

**NOTE TO REVIEWER**

OFCCP is requesting OMB approval of 926 hours in combined recordkeeping and reporting hours for its approval process to allow contractors to develop function based affirmative action programs. This is a new information collection request (ICR).

## SUPPORTING STATEMENT

### DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS AGREEMENT APPROVAL PROCESS FOR USE OF FUNCTIONAL AFFIRMATIVE ACTION PROGRAMS

OMB No. 1250-XXXX

#### A. JUSTIFICATION

##### EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY.

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

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

EO 11246 prohibits Federal contractors from discriminating against applicants and employees based on race, color, religion, sex, or national origin. EO 11246 applies to Federal contractors and subcontractors, and to federally assisted construction contractors and subcontractors holding a Government contract of more than \$10,000, or Government contracts that have, or can reasonably expect 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.

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<sup>1</sup> 41 CFR Parts 60-1 and 60-2.

<sup>2</sup> 41 CFR Part 60-741.

<sup>3</sup> 41 CFR Parts 60-250 and 60-300.

Section 503 prohibits employment discrimination on the basis of disability, and requires Federal contractors and subcontractors to take affirmative action to hire and promote qualified individuals with disabilities. Its requirements apply to Federal contractors and subcontractors with a Federal contract or subcontract in excess of \$10,000.

The affirmative action provisions of VEVRAA prohibit employment discrimination against covered veterans and require Federal contractors to take affirmative action to hire and promote covered veterans. For contracts of \$25,000 or more entered into prior to December 1, 2003, the affirmative action provisions of VEVRAA prohibit employment discrimination against, and require affirmative action for, 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, and require affirmative action for, disabled veterans, recently separated veterans, Armed Forces Service Medal Veterans and other protected veterans.

For purposes of this information collection, the regulations implementing Executive Order 11246 permit Federal supply and service contractors to develop affirmative action programs (AAPs) based on business functions or business units rather than establishments.<sup>4</sup> Multi-establishment supply and service contractors that are subject to AAP requirements may request an agreement with OFCCP that allows them to develop and use a function-based AAP. Some multi-establishment contractors may find it appropriate to develop AAPs based solely on functional or business units, while others may elect to use a combination of functional and establishment based AAPs.

To develop a functional AAP (FAAP), Federal contractors must have an agreement approved by the Director of OFCCP.<sup>5</sup> On March 21, 2002, OFCCP issued guidance establishing procedures for approving requests by contractors to use FAAPs.<sup>6</sup> On June 14, 2011, OFCCP issued a second directive, *Functional Affirmative Action Programs (FAAPs), Transmittal Number 296 (Directive 296)*, which outlines the process for obtaining an agreement that permits the contractor to develop FAAPs. Directive 296 replaced the 2002 Directive. The Information Collection Request (ICR) discussed

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<sup>4</sup> 41 CFR 60-2.1(d)(4).

<sup>5</sup> Formerly known as the Deputy Assistant Secretary.

<sup>6</sup> OFCCP ADM Notice: Functional Affirmative Action Programs (FAAP), Transmittal Number 254.

below addresses the collection of information involved in the process for obtaining a FAAP agreement as well as updating and renewing a FAAP agreement. OFCCP will issue a new Directive on FAAP agreements to replace Directive 296 once the agency obtains OMB approval for the ICR. The collection of information associated with the development of AAPs and compliance evaluations of covered contractors are addressed in a separate ICR approved by the Office of Management and Budget (OMB) under OMB Number 1250-0003.<sup>7</sup>

## **1. Legal & Administrative Requirements**

### **Executive Order Regulations**

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

This regulation sets out the basic nondiscrimination and affirmative action requirements of the EO 11246 enforcement program. It defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, specifies certain reporting and recordkeeping requirements and specifies basic contents of AAPs required under EO 11246. The following regulatory sections are those in Part 60-1 that contain recordkeeping and reporting requirements needed in the approval process for a FAAP agreement.

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 60-1.40 requires the development and maintenance of an EO 11246 AAP. This regulation requires that each contractor and subcontractor with 50 or more employees, that also meets one of the following criteria, develop an AAP for each establishment:

1. has a contract of \$50,000; 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

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<sup>7</sup> Non-construction Supply and Service Information Collection.

4. is a financial institution that 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 Part 60-2 and are described below.

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

Part 60-2 sets out the scope of the EO 11246 AAP requirements, including the purpose and contents of an AAP and coverage requirements.

