

### Note to Reviewer

OFCCP is requesting OMB approval of 803,725 hours in combined recordkeeping, reporting, and third party disclosure burden for compliance with OFCCP's regulatory requirements by Federal and federally assisted construction contractors. This compares with 1,326,320 hours for the last clearance request, a decrease of 522,595 hours. This change is due to an estimated decrease in the number of Federal construction contractor respondents from 75,696 to 52,429 or a decrease of 23,267 construction contractors. OFCCP used data from the General Services Administration's System for Award Management (SAM) to determine the number of Federal construction contractors covered by this Information Collection Request (ICR).

Supporting Statement  
Construction Recordkeeping Requirements  
OMB Number 1250-0001

**A. Justification**

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for administering three equal opportunity mandates that prohibit employment discrimination based on race, sex, sexual orientation, gender identity, color, national origin, religion, disability, and status as a protected veteran by Federal contractors.<sup>1</sup> Discrimination based on an employee or job applicant discussing, inquiring about, or disclosing pay is also prohibited.<sup>2</sup> The authorities OFCCP enforces also require affirmative action to provide equal employment opportunities:

- Executive Order 11246, as amended (referred to as “EO 11246”),<sup>3</sup>
- Section 503 of the Rehabilitation Act of 1973, as amended (referred to as “Section 503”),<sup>4</sup> and
- The affirmative action provisions of the Vietnam Era Veterans’ Readjustment Assistance Act of 1974,<sup>5</sup> as amended, 38 U.S.C. 4212 (referred to as “VEVRAA”).

OFCCP promulgated regulations implementing these programs consistent with the Administrative Procedure Act. These regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60 and are accessible on the Web at [http://www.ecfr.gov/cgi-bin/text-idx?SID=aa406f536b889c43ca553a8983d4c42c&c=ecfr&tpl=/ecfrbrowse/Title41/41cfrv1\\_02.tpl#6000](http://www.ecfr.gov/cgi-bin/text-idx?SID=aa406f536b889c43ca553a8983d4c42c&c=ecfr&tpl=/ecfrbrowse/Title41/41cfrv1_02.tpl#6000).

EO 11246 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. The most recent amendment of EO 11246 includes sexual orientation,

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1 On July 21, 2014, the President signed Executive Order 13672 amending Executive Order 11246 to include nondiscrimination based on sexual orientation and gender identity. This Order requires that a regulation be prepared within 90 days of the date of the Order. Though the new Executive Order is effective immediately, the protections apply to contracts entered into on or after the effective date of the new DOL regulation. The regulations implementing Executive Order 13672 will require amending 60-1.4, Equal opportunity clause, to include sexual orientation and gender identity.

2 Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information, 79 FR 20749 (April 11, 2014). This order become effective immediately, and applies to contracts entered into on or after the effective date of rules being promulgated by the Department of Labor under section 3 of the order.

3 The regulations implementing Executive Order 11246 applicable to construction contractors are published at 41 CFR Parts 60-1, 60-4, 60-3, 60-20, and 60-50.

4 See “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities,” 78 Federal Register 185, pp. 58682-58752 (24 September 2013). The regulations implementing Section 503 are published at 41 CFR Part 60-741.

5 See “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans,” 78 Federal Register 185, pp. 58614 – 58679,(24 September 2013). The regulations implementing VEVRAA are published at 41 CFR Part 60-300.

and gender identity in the nondiscrimination provision. This EO also creates affirmative action requires that contractors take affirmative action to ensure that applicants and employees are treated without regard to these protected categories. EO 11246 applies to Federal contractors and subcontractors, and to federally-assisted construction contractors and subcontractors, holding a Federal Government contract or subcontract of more than \$10,000 or Federal Government contracts or subcontracts 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 Federal 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 on the basis of disability, and requires Federal contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Its requirements apply to Federal contractors and subcontractors with a Federal Government contract or subcontract that meet the statutory contract dollar threshold value of in excess of \$10,000. However, this threshold amount is periodically adjusted pursuant to an inflation-adjustment statute and is currently \$15,000.<sup>6</sup>

The affirmative action provisions of VEVRAA prohibit employment discrimination against protected veterans and require Federal contractors and subcontractors to take affirmative action to employ and advance in employment protected veterans. Its requirements apply to Federal contractors and subcontractors with a Federal Government contract or subcontract of \$100,000 or more.

For the purposes of OFCCP’s recordkeeping and reporting requirements, the agency divides the obligations under these authorities into the information collection requests (ICR) listed in the table below. These divisions are based on the distinct programs and related regulatory requirements.

