicitations for bids for contracts or subcontracts. OFCCP estimates an average of 2 minutes per contractor x 50 bids per year or 100 minutes per contractor to maintain documentation of compliance with this requirement. **The total time necessary to comply is 7,569,600 (100 minutes x 75,696 = 7,569,600 minutes).**

41 CFR Part 60-4.2 - Solicitations

This regulation requires all applicants for construction contracts to include the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in 41 CFR 60-4.3 in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts.

Contractors must include the Notice in § 60-4.2(c) above in their solicitations for bids for contracts or subcontracts. OFCCP estimates an average of 2 minutes per contractor x 50 bids per year or 100 minutes per contractor to maintain documentation of compliance with this requirement. **The total time necessary to comply is 7,569,600 (100 minutes x 75,696 = 7,569,600).**

41 CFR 60-4.3(a)

This activity represents maintenance of data documenting the contractor's efforts to take affirmative steps in accordance with standards detailed by the 16 affirmative action steps (Steps A through P) included in the *Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246 at 41 CFR 60-4.3)*. The Specifications require the contractor to maintain records and documentation relating to applicants, referrals and referral sources, personnel practices and procedures, recruitment and training, and EEO policy and its implementation.

- A. Contractors and subcontractors must maintain a working environment free of harassment,

intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned. Evidence of compliance with recordkeeping for Step A is provided through documentation of the actions taken to comply with other steps. The required activities and burden times attributed to Step A are identified in Steps F and G of this analysis. See Steps F and G for these requirements.

- B. Contractors and subcontractors must establish and maintain current lists of minority and female recruitment sources; provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available; and maintain a record of the organizations' responses. Actions that demonstrate compliance:

Start-up event: Assume it takes 25 minutes for contractors to establish and maintain a list of recruitment sources. **The total time necessary to comply is 1,892,400 minutes (25 minutes x 75,696 contractors = 1,892,400 minutes).**

Assume it takes 15 minutes for contractors to provide written notification to minority and female recruitment sources when the contractor or its unions have employment opportunities. **The total time necessary for contractors to comply is estimated at 1,135,440 minutes (15 minutes x 75,696 contractors = 1,135,440 minutes).**

Assume that it takes the contractor 15 minutes to keep copies of announcements, cover letters to recruitment sources, and responses received from all sources. **The total time necessary for contractors to comply is estimated at 1,135,440 minutes (15 minutes x 75,696 contractors = 1,135,440 minutes).**

- C. Contractors and subcontractors must maintain current files containing the names, addresses and telephone numbers of each minority or female off-the-street applicant and minority or female referral from a union, recruitment source or

community organization and of what action was taken with respect to each individual. Occasionally, contractors/subcontractors will send individuals to the union hiring hall for referral back to the contractor. If the union did not refer the individual to the contractor or if the individual was referred but was not hired, the contractor/subcontractor must keep a record of all actions taken, along with the reasons why the referral or hiring did not occur. Actions that demonstrate compliance:

Assume that it takes 15 minutes to maintain files for off the street applicants and union referrals. **The total time necessary for contractors to comply is estimated at 1,135,440 minutes (15 minutes x 75,696 contractors = 1,135,440 minutes).**

Assume that recording the action taken for each applicant takes no more than 10 minutes; assume 10 decisions annually per contractor. **The total time necessary for the contractors to comply is 7,569,600 minutes (100 minutes x 75,696 contractors = 7,569,600 minutes).**

- D. Contractors and subcontractors must immediately notify the Director in writing when the union or unions with which the company has a collective bargaining agreement has not referred a woman or minority individual that was sent by the contractor or subcontractor. Similarly, contractors and subcontractors must notify OFCCP when they may have other information that the union referral process has impeded the contractor's efforts to meet its EEO and affirmative action obligations. Actions that demonstrate compliance:

Assume it takes 15 minutes annually to retain copies of all letters to and from the unions, minutes of meetings, etc., related to any claims that the union has impeded the company's efforts to comply with its EEO obligations. **The total time necessary for contractors to comply is estimated at 1,135,440 minutes (15 minutes x 75,696 contractors = 1,135,440 minutes).**