Section 60-2.1(d)(4) allows for the development of AAPs based on functional or business units. Any multi-establishment supply and service contractor subject to AAP requirements in Part 60-2 may request a FAAP agreement. The 2011 guidance on FAAPs sets forth criteria OFCCP considers when determining whether to approve a contractor's request to develop a functional AAP. To be considered suitable for a FAAP agreement, the contractor's function or business unit must:

1. exist and operate autonomously;
2. include at least 50 employees;
3. have its own managing official; and
4. have the ability to track and maintain its own personnel activity.<sup>8</sup>

The guidance also specifies the required elements of a FAAP, which are the same elements that are prescribed by the regulations in Part 60-2 for establishment-based AAPs. Section 60-2.10 describes the required contents of the AAP. Under a FAAP, all employees assigned to the covered functional or business unit must be included in the FAAP.

Sections 60-2.11 through 2.17 describe the required recordkeeping element for developing, maintaining, and updating an AAP. The recordkeeping burden for developing, maintaining, and updating an AAP are addressed in a separate ICR approved by OMB under OMB Number 1250-0003.

**Functional Affirmative Action Programs (FAAPs) Directive.**

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<sup>8</sup> A function or business unit refers to a component within an organization that operates autonomously in the ordinary course of the organization's business.

OFCCP requires contractors to submit specific items of information with a request for an agreement to develop and implement FAAPs. OFCCP uses the information to assess whether the contractor's organization is suitable for a FAAP agreement. The items of information, listed in Attachments B and C of the new Directive, include:

- A statement of how the contractor is a covered Federal contractor and a copy of the qualifying contract or subcontract of \$50,000, or more;
- A copy of the contractor's most recent EEO-1 Report;
- An organizational chart;
- The total number of employees within each proposed functional or business unit, including the identification of managing officials;
- A statement addressing the location where the FAAP unit will maintain personnel records including applicant processing activities;
- If the contractor maintains both functional and establishment based AAPs, a list of locations and number of employees and EEO-1 unit number for each establishment;
- The dates of the proposed AAP year for the functional programs; and
- Copies of personnel policies relevant to the proposed functions or business units, including organization and unit-specific policies related to recruitment, hiring, promotion, compensation, and termination.
- Information on the reporting hierarchy, personnel procedures, EEO violations, and outreach and recruitment efforts.

To renew, modify, or update a FAAP Agreement, OFCCP requires the contractor to update contact and other specific demographic information.

## **2. USE OF MATERIALS**

The information provided for obtaining, modifying, updating, and renewing a FAAP agreement will be used by OFCCP staff to evaluate the contractor's suitability for a FAAP agreement. Contract information will be used to establish whether the requester is a covered Federal contractor or subcontractor. Information regarding the structure and size of the contractor will be used to determine if the requestor meets the size requirement. Policies and other information regarding the structure are used by OFCCP personnel to

determine whether the entity acts as a function or business unit and if that function maintains its own personnel activity and has its own managing official.

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

The AAP is the contractor's plan for ensuring nondiscrimination and equal employment opportunity. Section 60-2.11(b) outlines the contents of an AAP. Contractors requesting a FAAP Agreement are covered by this regulation and required to develop affirmative action programs (AAP). Information from the AAPs (e.g., numbers of employees, dates of implementation) is included in the request for a FAAP Agreement.

**3. IMPROVED INFORMATION TECHNOLOGY**

OFCCP does not impose a detailed master format for organizational profiles or job groupings. Contractors are thus free to utilize information technology of their choice when designing their particular methods for developing those portions of the AAP.

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**

Where possible, OFCCP participates in information sharing (e.g., the VETS 100/100A Report, EEO-1 Report). Contractors maintain other information, such as contract information, numbers of employees, and employment policies as a normal course of business.

The organizational chart requested in the new directive is unique in that contractors create it specifically for OFCCP. This reporting requirement rests exclusively from the implementation of EO 11246. Its authority uniquely empowers the Secretary of Labor, and by a Secretary's Order, the OFCCP, to require the reporting of data and other information in connection with the enforcement of the laws and regulations requiring Government contractors to take

affirmative action and equal employment opportunity. No duplication of effort exists because no other Government agencies have these specific requirements.

Burden has not been double counted for items included in the new FAAP directive that mirror existing requirements not related to the FAAP. Information developed for one purpose may be used to satisfy others. Those items are more fully discussed in item 12.

## 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 and recordkeeping burden on a significant number of small businesses. Contractors with fewer than 50 employees are exempt from AAP requirement; however, once OFCCP's authority covers one contractor's establishment, all of its employees must be accounted for in an AAP whether or not each of the contractor's establishments meet the minimum 50 employees threshold.