OMB Number	Description
1250-0001	Construction Recordkeeping Requirements
1250-0002	Complaint Procedures
1250-0003	Supply and Service Program
1250-0004	VEVRAA Requirements
1250-0005	Section 503 Requirements
1250-0006	Functional Affirmative Action Program Agreement Procedures

Some general approaches and assumptions are applicable across the regulations enforced by OFCCP. Many relate to assessing cost and burden in this ICR, including those listed below.

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<sup>6</sup>The threshold for Section 503 of the Rehabilitation Act is subject to 41 U.S.C. 431(a) that adjusts certain acquisition related thresholds for inflation. Thus, the threshold for Section 503 increased to \$15,000 on August 30, 2010 (75 FR 53129). These inflationary adjustments also apply to VEVRAA’s \$100,000 statutory minimum threshold but they do not apply to Executive Order 11246 and its dollar threshold of more than \$10,000. The procurement adjustments are made every five years.

- This ICR does not include burden estimates for compliance with the information collections in VEVRAA and Section 503 because the burdens for these collections are covered elsewhere.<sup>7</sup> However, because construction contractors are required to provide documents and information relevant to their compliance with VEVRAA and Section 503, OFCCP references these statutes in this ICR.<sup>8</sup> The burden associated with reporting compliance with Section 503 and VEVRAA during a construction compliance evaluation is included in this ICR.
- The General Services Administration’s System for Award Management (SAM) is the system where all bidders must register in order to receive a Federal contract or grant. There are approximately 500,000 contractor companies registered in SAM. This ICR focuses on construction contractors, thus using the North American Industry Classification System code 23, OFCCP estimates that there are 52,429 Federal construction contractors.

Pursuant to the expiration of OMB No. 1250-0001, this ICR seeks approval of the agency’s construction recordkeeping and reporting requirements.

## **1. Legal and Administrative Requirements**

### **a. Executive Order 11246 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, and specifies certain reporting and recordkeeping requirements. Part 60-1 contains recordkeeping, reporting and third party disclosure requirements for the construction program. OFCCP discusses specific sections of this part below.

Section 60-1.4 describes the equal opportunity clause in Government contracts. Sections 60-1.4(a)(3) and 60-1.4(b)(3) require contractors to notify labor organizations of their obligations under EO 11246 and the implementing regulations. OFCCP explains third party disclosure requirements in numbered paragraph 12.c below, titled Third Party Disclosure to Labor Unions.

Section 60-1.7 requires specific Federal prime contractors and first-tier subcontractors to file an Employer Information Report EEO-1 (EEO-1 Report) annually. The U.S. Equal Employment Opportunity Commission (EEOC) and OFCCP use EEO-1 Report data to analyze employment patterns for women and minorities and as a civil rights enforcement tool. OMB approved the EEO-1 Report information collection under OMB No. 3046-0007. The EEO-1 Report requires reporting in seven racial and

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<sup>7</sup> Control Numbers 1250-0004 (VEVRAA) and 1250-0005 (Section 503) cover these requirements.

<sup>8</sup> Construction contractors working on federally assisted construction projects are not subject to the requirements of Section 503 and VEVRAA.

ethnic categories<sup>9</sup> within nine job categories.<sup>10</sup> To view the information collection, go to [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201409-3046-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201409-3046-001).

Section 60-1.12 requires contractors to 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, this retention period is one year. Section 60-1.12 provides that the contractor must be able to identify the gender, race and ethnicity of each employee for any record the contractor maintains. Where possible, the contractor must also identify the gender, race and ethnicity of each applicant or Internet applicant.

Section 60-1.20 addresses the methods OFCCP uses to assess contractors' compliance with the agency's regulations during compliance evaluations. These methods range from an in-depth comprehensive evaluation of the contractor's employment practices (e.g., a "compliance review") to a determination of whether the contractor maintained records consistent with section 60-1.12 (e.g., a "compliance check").

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

The EEOC, the U.S. Office of Personnel Management (OPM), the Department of Labor (DOL), and the Department of Justice (DOJ) adopted the Uniform Guidelines on Employee Selection Procedures (UGESP) in 1978. UGESP applies to tests and other selection procedures used as a basis to make any employment-related decision. UGESP was incorporated into the EO 11246 regulatory scheme through notice and comment rulemaking and has the full force and effect of law. Under UGESP, each contractor maintains records and other information for each job sufficient to permit analyses of the impact of its selection procedures on the employment opportunities of people based on race, sex, or ethnic group.<sup>11</sup> Using this information, contractors and OFCCP identify and evaluate selection procedures for adverse impact.