E. Contractors and subcontractors must develop on-the-job training opportunities or participate in training programs for the job area(s) which expressly include minorities and women. Contractors' actions must include upgrading programs, apprenticeships and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. Contractors and subcontractors must provide notice of these training opportunities and job programs to recruitment sources, state employment offices and other referral sources that have been compiled under Specification number two. Actions that demonstrate compliance:

Start-up event: Assume that it takes Federal construction contractors 45 minutes to document the development of an on-the-job training program or enroll women and minority employees that are in an existing training program. **The total time necessary to comply is 3,406,320 minutes (45 minutes x 75,696 contractors = 3,406,320 minutes).**

Assume that it takes 20 minutes to maintain records of employees' participation in training programs, including those that are approved or funded by the Department of Labor's Office of Apprenticeship, Training, Employer and Labor Services. **The total time necessary to comply is 1,513,920 minutes (20 minutes x 75,696 contractors = 1,513,920 minutes).**

Assume that it takes 20 minutes to document any contributions of cash, equipment or personnel provided in support of training or apprenticeship programs. **The total time necessary to comply is 1,513,920 minutes (20 minutes x 75,696 contractors = 1,513,920 minutes).**

Informing minority and female recruitment sources and schools of these programs in writing and retaining copies of such letters. Contractors comply with this step in accordance with 29 CFR Part 30 which sets forth policies and procedures

to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State Apprenticeship Agencies. These policies and procedures apply to recruitment and selection of apprentices, and to all conditions of employment and training during apprenticeship. **No time has been allocated for this step because the requirement is under DOL/ETA OMB# 1205-0224.**

- F. Contractors and subcontractors must disseminate the EEO policy by: providing notice of the policy to unions and training programs and requesting their cooperation and assistance in meeting EEO obligations; including EEO policy statements in all policy manuals and collective bargaining agreements; publicizing these policies in company newsletters, the annual report, etc.; specifically reviewing the policy with all management personnel and with all minority and female employees at least once a year; posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed. The requirements and times listed below also cover the actions required in Step A:

Start-up event: Assume that it takes contractors 20 minutes to document the development of an EEO policy statement. **The total time necessary to comply is 1,513,920 minutes (20 minutes x 75,696 contractors = 1,513,920 minutes).**

Assume that it takes 10 minutes to find a conspicuous place to post the statement. **The total time necessary for is 756,960 minutes (10 minutes x 75,696 contractors = 756,960 minutes).**

Assume it takes 10 minutes to satisfy requirements to inform all minority and female employees at least once a year of the contractor's EEO policy. **The total time necessary for is 756,960 minutes (10 minutes x 75,696 contractors = 756,960 minutes).**

Giving supervisory personnel and other employees memoranda and other written instructions and

holding meetings for supervisory personnel to discuss EEO obligations are included in Step G.

Assume it takes 30 minutes to compose and distribute the written notification to unions and training programs. **The total time necessary to notify the union of the contractors EEO policy is 2,270,880 minutes (30 minutes x 75,696 contractors = 2,270,880 minutes).**

- G. At least once a year, contractors and subcontractors must review EEO policies and affirmative action obligations with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions. These EEO policies and affirmative action obligations must be specifically reviewed with on-site supervisory personnel such as superintendents, general foremen, etc., prior to starting construction work at any job site. Contractor and subcontractor personnel must maintain records that identify the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter. Actions that demonstrate compliance:

Assume it takes 50 minutes to write and approve a memorandum identifying the time and places of meetings to review EEO policies, the persons attending, subject matter discussed and disposition of the subject matter. **The total time necessary to comply is 3,784,800 minutes (50 minutes x 75,696 contractors = 3,784,800 minutes).**

Assume it takes 60 minutes to discuss EEO policies and review procedures that are legally compliant with employees in charge of hiring, assignment, layoff, termination, and other employment decisions. **The total time necessary to comply is 4,541,760 minutes (60 minutes x 75,696 contractors = 4,541,760 minutes).**

Assume it takes 30 minutes to organize and file the meeting minutes for the meeting to discuss EEO policies. **The total time necessary to comply**

is 2,270,880 minutes (30 minutes x 75,696 contractors = 2,270,880 minutes).