OFCCP's review of the FY2009 EEO-1 data showed that 20,490 small entities (not establishments) with between 50 and 500 employees had Federal contracts that would enable them to request FAAP Agreements.<sup>9</sup> The most recent data provided by the Small Business Administration Office of Advocacy reports that there are 27.4 million small entities in the United States.<sup>10</sup> See Firm Size Data at [www.sba.gov/advo/research/data.html#us](http://www.sba.gov/advo/research/data.html#us). The requirements relative to requesting FAAP Agreements will therefore impact less than 1 percent of small entities nationwide. Further, participation in FAAP and requesting a FAAP Agreement applies to only those contractors that opt to develop their AAPs using functions or business units. Thus, OFCCP has determined that an impact on less than 1 percent of small entities does not constitute a substantial number. See *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*, Office of Advocacy, U.S. Small Business Administration at 20 ("The interpretation of the

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<sup>9</sup> The EEO-1 data base separately identifies contractor entities and the facilities that comprise them. The FPDS-NG data base, by contrast, identifies contractor facilities but does not identify the larger entities of which they are a part.

<sup>10</sup> This figure includes 6,049,655 employer firms and 21,351,320 non-employer firms.



term 'substantial number' is not likely to be five small firms in an industry with more than 1,000 firms.")

Having determined that a substantial number of small entities will not be impacted by this requirement, we need not assess whether the impact on those small entities affected would be economically significant. Nevertheless, we also conclude that the approximate cost (\$674 per participant in the FAAP program) is not likely to have a significant economic impact on the small entities subject to this requirement.

Further, contractors that exercise this option benefit from the flexibility because it allows participating contractors to better tailor their AAPs to address their specific business structure.

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

The approval process for obtaining a FAAP agreement allows OFCCP to determine if contractors seeking permission to use function or business unit based AAPs are appropriate in terms of size, hierarchy, and autonomy. While function based AAPs are effective for entities that are structured by function, it is not appropriate for all contractors. If contractors were not required to obtain approval for implementing FAAPs, contractors could group their business units, functions, or establishments to mask potential discrimination. In addition, contractors could use the FAAP to avoid selection for compliance evaluations. Thus, without an approval process, OFCCP's ability to enforce the affirmative action and equal employment opportunity obligations of Federal contractors would be impeded.

Annual updates, modifications, and renewals are needed as described in the new Directive to ensure that OFCCP has current information regarding each functional unit's structure, size, and managing official. If the data were not received or received less frequently, OFCCP would not be able to efficiently schedule approved FAAPs for compliance evaluations. This could lead to less efficiency in determining Federal contractors' compliance with affirmative action and equal employment opportunity requirements.

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

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

## **8. CONSULTATION OUTSIDE THE AGENCY**

OFCCP published a Federal Register Notice on May 22, 2012 soliciting comments from the public on the collection of information involved in the process outlined in Directive 296 for obtaining an agreement to develop affirmative action programs based on functional or business units. OFCCP received three comments: one from an association whose members include large corporations that are government contractors and subcontractors; one from an industry group comprised of employers that are federal contractors; and one from a consulting firm that specializes in developing affirmative action programs for federal contractors. While the comments expressed views on provisions in Directive 296 that are unrelated to the collection of information, we have addressed only the comments related to the utility of the collection of information specified in Attachments B and C of Directive 296, and the burden associated with the collection of information.

OFCCP considered the comments received and the burden that the FAAP agreement approval process would impose on contractors. OFCCP believes that the approval of this ICR is essential to the enforcement of its regulations implementing Executive Order 11246. After considering the comments, we determined the collection of information related to obtaining, updating and renewing FAAP agreements is the "best most innovative and least burdensome task for achieving regulatory ends."<sup>11</sup>

OFCCP identified a few alternatives to the collection of information set forth in Attachments B and C of Directive 296 that would be as effective in assessing contractor suitability for function based AAP that are less burdensome. Therefore we made changes to the items of information to be submitted in support of the request for a FAAP agreement in response to the comments received. As a result of these changes, OFCCP has developed a new Directive and Attachments to replace Directive 296. The new Directive and Attachments will be issued once OFCCP obtains OMB approval for the ICR.

OFCCP believes that approving the collection of information in the new Directive and Attachments enhances contractor's

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<sup>11</sup> See Executive Order 13563.

ability to comply with the regulations and our ability to monitor compliance with Executive Order 11246, as amended.

Below is a discussion of the comments OFCCP received including those proposing alternatives to the collection of information contained in Directive 296, and our responses to the comments. We organize the discussion according to the Attachments to Directive 296.

**a) Attachment B**

1) Copy of a Federal Contract or Subcontract

One commenter opposed the submission of a Federal contract or subcontract of \$50,000 or more. The commenter argued that generally, human resources personnel have limited access to contractual agreements and OFCCP should consider the company's request for approval to develop FAAPs as evidence of its status as a Federal contractor. OFCCP's jurisdiction and enforcement authority rests solely with Federal contractors and subcontractors. Implementation of an AAP is required of those contractors with \$50,000 or more in contracts or subcontracts and 50 or more employees. In the approval process, the submission of a Federal contract or subcontract substantiates the agency's regulatory authority to negotiate a FAAP agreement with a company requesting approval for a FAAP. Thus, a Federal contract or subcontract is a critical document in the application approval process.