When a test or other selection procedure is determined to have an adverse impact, UGESP requires the contractor to validate the test or procedure (41 CFR 60-3.4) and to retain its validation study documentation.

Section 60-3.15 requires contractors with 100 or more employees to keep records for each job that are sufficient to allow contractors to make an adverse impact determination. Contractors make this determination at least annually and make it for each racial or ethnic group constituting of at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable workforce.

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9 Hispanic or Latino, White not Hispanic or Latino, Black or African-American not Hispanic or Latino, Native Hawaiian or Other Pacific Islander not Hispanic or Latino, Asian not Hispanic or Latino, American Indian or Alaska Native not Hispanic or Latino, and Two or More Races not Hispanic or Latino.

10 The Officials and Managers category is divided into the subcategories -- Executive/Senior Level Officials and Managers, and First/Mid-Level Officials and Managers.

11 Section 60-3.4 requires recordkeeping and analyses on the following race and ethnic groups: Black, Hispanic, Asian/Pacific Islander, American Indian, and White (other than Hispanic). A total is also provided for each group.

Section 60-3.15 requires contractors with fewer than 100 employees to keep records on the number of persons hired, promoted, and terminated for each job by sex and, where appropriate, by race and national origin. Section 60-3.15 also requires contractors to keep records showing the number of applicants for hire and promotion by sex and, where appropriate, by race and national origin, as well as records showing the selection procedures used.

The OMB approved the information collection required under UGESP under OMB No. 3046-0017. To view the information collection, go to this Web address: [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201110-3046-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201110-3046-001).

#### 41 CFR Part 60-4 – Construction Contractors – Affirmative Action Requirements

This part sets out the affirmative action requirements of the EO 11246 that apply to all construction contractors, contracting agencies, applicants<sup>12</sup> for construction contracts and nonconstruction contractors.<sup>13</sup> It defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, and specifies certain recordkeeping and reporting requirements. OFCCP discusses specific sections of this part below.

Section 4.2 requires all contracting officers, applicants for construction contracts and covered nonconstruction contractors to include the “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity” set forth in section 4.2 in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts. This notice includes the goals for the specific project based on its location. In addition, contracting officers, applicants for construction contracts and covered nonconstruction contractors must notify OFCCP within 10 working days of award of a covered contract. Similarly, subsection 4.2(d)3 requires that all contractors provide OFCCP written notification of covered subcontract awards in excess of \$10,000 within 10 working days of the award.

Section 4.3 requires all contracting officers, applicants for construction contracts, construction contractors, and covered nonconstruction contractors to incorporate the “Standard Federal Equal Employment Opportunity Construction Contracts Specifications” set forth in section 4.3 into all nonexempt Federal contracts and subcontracts. Briefly, the specifications require covered contractors to engage in specific affirmative activities including:

- ensuring and maintaining a work environment free of harassment;
- establishing and maintaining a list of minority and female recruitment resources;
- contacting recruitment sources and training institutions when employment opportunities are available;

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<sup>12</sup> Applicants are defined as an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The terms also include such persons after they become recipients of such Federal assistance. 41 CFR 60-1.3.

<sup>13</sup> Nonconstruction contractors and subcontractors are required to comply with these requirements if, as a part of their Federal contract or subcontract, construction work is necessary in whole or in part to the performance of a nonconstruction contract or subcontract. 41 CFR 60-4.1.

- maintaining a file of minority and female walk-in applicants;
- notifying OFCCP if a union is impeding its efforts to meet its obligations;
- developing on the job training programs or participating in training programs;
- disseminating its equal employment opportunity policy both externally and internally;
- encouraging current minority and female employees to recruit others;
- validating all tests;
- conducting annual assessments and inventories of current minority and female employees for promotional opportunities;
- ensuring that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect;
- ensuring that all facilities are nonsegregated;<sup>14</sup>
- documenting and maintaining records of compliance; and
- conducting an annual review of supervisory performance and adherence to contractor's affirmative action obligations.

Sections 60-4.4 and 60-4.5 describe Hometown Plans and the requirements of contractors participating in approved Hometown Plans.<sup>15</sup>

Section 60-4.6 explains the goals and timetables set by OFCCP and their application to a contractor's workforce.

Section 60-4.7 explains the effect of the regulations in part 60-4 to the requirements of 60-1, 60-3, 60-20, and 60-50.