H. Contractors and subcontractors must disseminate EEO policies externally by including them in any advertising in the news media (including minority and female news media). Contractors and subcontractors must also provide written notification to and discuss EEO policies with other contractors and subcontractors with whom the companies do or anticipate doing business. Actions that demonstrate compliance:

Start-up event: Assume that it takes a contractor 30 minutes to write a memorandum to a marketing department - or any advertiser with which the company out-sources work - informing them of the need to include the "equal opportunity employer" statement. **The total time necessary to comply is 2,270,880 minutes (30 minutes x 75,696 contractors = 2,270,880 minutes).**

Assume it takes 20 minutes to develop form letters and send the letters to subcontractors informing them of their EEO obligations. It is estimated that it takes 15 minutes to send out the letters. Additional time would be required to file the form letters. Assume it takes 15 minutes annually to file copies of the letters. **The total time necessary to comply is 3,784,800 minutes (50 minutes x 75,696 contractors = 3,784,800 minutes).**

Assume officials from construction contractors meet to discuss EEO policies with other contractors and subcontractors with whom the contractor does or anticipates doing business. No time is allocated for this meeting because these meetings are considered a normal course of business. However, assume it takes 15 minutes to document and file the minutes of the meeting. **The total time necessary for contractors to comply is estimated at 1,135,440 minutes (15 minutes x 75,696 contractors = 1,135,440 minutes).**

- I. Contractors and subcontractors must direct recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Contractors and subcontractors must send notice to its recruitment sources for women and minorities announcing acceptance of applications for apprenticeship or other training. This notice must be sent no later than one month before acceptance of applications for apprenticeship and training openings. Notices must describe the openings, screening procedures and tests to be used in the selection process.

Actions and the associated time for this requirement are the same as in Step B and E.

- J. Contractors and subcontractors must encourage current minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both at the work site and in other areas of the contractor's work force. Actions that demonstrate compliance:

Assume that it takes 15 minutes for contractors to discuss recruitment options with their minority and women employees. **The total time necessary for contractors to comply is estimated at 1,135,440 minutes (15 minutes x 75,696 contractors = 1,135,440 minutes).**

- K. Contractors and subcontractors must validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3, the "Uniform Guidelines on Employee Selection Procedures." Actions for demonstrating compliance vary by the number of people employed by the contractor. The EEOC has cleared the Uniform Guidelines with the Office of Management and Budget (OMB No. 3046-0017). The EEOC accounts for burden hours of all employers with

15 or more employees. The OFCCP accounts for the burden hours of contractors with 1-14 employees.

For 14 or fewer employees, collecting and maintaining the number of persons hired, promoted and terminated in each trade, by sex, and where appropriate, by race and national origin; maintaining records of selection procedures used (e.g. standardized testing, interviews, qualification reviews, etc.) are accounted for under general recordkeeping requirements at 41 CFR 60-1.12 currently approved under OMB No. 1250-0003.

- L. At least once a year, contractors and subcontractors must inventory and evaluate all minority and female personnel for promotional opportunities. Contractors must also encourage these employees to seek or prepare for, through appropriate training, etc., promotional opportunities. Actions that demonstrate compliance:

Assume it takes contractors 35 minutes to maintain written records proving this annual review occurs. **The total time necessary to comply is 2,649,360 minutes (35 minutes x 75,696 contractors = 2,649,360 minutes).**

- M. Contractors and subcontractors must ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect, by continually monitoring all personnel and employment related activities to ensure that EEO policies and contractors' obligations under the contract specifications are being carried out. Actions that demonstrate compliance:

Assume it takes 30 minutes annually for a contractor to document efforts to monitor seniority practices, job classifications, work assignments or other personnel practices to ensure existing personnel practices are nondiscriminatory. **The total time necessary to comply is 2,270,880 minutes (30 minutes x 75,696 contractors = 2,270,880 minutes).**

- N. Contractors and subcontractors must ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities designed to assure privacy between the sexes shall be provided. Actions that demonstrate compliance:

Offering adequate toilet and changing facilities to all employees to guarantee privacy between the sexes will not impose any additional burden on construction contractors.