2) Copy of the Contractors VETS-100/100A Reports

One commenter opposed the requirement to submit a copy of the contractor's most recent VETS-100/100A Form. The commenter questioned the relevance of this information regarding OFCCP's decision to approve the FAAP agreement. While the VETS-100/100A forms would assist OFCCP in evaluating a contractor's compliance with regulatory requirements, this information is not needed to determine whether the contractor should be allowed to develop AAPs based on functional or business units. Accordingly, this item is not included in Attachment B of the new Directive.

3) An Organizational Chart and Workforce Analysis

One commenter supported the submission of an organizational chart and workforce analysis stating that the submission should supply enough information to get a depiction of the company's organizational structure. Another commenter did not oppose the submission of an organizational chart and workforce analysis; however, was opposed to the submission of race and gender information of employees within each functional unit.

In contrast, the remaining commenter objected to submitting either an organizational chart or a workforce analysis. This commenter stated that the preparation of these materials is burdensome and questions why contractors would be required to prepare such detailed information when there is a chance that OFCCP could deny the request for approval.

An organizational chart that clearly identifies each of the proposed functional or business units and the total number of employees in each functional or business unit is critical in determining if a contractor is suitable for developing a FAAP. The chart shows the relationship of the units and functions. Thus, taking into consideration each of the comments, OFCCP has modified this item in Attachment B of the new Directive to request a detailed organizational chart, which is critical to the approval process. The specific provision to submit race, gender, and workforce analysis information is no longer a part of this request.

#### 4) Identification of Major Job Groups

Three commenters opposed identifying major job groups. The three commenters agreed that the preparation of these materials would be burdensome and premature given OFCCP could deny their request for approval. The commenters also expressed that the request for this information was akin to the information that is required to be included in an affirmative action program and that OFCCP was penalizing those contractors desiring to develop FAAP agreements by having them develop their job groups prior to actual approval.

In consideration of these comments, OFCCP determined that a detailed organizational chart is sufficient to

determine whether the contractor's organization is suitable for a FAAP agreement. Thus, a request for major job groups is not included in Attachment B of the new Directive.

#### 5) Copies of Personnel Policies

Three commenters opposed the request to submit copies of personnel policies related to recruitment; hiring; promotion; compensation; and termination. The commenters contend that the submission of such information is not relevant to the contractor's request to develop FAAPs nor would it help the agency determine if a FAAP is appropriate. One commenter further stated that in lieu of providing copies of personnel policies, contractors should be allowed to submit a statement detailing the location of the personnel records and a discussion of the policies in general. Among the basic criteria and principal of OFCCP's FAAP agreements are operating autonomously and demonstrating the ability to efficiently manage and monitor all personnel actions. The review and analysis of a contractor's personnel policies is a key component to making this assessment. Therefore, the personnel policies must be submitted with the contractor's application for FAAP approval.

#### **b) Attachment C**

Attachment C of Directive 296 set forth a list of items to be "discussed and furnished" during the FAAP conference. Attachment C of the new Directive no longer states that the items are to be furnished. Rather, Attachment C indicates the items listed are topics that will be discussed during the FAAP Conference. The purpose of this attachment is to allow the contractor to prepare for the meeting with OFCCP.

1) Personnel Procedures including recruitment; hiring; promotion; compensation; termination; record retention and data analysis

One commenter was concerned with the need to submit personnel procedures including recruitment; hiring; promotion; compensation; termination; record retention and data analysis. The commenter indicated that the agency's request for this information and information regarding their good faith efforts is not relevant to whether the creation of a FAAP is appropriate. As

stated above, items listed in Attachment C were intended not as data submissions, but to allow the contractor to prepare for the FAAP conference with OFCCP. Thus this is not a data submission. In response to relevance, the approval process and conference are intended for OFCCP to determine if a contractor is suitable for implementing a FAAP. A critical component to the approval for OFCCP is determining if the contractor's structure and policies meet the required criteria and general principles. Thus a discussion of the listed personnel procedures is a necessary part of the process.