#### b. VEVRAA Regulations

##### 41 CFR Part 60-300

OFCCP recently revised its regulations implementing VEVRAA. Included in the revisions was the rescission of 41 CFR Part 60-250. Regulations on the rights and protections provided to veterans, and the related obligations and responsibilities of contractors, are set forth in 41 CFR Part 60-300.

These regulations establish the basic nondiscrimination and affirmative action requirements of the VEVRAA enforcement program. They define coverage, specify clauses to be included in contracts, provide procedures to ensure compliance by covered contractors, specify certain reporting and recordkeeping requirements, establish an annual benchmark for veteran hiring, and specify the basic requirements for affirmative action programs (AAPs) under VEVRAA. A discussion of the relevant sections of 60-300 follows.

Section 60-300.5 describes the equal opportunity clause in Federal contracts.

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<sup>14</sup> This requirement includes an exception for separate or single-user toilet and necessary changing facilities.

<sup>15</sup> OFCCP no longer approves Hometown Plans.

Section 60-300.40 requires contractors with 50 or more employees and contracts of \$100,000 or more to implement the requirements of Subpart C of the regulation including inviting applicants to self-identify and developing an AAP.

Section 60-300.42 requires contractors to invite applicants to voluntarily self-identify their protected veteran status at the pre-offer and post-offer stage.

Section 60-300.44 identifies required elements of an AAP, including those listed below.

- Develop and include an equal opportunity policy statement in the AAP.
- Review personnel processes to ensure that qualified protected veterans are provided equal opportunity.
- Review all physical and mental job qualification standards to ensure that those that screen out or tend to screen out qualified disabled veterans are job-related and are based on business necessity.
- Provide reasonable accommodations for physical and mental limitations of an applicant or employee who is a qualified disabled veteran.
- Develop procedures to ensure that employees are not harassed because of their veteran status.
- Undertake appropriate outreach and positive recruitment activities reasonably designed to effectively recruit protected veterans, document and assess these activities on an annual basis, and disseminate its affirmative action policy to all subcontractors.
- Develop procedures and practices to disseminate affirmative action policies internally.
- Establish an audit and reporting system to measure the effectiveness of the AAP.
- Collect and maintain certain applicant and hiring data
- Designate a responsible official to implement and oversee the AAP.

Section 60-300.45 requires contractors to either adopt the national hiring benchmark published on OFCCP's website or establish their own hiring benchmark at each establishment for protected veterans using five factors.<sup>16</sup>

Section 60-300.60 identifies the methods OFCCP uses to assess contractors' compliance with the agency's regulations during a compliance evaluation. These

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16 41 CFR 60-300.45.



methods range from an in-depth comprehensive evaluation of the contractor's employment practices (e.g., a compliance review) to determination of whether the contractor maintained records consistent with section 60-300.80 (e.g. a "compliance check). Evaluation of compliance with VEVRAA is concurrent with evaluation of the contractor's compliance with Executive Order 11246.

Detailed instructions for the development of a VEVRAA AAP are in Subpart C of 41 CFR Part 60-300.

c. Section 503 Regulations

41 CFR Part 60-741

OFCCP recently revised its regulations implementing Section 503, which are found at 41 CFR 60-741 and address the affirmative action and nondiscrimination obligations of contractors and subcontractors related to individuals with disabilities. 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, establishes an aspirational utilization goal of 7 percent, and specifies the basic requirements for AAPs under Section 503.

Section 60-741.5 describes the equal opportunity clause in Federal contracts.

Section 60-741.40 requires the development and maintenance of a Section 503 AAP. This regulation requires each contractor and subcontractor that has 50 or more employees, and a contract of \$50,000 or more to implement the requirements of Subpart C of these regulations including inviting applicants and employees to self-identify and developing an AAP for each establishment.

Section 60-741.42 requires contractors to invite applicants to voluntarily self-identify as an individual with a disability at the pre-offer and post-offer stage of the employment process. Additionally, it requires contractors to invite employees in the first year of becoming subject to these requirements and at five year intervals thereafter to invite employees to voluntarily inform the contractor whether the employee believes that he or she is an individual with a disability.

Section 60-741.44 identifies required elements of an AAP, including those listed below.

- Develop and include an equal opportunity policy statement in the AAP.
- Review personnel processes to ensure that qualified individuals with disabilities are provided equal opportunity.