Assume it takes contractors 15 minutes annually to maintain material evidence that proves information concerning parties, picnics and other company sponsored events has been disseminated equally to all employees. **The total time necessary for contractors to comply is estimated at 1,135,440 minutes (15 minutes x 75,696 contractors = 1,135,440 minutes).**

- O. Contractors and subcontractors must document and maintain records of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and, other business associations. This step does not require contractors to solicit offers from women- and minority-owned businesses. If they do solicit offers, they must document the solicitations. Actions that demonstrate compliance:

Assume it takes contractors 60 minutes annually to maintain a file of letters and solicitations for subcontracts from minority or female contractors. **The total time necessary to comply is 4,541,760 minutes (60 minutes x 75,696 contractors = 4,541,760 minutes).**

- P. At least once a year, contractors and subcontractors must conduct a review of all supervisors adherence to and performance under the company's EEO policies and affirmative action

obligations. Actions that demonstrate compliance:

Retaining copies of performance evaluations, memoranda, letters, reports, minutes of meetings or interviews with supervisors and management personnel about their employment practices as they relate to EEO policy and affirmative action obligations are included in Step G.

Assume that it takes 45 minutes to compile any written evidence that supervisors and managers have been notified when their employment practices adversely or positively affected the company's EEO and affirmative action posture. **The total time necessary to comply is 3,406,320 minutes (45 minutes x 75,696 contractors = 3,406,320 minutes).**

41 CFR Part 60-4.5 - Hometown Plan

This section requires contractors participating, either individually or through an association, in an approved Hometown Plan to comply with the affirmative action obligations under EO 11246 by complying with its obligations under the plan. **Since OFCCP no longer approves Hometown Plans, no time is allocated for this provision. Pursuant to 41 CFR 60-4.5(a) contractors not participating in Hometown Plan must still comply with the specifications set forth in 41 CFR 60-4.3(a). The burden estimates for these contractors are included in the analysis above.**

The sum of the recordkeeping burden is 1,230,060 hours (73,803,600 minutes/60 minutes = 1,230,060 hours).

Affirmative Action Programs for Section 503 and Section 4212 Programs

Under Section 503, construction contractors and subcontractors that employ 50 or more employees and have a contract of \$50,000 or more are required to develop, maintain, and update an AAP in accordance with 41 CFR 60-741.40.

The affirmative action provisions of Section 4212 prohibit employment discrimination against any protected veteran.

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.

Under Section 4212, construction contractors and subcontractors that employ 50 or more employees and have a contract or subcontract of \$50,000 or more are required to develop, maintain, and update an AAP in accordance with 41 CFR 60-250.40.

Data derived from the Federal Central Contractor Registration (<https://www.bpn.gov/ccr/>) for 2010 indicate that 11,065 of the 75,696 Federal construction contractors are subject to the above Section 503 AAP requirements.

OFCCP estimates that 10% of the construction contractors, subject to the above Section 503/Section 4212 AAP requirements, are first time contractors which equals 1,106.

Initial Development: It is estimated that it takes approximately 18 hours to document and maintain material evidence of developing a joint Section 503/Section 4212 AAP. Thus, 1,106 contractors times 18 hours equals 19,908 hours.

Annual Update: It is estimated that it takes approximately 7.5 hours to document and maintain material evidence of annually updating the AAP. Approximately 9,959 contractors (11,065 minus the 1,106 first time contractors = 9,959) times 7.5 hours equals 74,692 hours.

AAP Burden Hours Summary for 41 CFR 60-250.40, 41 CFR 60-300.40 and 60-741.40 Requirements

First time development	19,908 hours
Annual update	<u>74,692</u> hours
Total	94,600 hours

Total Recordkeeping Burden

Recordkeeping Burden	1,230,060 hours
AAP Burden	<u>94,600 hours</u>
Total	1,324,660 hours

Note: Average Time for Recordkeeping Burden 17 hours
(1,324,660/75,696 = 17 hours)

b. Reporting Burden

(1) Compliance Reviews - This burden arises from onsite activities in the compliance review. For purposes of this calculation, it is estimated that a contractor spends approximately three hours in furnishing requested information. Typically, construction contractors have relatively few employees for whom records must be provided.