## 2) On-going or Past EEO Violations

Two commenters opposed the request to furnish information regarding any on-going or past EEO violations from local, state, and federal agencies over the past three years. The commenters contend that it does not aid OFCCP in determining whether a FAAP is appropriate. OFCCP maintains that this information is relevant to the decision to approve a FAAP agreement because it identifies areas where a contractor may have had difficulties in the past and these difficulties could potentially hinder them in providing information compliant with the guidelines of a FAAP agreement. As stated by all commenters, contractors requesting FAAP agreements are generally large in size and in addition to determining whether the FAAP structure is appropriate, OFCCP must determine whether the contractor has the ability to meet the parameters of the FAAP agreement, including the obligations to comply with OFCCP's regulations at 41 CFR Chapter 60. Furthermore, information regarding any on-going or past EEO violations from local, state, or federal agencies other than OFCCP is not readily available from any other source.

## 3) Samples of Past Outreach under Section 503 and VEVRAA

Three commenters opposed the request for information related to past outreach efforts required under the regulations implementing Section 503 and the affirmative action provisions of VEVRAA, and a description of how outreach will be performed under the FAAP structure. The commenters argued that OFCCP has

not presented a rationale for this request and that the information is not critical to OFCCP's ability to determine if the contractor is suitable for developing a FAAP.

As stated above, a FAAP agreement does not relieve a contractor of its obligations to comply with OFCCP's regulations. Further, the contractor must demonstrate the ability to efficiently manage and monitor all personnel actions including affirmative action responsibilities under the other laws OFCCP administers. Thus, a discussion regarding a contractor's plans to conduct the outreach prescribed by the Section 503 and VEVRAA regulations under a FAAP structure is critical to the decision whether to approve a FAAP request.

### **c) Additional Comments**

One commenter stated that the requirement that OFCCP be notified of "significant changes" to a company's structure within 30 days of the changes taking place was often difficult. The commenter explained that organizational changes are generally associated with a great deal of upheaval within a company and 30 days does not allow human resources personnel enough time to notify the agency of the changes. The commenter suggested that the timeframe of 30 days be increased to 120 days. Another commenter expressed that by requiring contractors to provide an annual update of "minor changes" OFCCP was holding contractors with FAAP agreements to standards other than those of contractors with establishment-based AAPs. While OFCCP understands that changes within an organizational structure can disrupt the corporate culture, the submission of such information is essential to the agency's ability to accurately track information regarding FAAP agreements which are used in selecting FAAP contractors for compliance evaluation. To reduce the burden associated with this notification of updates, the agency has modified its proposal to allow contractors 60 days to provide notification of "significant changes." Like the update for significant changes, the annual update is needed to keep OFCCP aware of changes that may impact the random scheduling process, thus the annual update remains as a part of the approval process. OFCCP used the phrase "minor changes" in Directive 296 but not having the updates on the managing official and contact information can seriously disrupt and delay the scheduling of compliance

evaluations. In the new Directive, the word "minor" has been deleted to avoid the misconception that the requested information is inconsequential.

#### **d) Burden Analysis**

Commenters believe that OFCCP underestimates the time required for contractors to submit an initial request for a FAAP agreement. The commenters noted that workforce analysis, job group and recruitment area and meetings are beyond what is needed to ascertain if a contractor meets the requirements for a FAAP agreement. The commenters did not provide alternative analysis of how long it takes contractors to submit an initial FAAP request.

OFCCP assessed the burden of the FAAP approval process using information available through OFCCP's 2004 survey. In addition, OFCCP experts in the FAAP approval process determined these burden estimates based on firsthand knowledge of the FAAP application process. Taking into consideration the alternatives described above and included in the new Directive, the burden hours per contractor requesting a FAAP agreement decrease from 53.25 to 28.15 hours.

#### **9. Gift Giving**

OFCCP provides neither payments nor gifts to respondents.

#### **10. ASSURANCE OF CONFIDENTIALITY**

While the agency makes no express assurance of confidentiality in relation to this information collection, the Agency recognizes that the contractor who submits the required information may view it as extremely sensitive information. The 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 agency actions are completed.

## **11. SENSITIVE QUESTIONS**

Generally, OFCCP does not collect information of a personal nature, such as marital status, religious beliefs, or other matters commonly considered private during the course of approving a FAAP Agreement.

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

The estimate of the information collection burden is divided into two sections: recordkeeping and reporting. The following is a summary of the methodology for the calculating the recordkeeping and reporting requirements for contractors requesting a FAAP.

### **a. Recordkeeping Burden**

OFCCP regulations impose a recordkeeping burden that includes burdens related to developing, updating, and maintaining AAPs. The recordkeeping burdens are included in OFCCP's ICR for supply and service contractors OMB Number 1250-0003 and they are not changed.

The Uniform Guidelines on Employee Selection Procedures are used by four agencies other than OFCCP; however, nearly all of the burden hours are associated with three agencies: OFCCP, EEOC, and Department of Justice. The EEOC, under OMB Number 3046-0017, accounts for all employers with 15 or more employees.

Because the recordkeeping burdens are covered in another ICR, OFCCP is assessing no recordkeeping burden in this ICR.