- Review all physical and mental job qualification standards to ensure that those that screen out qualified individuals with disabilities on the basis of disability are job-related and are based on business necessity.
- Provide reasonable accommodations for physical and mental limitations.
- Develop procedures to ensure that employees are not harassed because of their disability.
- Undertake appropriate outreach and positive recruitment activities reasonably designed to effectively recruit individuals with disabilities, document and assess these activities on an annual basis, and disseminate its affirmative action policy to all subcontractors.
- Develop procedures and practices to disseminate affirmative action policies internally.
- Establish an audit and reporting system to measure the effectiveness of the AAP.
- Collect and maintain certain applicant and hiring data
- Designate a responsible official to implement and oversee the AAP.

Section 60-741.45 requires contractors to apply a 7 percent utilization goal to each of their job groups or to their entire workforce if the contractor has 100 or fewer employees.

Section 60-741.60 identifies the methods OFCCP uses to assess contractors' compliance with the agency's regulations during compliance evaluations. These methods range from an in-depth comprehensive evaluation of contractors' employment practices (e.g., a compliance review) to determination of whether the contractor maintained records consistent with section 60-741.80 (e.g. a "compliance check"). Evaluation of compliance with Section 503 is concurrent with evaluation of contractors' compliance with Executive Order 11246.

Detailed instructions for the development of a Section 503 AAP are in Subpart C of 41 CFR Part 60-741.

## 2. Use of Materials

### EEO-1 Report Data<sup>17</sup>

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<sup>17</sup> 41 CFR 60-1.7 – Reports and other required information.

The Joint Reporting Committee, comprised of OFCCP and EEOC, promulgates the EEO-1 Report. Employers use the EEO-1 Report “Question 3” to self-identify as contractors and subcontractors and indicate whether they meet the 50 employees and \$50,000 contract value threshold for AAP coverage. In construction evaluations, OFCCP uses the report to assess contractors’ equal employment opportunity trends.

Should EEO-1 Report data become unavailable or become inadequate for the agency’s purpose, OFCCP would identify and obtain alternative sources of information.

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity – 41 CFR 60-4.2

This requirement ensures that all construction contractors and subcontractors are aware of the affirmative action requirements and obligations in the solicitation for offers and bids on all Federal and federally assisted construction projects. Without this notification, construction contractors and subcontractors may not be fully aware of their obligations before they develop their bids and proposals. Further, the required notice of subcontract awards provides OFCCP with accurate and current information regarding which employers are working on Federal contracts. This information serves two purposes: first, to identify those construction employers that would benefit from technical assistance; and second, to contribute to the formulation of OFCCP’s pool for selecting construction contractors for compliance evaluations.

Standard Federal Equal Employment Opportunity Construction Contract Specifications – 41 CFR 60-4.3

The 16 affirmative action specifications are contractors’ plan for ensuring nondiscrimination and equal employment opportunity. The required activities relate to monitoring the work environment, outreach and recruitment, training, equal employment opportunity policies, selection and testing procedures, promotion practices, nonsegregated facilities, supervisor performance, and subcontracting. The recordkeeping requirements associated with executing the specifications are critical to the final evaluation and assessment of a contractor’s compliance.

During a compliance evaluation, OFCCP examines contractors’ compliance with the 16 specifications, supporting documentation, compensation data, and documents related to personnel actions, employment policies and practices to determine whether the contractor is complying with its obligations not to discriminate in employment and to take affirmative action to ensure equal employment opportunity.

Section 503 and VEVRAA AAPs<sup>18</sup>

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<sup>18</sup> Contractors with 50 or more employees and a contract of \$50,000 or more are required to develop Section 503 AAP. Contractors with more than 50 employees and a contract of \$100,000 or more are required to develop VEVRAA AAPs. This requirement does not apply to federally assisted construction contractors or subcontractors.

Sections 60-741.44 and 60-300.44 describe the required contents of each contractor's written AAPs under Section 503 and VEVRAA, respectively. During a compliance evaluation, OFCCP reviews contractors' AAPs to determine whether each contractor is complying with its obligations of nondiscrimination and affirmative action to ensure equal employment opportunity. This evaluation entails examination of various support documentation including:

- assessments of personal processes under 41 CFR 60-741.44(b) and 60-300.44(b);
- assessments of physical and mental job qualification standards under 41 CFR 60-741.44(c) and 60-300.44(c);
- results of evaluation of the effectiveness of outreach and recruitment efforts under 41 CFR 741.44(f) and 60-300.44(f);
- records of activities to comply with audit and reporting system requirements under 41 CFR 60-741.44(h) and 60-300.44(h);
- details of computations and calculations contained in the data collection analysis under 41 CFR 60-741.44(k) and 60-300.44(k);
- utilization analysis evaluating the representation of individuals with disabilities in each job group or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, as provided in 41 CFR 60-741.45; and
- documentation of the hiring benchmark adopted, including the methodology used to establish it if using the five factor approach, as described in 41 CFR 60-300.45.