1 Hour - Analyzing requests for information.

2 Hours - Identifying and retrieving all the information for the Compliance Officer.

During FY 2011, OFCCP conducted 550 construction reviews. Utilizing this number, **OFCCP assumes that this reporting takes 1650 hours (3 hours x 550 compliance reviews = 1650 hours).**

(2) Union Referral Process - This burden arises from the requirement to provide written notification to the Director that the union referral process has impeded the contractor's efforts to meet its obligations.

To comply with this reporting requirement, a Federal construction contractor must immediately notify the Director in writing when the union or unions with which the contractor/subcontractor has a collective bargaining agreement has not referred a female or minority individual sent by the contractor/subcontractor, that the union referral process has impeded the contractor's efforts to meet its EEO and affirmative action obligations. The OFCCP will assume that this reporting takes 10 hours.

Thus, 10 hours added to 1650 hours equal 1660 hours.

Note: The average time for reporting burden is 0.02 hours (1660/75,696 = 0.02)

The sum of the recordkeeping and reporting burden is 1,326,320 (1,324,660 + 1660 = 1,326,320).

The estimated recordkeeping and reporting burden per establishment is 17 hours (1,326,320 hours/75,696 contractors = 17 hours).

BURDEN CHANGE SUMMARY

	<u>CURRENT INVENTORY</u>	<u>CURRENT REQUEST</u>	<u>ADJUSTMENT CHANGES</u>
Total Number of Responses	240,534	75,696	-164,838
Recordkeeping Burden	2,490,717	1,324,660	-1,166,057
Reporting Burden	679	1660	+981
TOTAL ANNUAL BURDEN	2,491,396	1,326,320	
NET DECREASE	1,165,076		

Annualized Cost of Burden Hours

The estimated annualized cost to respondents is based on Bureau of Labor Statistics data in the publication, "Employer Costs for Employee Compensation - September 2011," which lists total compensation for management, professional, and related occupations as \$ 50.47 per hour and administrative support as \$ 22.86 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. **1,326,320** hours x .52 x \$50.47 = \$34,808,472

Adm. Supp. **1,326,320** hours x .48 x \$22.86 = \$14,553,444

Total annualized cost estimate = \$49,361,916

Estimated average cost per establishment is (approximation due to rounding):

\$49,361,916/75,696 = \$652

13. ANNUAL OPERATION AND MAINTENANCE COST BURDEN TO RESPONDENTS

Operation and maintenance costs: Annual reporting and recordkeeping do not add any additional cost burdens to respondents for the operation and maintenance of recordkeeping and reporting systems. Information required by OFCCP recordkeeping and reporting requirements is contained in payroll and personnel records maintained by respondents in the normal course of business.

14. ESTIMATE OF COST TO THE FEDERAL GOVERNMENT

We have estimated the cost to the government as follows:

32 Hours per audit	x 550	compliance	=	17,600 Hours
		evaluations		
		TOTAL HOURS	=	<u>17,600</u>

We have estimated 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 for the Rest of the U.S. (rates frozen at 2010 levels)). The total cost would be \$32.97 per hour x 17,600 hours = \$580,272. This dollar amount is part of the normal cost of OFCCP's enforcement work at the field level.

15. CHANGES IN BURDEN HOURS

OFCCP is requesting OMB approval of **1,326,320** hours in combined recordkeeping and reporting burden for compliance with EO 11246 by Federal and federally assisted construction contractors. This compares with **2,491,396** hours for the last clearance request, a decrease of 1,165,076 hours. This change is due to an estimated decrease of **164,838 Federal and federally assisted construction contractor respondents**. OFCCP used data from the Federal Central Contractor Registration 2010 to calculate the number of Federal and federally assisted construction contractors for this ICR.

16. STATISTICAL USES AND PUBLICATION OF DATA

The data collected as a result of the items contained in the request will not be published as statistical tables.

17. APPROVAL TO NOT DISPLAY THE EXPIRATION DATE

Such approval is not being sought.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

The agency claims no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection does not employ statistical methods.