### **b. Reporting Burden**

A contractor seeking to use AAPs based on functional or business units must obtain prior approval. To do this, the contractor sends a written request to OFCCP explaining why it believes FAAPs are appropriate. In addition to this explanation, OFCCP needs specific information from the

contractor in order to determine whether FAAPs are appropriate for the contractor's organization.

The reporting burden assessed below reflects the written submission requesting approval for an agreement and the information needed by OFCCP to make its determination. Although some of the information is submitted electronically, the burden estimates below assume submission of paper documents. The estimates of time were provided by the FAAP Unit which has worked with contractors in the approval process.

**1) Initial Request to for an Agreement:**

Based on the current number of requests, OFCCP estimates that there will be approximately 19 requests for new agreements each year.

**Attachment B: Information Submitted by the Contractor Prior to the FAAP Conference:**

**Written Request to OFCCP's Director**

Seeking approval to develop AAPs along functional or business unit lines is a decision a contractor voluntarily makes. For contractors wanting to develop an AAP based on business functions or business units, OFCCP requires that they submit a written request explaining how the proposed functional AAP correlates to the contractor's organizational structure. A transition plan describing the process and time frames for moving from establishment-based AAPs to functional-based AAPs are also required. OFCCP estimates that it will take 2 hours per contractor to develop this request.

**Jurisdiction Information:**

The contractor is required to state how it is a covered Federal contractor or subcontractor, including specific information regarding at least one Federal contract or subcontract of \$50,000 or more, identifying the name of the contracting agency, the contract number, the contract period, and the name of the prime contractor if the contractor is a subcontractor. OFCCP estimates that it will take 0.5 hours per contractor to prepare this statement.

**A Copy of a Qualifying Federal Contract:**

The contractor is required to provide a copy of a Federal contract or subcontract of \$50,000 or more that confirms that the contractor or subcontractor is a covered Federal contractor or subcontractor. OFCCP estimates that it will take 0.5 hours per contractor to provide this item.

**Most Recent EEO-1 Report**

The contractor is required to provide a copy of its most recent consolidated EEO-1 Report. The consolidated EEO-1 report provides information relative to the total size of a corporation. The report is required reporting for Federal contractors and subcontractors. The burden for developing a consolidated EEO-1 Report is covered under OMB Control Number 3046-0007. Therefore, there is no burden associated with this item.

**Organization Chart**

The contractor is required to provide a copy of its organizational chart for the contractor's organization that identifies the major operational units and a narrative description of the "business or function" of each proposed FAAP unit that explains how the structure meets the definition of a functional or business unit. OFCCP estimates that it will take 8 hours per contractor to provide this item.

**The Total Number of Employees**

The contractor is required to provide the total number of employees within each proposed functional or business unit, including the identification of the managing official of each functional or business unit. This submission allows OFCCP to evaluate the size of the workforce that will be covered by the proposed AAP agreement. OFCCP estimates that it will take 2 hours per contractor to provide this item.

**Statement Identifying the Location of Personnel Records**

Because a FAAP generally reflects more than a single establishment, OFCCP requires that the contractor provide a statement addressing the location (including city and state) where personnel records, including applicant data, are located. OFCCP estimates that it

will take 1 hour per contractor to provide this information.

**List of Establishment Based AAPs**

Some contractors may opt to continue to maintain a portion of their workforces in establishment-based AAPs. In order to ensure that the scheduling procedures for compliance evaluations of contractor establishments are not disrupted, OFCCP requires the contractor to provide a list of locations, including the number of employees, phone number and address of the establishment's managing official, AAP contact information, and the EEO-1 unit number for each establishment that will continue to maintain an establishment-based AAP. OFCCP estimates that it will take 1.5 hours per contractor to provide this item.

**Dates of the Proposed AAP Year**

As a part of the request for an agreement, OFCCP requires that the contractor provide the dates of the proposed AAP year for the FAAP. OFCCP estimates that it will take 0.5 hours per contractor to provide this information.

**Copies of Personnel Policies**

To evaluate if the functional or business unit meets the criteria detailed in the Directive, OFCCP requests copies of personnel policies relevant to evaluating the proposed functions or business units, including organizational and unit-specific policies related to recruitment, hiring, promotion, compensation, and termination. OFCCP estimates that it will take 1.25 hours per contractor to produce this information.

**Attachment C: Items to be Submitted and Discussed During the FAAP Conference with OFCCP**

**Reporting Hierarchy**

OFCCP requires that the contractor provide an explanation of the reporting hierarchy of the functional unit. This includes reporting within the unit and, as appropriate, reporting to the parent entity. OFCCP estimates that it will take 1 hour per contractor to provide this information.