### **3. Improved Information Technology**

In general, under OFCCP regulations each contractor develops its own methods for collecting support data, developing and maintaining information. Contractors are free to use whatever methods best suit their needs as long as they can retrieve and provide OFCCP with the data required by the agency's regulations.

The vast majority of Federal contractors and subcontractors are repeat contractors. Since they are subject to OFCCP's regulatory requirements year after year, most have developed their information technology systems to generate the data required by OFCCP regulations.

Information technology systems used to comply with data requirements under OFCCP's regulations should be capable of:

- monitoring hours worked on construction projects,
- facilitating calculation of utilization,

- collecting employment activity data (for example: applicants, hires, promotions, and terminations) related to EO 11246, and if applicable, Section 503 and VEVRAA,
- conducting Section 503 utilization analysis,
- analyzing outreach and recruitment,
- tracking self-identification,
- disseminating EO policies,
- providing notice to subcontractors and vendors, and
- facilitating calculation of the annual VEVRAA hiring benchmark.

In addition, OFCCP provides compliance assistance to all contractors, including smaller contractors, by leveraging information technology. For example, OFCCP's web site provides wider access to compliance resources and information, including:

- webinar trainings on a variety of compliance related topics found at [www.dol.gov/ofccp](http://www.dol.gov/ofccp)
- Small Business Guide at <http://www.dol.gov/ofccp/TAguides/sbguides.htm>
- New Contractors' Guide at [http://www.dol.gov/ofccp/TAguides/new\\_contractors\\_guide.htm](http://www.dol.gov/ofccp/TAguides/new_contractors_guide.htm)
- 2006-2010 EEO Tabulation available at <http://www.census.gov/people/eeotabulation/data/eeotables20062010.html>
- Contractors' VEVRAA Hiring Benchmark Database projected in Q2 of FY2014
- Employment Resource Referral Directory at <http://www.dol-esa.gov/errd/index.html>

OFCCP believes that advances in technology make contractor compliance with the recordkeeping and reporting requirements easier and less burdensome. However, in the absence of empirical data, OFCCP is unable to quantify the impact of improved information technology. Accordingly, OFCCP does not include it in the calculation of burden hours.

Pursuant to the Government Paperwork Elimination Act (GPEA, P.L. 105-277, 1998), by October 2003, Government agencies must generally provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable. OFCCP fulfills its GPEA requirements by permitting electronic transmission, via e-mail or computer disk, of contractors' documentation.

#### **4. Description of Efforts to Identify Duplication**

The reporting and recordkeeping requirements in this request result exclusively from the implementation of EO 11246, Section 503, and VEVRAA. These authorities uniquely empower the Secretary of Labor, and by a Secretary's Order, the OFCCP, to

require the collection, analysis, and reporting of data and other information in connection with the enforcement of the laws and regulations requiring Government contractors to take affirmative action to ensure equal employment opportunity. No duplication of effort exists because no other Government agencies have these specific data collection requirements.

Where possible, OFCCP participates in information sharing and standardized requirements. Examples are OFCCP's joint collaboration on and use of EEOC's EEO-1 Report, and OFCCP's use of UGESP created with EEOC, OPM, DOJ and DOL. See Part 60-3.

While contractors maintain other employment data as a normal course of business, the 16 construction affirmative action specifications are unique in that contractors engage in specific activity to comply with the requirements of OFCCP regulations. This documentation is not available from any other source.

## **5. Collection by Small Organizations**

OFCCP believes that its information collection does not have a significant economic impact on a substantial number of small entities. Generally for the purposes of identifying small business entities, OFCCP has determined that entities with fewer than 500 employees are small entities. Thus in making this determination, OFCCP compared the number of small business entities involved in construction to its construction contractor universe. Based on U.S. Census data there are 657,364 small construction firms that employ fewer than 500 people. Based on the May 2014 SAM data, there are 49,385 Federal construction contractors with fewer than 500 employees. Thus, comparing the number of small Federal contractors to the number of small construction contractor firms, OFCCP estimates that this ICR impacts approximately 7.5 percent of small construction firms.

OFCCP then examined the economic impact of the ICR. The estimated cost of the ICR is \$499 per contractor.<sup>19</sup> OFCCP compared the cost of the ICR to the receipts from the U.S. Census Bureau's Statistics of U.S. Businesses for the North American Industry Classification System Code 23, disaggregated by firm size. In comparing the average annual receipts (\$50,246) of the smallest construction firms, those firms with receipts below \$100,000, OFCCP determined that this ICR would account for less than one percent of the average annual receipts. Thus OFCCP believes that this ICR will not have a significant impact on small construction firms.<sup>20</sup>

## **6. Consequences for Federal Programs if this Information is Collected Less Frequently**

Less frequent collection could negatively affect civil rights enforcement activities because the data should reflect the contractor's existing workforce. Current

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<sup>19</sup> This estimate of \$499 includes the costs of recordkeeping, reporting, and operations and maintenance.

<sup>20</sup> The average annual receipts for firms with sales/receipts/revenues below \$100,000 is \$50,246. Therefore, comparing the cost of the ICR, \$499 to the average annual receipts equals 0.0993 ( $\$499/\$50,246 = 0.0993$ ).

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 a Federal contractor's affirmative action activities because the demographics of their workforce would not be reported. As a result, contractors' efforts to recruit, hire, and retain minority and female employees may be inadequate or misdirected. More current data therefore allows contractors to make more efficient use of the resources it employs to satisfy outreach and recruitment obligations.

For construction contractors that file EEO-1 Reports annually, less frequent collection could negatively affect OFCCP's civil rights enforcement activities because the agency would no longer have access to the most current data. As mentioned previously, EEO-1 data underpins our analyses of employment trends and patterns. Presently, data resulting from annual filing of the EEO-1 Report is one year old by the time OFCCP receives it; it can be 2 years old by the time OFCCP obtains new or updated data. If OFCCP allows contractors to file EEO-1 Reports in alternate years, the agency would receive and use data that is between two to four years old. The older the data the greater the chances are that more qualified workers may be victims of discrimination and that the discrimination continues for a longer period. A consequence may be that make whole remedies and the overall burden of contractor compliance are greater.<sup>21</sup>

## **7. Special Circumstances for the Collection of Information**

Section 41 CFR 60-4.3(a)7.d requires contractors to immediately notify OFCCP's Director in writing when the union or unions with which a specific contractor has a collective bargaining agreement has not referred a woman or minority individual that was sent by that contractor. Similarly, contractors must notify OFCCP when they have information that the union referral process has impeded contractors' efforts to meet the obligations under these regulations.

This requirement is necessitated by Section 207 of EO 11246. Pursuant to this section, OFCCP is required to take action to ensure that any union or other agency referring workers on Federal contracts cooperates with the implementation of the Order. Further, when appropriate, OFCCP must notify the EEOC, DOJ, 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 contractors.

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<sup>21</sup> A victim of employment discrimination may be entitled to a remedy that places him or her in the position he or she would have been in if the discrimination had not occurred. This may mean that the victim may be entitled to hiring, promotion, reinstatement, back pay, a pay raise, or reasonable accommodation, including reassignment. OFCCP does not recover punitive damages.

## 8. Consultation Outside the Agency

This ICR was published on September 2, 2014 for a sixty day notice and comment period (79 FR 52044). OFCCP received one comment from a trade association during the 60-day comment period. The comment was given careful consideration and the issues are summarized and answered below. The issues raised in the comment are grouped into four general categories: OFCCP's estimate of the construction contractor universe is not correct, the estimate of burden is understated, the impact of the information collection on small contractors is incorrect, and that the construction industry does not need to be regulated.

### a. Size of the Construction Contractor Universe.

In considering the size of the construction contractor universe, the commenter argued that OFCCP's estimate did not include subcontractors, federally assisted construction contractors, and non-federal contracting establishments that may be impacted by the regulations. The commenter also indicated that the requirements are per establishment as compared to per company stating that the number used by OFCCP may be misleading. As an alternative, the commenter proposed that OFCCP use the number of establishments identified in its 2013 rulemaking related to the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) as a starting point. The numbers were derived from the Veterans Employment and Training Services annual report (VETS-100/100A). Alternatively the commenter suggests that OFCCP used the Employer Information Report EEO-1 (EEO-1 Report).

In determining its universe, OFCCP considered a number of sources. As the commenter indicated, in the VEVRAA rulemaking, OFCCP relied on a combination of the 2009 VETS-100/100A data and 2009 EEO-1 reporting data. The result was a universe of 251,300. This same universe could not be used as the data is no longer current and it included both supply and service contractors and construction contractors.