**Personnel Procedures**

To assess whether the proposed FAAP meets the criteria of operating autonomously, OFCCP requests that contractors provide their personnel procedures for recruitment, hiring, promotion, compensation, termination, record retention, and data analysis for each functional or business unit. If functional units have different personnel or compensation practices, OFCCP requires that those be identified as well. OFCCP estimates that it will take 2.4 hours per contractor to provide this information.

#### **Human Resources and Equal Employment Opportunity**

OFCCP requires the contractor to provide information regarding how each functional unit manages its own human resources and equal employment opportunity responsibilities. This information is relevant to determining whether the functional or business unit operates autonomously. OFCCP estimates that it will take 1.5 hours per contractor to provide this information.

#### **Transition Information**

OFCCP requires the contractor to discuss its transition plans, including time frames, for moving from establishment based AAPs to function based AAPs. This request relates to information provided in the initial written request and the supplemental information provided with the written request regarding whether or not there will be some establishments continuing with establishment based AAPs. Given that the contractor provided detail in its initial request to the Director and identified if any of its establishments would continue to use establishment based AAPs, OFCCP estimates that it will take 1 hour per contractor to provide this information as appropriate.

#### **EEO Violations**

In determining whether the contractor's request for a FAAP agreement should be approved, OFCCP will consider the contractor's compliance history and requires the contractor to provide information regarding any ongoing or prior EEO violations with local, state, or federal agencies.<sup>12</sup> OFCCP estimates that it will take 2 hours per contractor to provide this item.

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<sup>12</sup> Information for prior EEO violations is requested for the past 3 years from the date the FAAP request letter is sent to the Director.

### **Compliance with Section 503 of the Rehabilitation Act and VEVRAA Requirements**

During the conference, OFCCP asks the contractor to discuss its plan for ensuring those establishments covered by the FAAP Agreement will comply with the requirements of Section 503 of the Rehabilitation Act and VEVRAA after its transition to a functional format. This information allows OFCCP to determine the impact the transition to a function-based AAP may have on individuals with disabilities and covered veterans. OFCCP estimates that it will take 3 hours per contractor to prepare to discuss this item.

The total burden hours for requesting approval of a FAAP agreement is estimated to be 535 hours (28.15 hours x 19 contractor requests = 535 hours).

## **2) FAAP Modifications, Updates, and Renewals**

### **A. Modifying an Agreement**

The new Directive requires contractors with approved agreements to modify their agreements if the Director determines that modifications are required because of significant organizational changes. Because collections of information are associated with this requirement, a separate burden hour estimate was developed for the modification of current FAAP agreements.

Modification of a current agreement is required when a contractor makes significant changes to its corporate structure that alters the functions identified in their agreement and the OFCCP Director determines that modification of the agreement is necessary. Contractors are required to notify the OFCCP Director and the FAAP Director of significant changes to the organizational structure and provide enough information to OFCCP so a determination can be made as to whether the FAAP agreement needs to be modified. The contractor is required to notify and submit this information within 60 days of the change. OFCCP requires written notice from a contractor with an existing FAAP agreement that explains the change and rationale for the alteration in sufficient detail to allow OFCCP to determine if the contractor still meets the criteria to use the FAAP format. OFCCP estimates that it would take 5.5 hours per contractor to provide this information.

**B. Updating an Agreement**

OFCCP's guidance on FAAP agreements requires that contractors with approved agreements annually update the agreements as appropriate, including information on managing officials, addresses, and employee counts. OFCCP requires that contractors with existing FAAP agreements report such changes to the agreement. Because collections of information are associated with this activity, a separate burden hour estimate was developed for the update of FAAP agreements. OFCCP estimates that it would take 5.5 hours per contractor to provide this information.

**C. Renewing a FAAP Agreement**

FAAP Agreements are approved for a three-year term. The approval is on a rolling basis. At least 120 days prior to the expiration of an approved FAAP agreement, a contractor that wishes to continue developing FAAPs must submit a written request to the Director of OFCCP requesting to renew its FAAP Agreement. The request is a one-page letter indicating the contractor's desire to renew its agreement. Because reporting is associated with this requirement a separate burden hour estimate was developed for renewing current FAAP agreements. OFCCP estimates that it would take 0.5 hours per contractor to request renewal of its FAAP agreement.

On average, OFCCP has 102 approved FAAP agreements in place. Although there may be slight annual variations the following estimation reflects the outcome if all of the FAAP Agreements either were modified, updated, or renewed in a given year and one-third fell into each group. (5.5 hours + 5.5 hours + 0.5 hours)/3 = 3.83 hours  
102 responses x 3.83 hours = 391 hours.

**c. Third Party Disclosure Burden**

There are no third party disclosure burdens associated with the Functional Affirmative Action Program proposed Directive.

**Total Reporting Burden by Contractor Classification**

	Total Response s for Equal Number of	Recordkeepi ng Hours	Reportin g Hours	Third Party Disclosur e	Tota l Hour s
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	Respondents				
Initial request for approval of an Agreement	19	0	535	0	<b>535</b>
Agreement Updates, Modifications, and Renewals	102	0	391	0	<b>391</b>
<b>Total</b>	<b>121</b>	<b>0</b>	<b>926</b>	<b>0</b>	<b>926</b>

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

The estimated annualized cost to contractors is based on Bureau of Labor Statistics data in the publication, "Employer Costs for Employee Compensation" - June 2012, which lists total compensation for management, professional, and related occupations as \$50.85 per hour and administrative support as \$24.12 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. The weighted average of the rates is \$38.02. We have calculated the total estimated annualized cost as follows:

**Summary of Annualized Cost of Burden Hours (personnel hours)**

	Total	
	Hours	Cost
Initial Agreement	535	\$20,341
Modifying, Updating, or Renewing an Agreement	391	\$14,866
<b>Total</b>	<b>926</b>	<b>\$35,207</b>

**13. ANNUAL OPERATION AND MAINTENANCE COST**

We are currently unaware of any capital or start-up costs associated with this collection of information. The information that contractors provide OFCCP is generally maintained by them in the normal course of business.

OFCCP estimates that contractors will have some operating and maintenance costs associated with this collection. Contractors requesting a FAAP agreement and those renewing



an existing agreement are expected to copy and mail the documents to OFCCP. Modifications and updates of FAAP Agreements normally occur by an initial letter or by telephone call with follow-up emails confirming the modifications or the updates. Therefore, we assess no cost beyond \$0.07 for initial mailing copying costs of a one-page letter.

We estimate the average size of their organizational plan and supporting documentation to be 20 pages. We estimate the average size of the renewal request to be one page. We estimate an average copying cost of \$.07 per page. The estimated total copying cost is below.

Copying Cost

Initial Request	\$1.40 x 19 = \$26.60
Renewal (request letter)	\$0.07 x 102 = \$7.14
TOTAL	\$33.74

In addition, we estimate an average mailing cost of \$5.00 per contractor. This assumes the information is provided using USPS Priority Mail, flat rate envelopes. We further estimate an average mailing cost of \$0.45 for modification, update, and renewal requests. Additional communications for modifications and updates to FAAP Agreements normally occur by telephone call with follow-up emails confirming the modifications or the updates. Therefore, we assess no additional cost beyond a first mailing of the request.

Mailing Cost

Initial Request	\$5.00 x 19 = \$95
Renewal (request letter)	\$0.45 x 102 = \$45.90
TOTAL	\$140.90

The total estimated operating and maintenance cost for all contractors related to FAAP is an estimated \$174.64 or \$33.74 + \$140.90. = \$174.64.

**14. ESTIMATED COST TO THE FEDERAL GOVERNMENT**

We have estimated the cost to the Government as follows:

40 Hours per Approved FAAP Agreement x 19 Agreements = 760 Hours

8 Hours per Renewed FAAP Agreement x 102 Agreements = 816 Hours

8 Hours per Modified FAAP Agreement x 102 Agreements = 816 Hours

8 Hours per Updated FAAP Agreement x 102 Agreements = 816 Hours

We estimate the hourly rate at \$32.97<sup>13</sup>. The total hourly cost would be \$32.97 per hour x 3,208 hours = \$105,768. This cost is incorporated into the agency's existing funding for personnel.

**15. CHANGES IN BURDEN HOURS**

We are requesting OMB approval of 121 responses, 926 burden hours and \$175 in other burden costs. This is a new collection. The sum of burden is reported below.

Activity	Estimated Hours
<b>Total Recordkeeping</b>	0
Reporting Burden (in hours)	
Initial Agreement	535
Modifying, Updating, or Renewal of an Agreement	391
<b>Total Reporting Burden</b>	926
<b>Total Third Party Disclosure</b>	0
<b>Total Annual Burden (in hours)</b>	926
Annualized Cost (personnel)	\$35,207

Summary of Costs	Estimated Dollars

<sup>13</sup> This estimate is based on Office of Personnel Management's 2012 Salary Table and assumes a GS-12, step 1, annual salary of \$68,809 (rates frozen at 2010 levels), excluding locality pay.

Annual Operations and Maintenance Costs	\$175
Annualized Start-up and Capital Cost	\$0
<b>Total Estimated Annual Costs</b>	<b>\$175</b>

**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**

There are no exceptions to the certification statement.

**PART B—STATISTICAL METHODS**

This information collection does not employ statistical methods.