OFCCP then considered using just the VETS-100/100A. This report was completed by contractors and subcontractors with a Federal contract or subcontract entered into or modified on or after December 1, 2003 in the amount of \$100,000 or more. If the contractor or subcontractor had a contract of \$25,000 or more entered into before December 1, 2003 and not since modified, then then contractor or subcontractor was required to complete a VETS-100 Report. In considering this data, OFCCP determined that in 2012 approximately 1,900 construction contractors completed a VETS-100/100A for approximately 6,300 locations. Although this reflects just Federal construction contractors, OFCCP did not use this data source because it does not include contractors with contracts between \$10,000 and \$99,999 nor did it include federally assisted construction contractors.

OFCCP also considered using EEO-1 Reports. Construction contractors and first-tier subcontractors are required to submit EEO-1 reports if they have a contract or



first-tier subcontract of \$50,000 or more and if they employ 50 or more employees. In 2012, 1,946 construction contractors submitted EEO-1 Reports. OFCCP did not rely on EEO-1 Reports because it does not include construction employers with fewer than 50 employees nor does it address contractors and subcontractors with contracts between \$10,000 and \$49,999. In addition, subcontractors beyond the first tier are not required to submit EEO-1 Reports.

In the previous renewal of the construction information collection request, OFCCP relied on data from the Central Contractor Registration and the Federal Procurement Data System. Since that time, both data bases were merged into the General Services Administration's System for Award Management (SAM). Analysis of the data available in SAM showed 52,429 construction contractors registered. OFCCP believes that the SAM data may produce an overestimate of the entities affected because the data set includes: inactive contractors, contracts below the \$10,000 threshold, and recipients of Federal grants and Federal financial assistance. Although SAM does not necessarily include all subcontractors, thus potentially leading to an underestimate, but this limitation of the data is offset somewhat because of the overlap among contractors and subcontractors; a firm may be a subcontractor on some activities but have a contract on others and thus be included in the SAM data. There is at least one reason to believe the SAM data yield an underestimate of the number of entities affected by this rule and other reasons to believe the data yield an overestimate. Thus OFCCP relied on the SAM data as it was the most inclusive of its construction universe.

b. OFCCP's Under Estimate the Burden

The commenter argues that OFCCP underestimates the burden related to compliance in three areas: OFCCP's reliance on technology, the estimation of burden for training programs and the cost associated with the revised Section 503 of the Rehabilitation Act regulations, the revised VEVRAA regulations and the new rules nor does it include the time and cost burdens that contractors will incur as a result of the recently published Executive Orders. The commenter also argues that the total burden hours does not include the burden for new contractors to comply with a number of other requirements including burdens associated with the Davis-Bacon Act, E-Verify, Federal Acquisition Regulations, or the Drug-Free Workplace Act.

Although the commenter asserts that OFCCP relies on technology to reduce the burden assessed to contractors and explains that construction contractors do not maintain records electronically, in fact OFCCP's assessment of burdens and costs does not include a reduction for technology. As explained in the ICR, "...OFCCP is not able to quantify the impact of improved information technology. Accordingly, OFCCP does not include it in the calculation of burden hours. Thus the estimation of burden is based on a contractor not using technology.

Although the commenter indicates that the time to develop, deliver and document training is underestimated, no alternative estimates or supporting documentation was offered to support this statement. In estimating the time for training, OFCCP relied on its previously approved ICRs including the previous Construction ICR, and the VEVRAA and Section 503 ICRs. Thus OFCCP has not adjusted its estimates related to training included in the ICR.

The burden associated with complying with VEVRAA and Section 503 regulations are included under OMB control numbers 1250-0004 and 1250-0005. Estimates of burden for complying with future OFCCP rulemaking is assessed with those rules as appropriate. Estimates of other recordkeeping requirements associated with regulations not within OFCCP's jurisdiction are assessed by the responsible agency, for example, the estimate of burden for recordkeeping and reporting burdens associated with the Davis-Bacon Act are approved under OMB control number 1235-0018. Thus, no additional burden is assessed for these requirements in this ICR.

#### c. Impact on Small Contractors

Although the commenter asserts that OFCCP arbitrarily selected fewer than 500 employees as its definition of a small business entity, in fact OFCCP used this number in both the VEVRAA and Section 503 regulations, see 78 Federal Register 586656 and 78 Federal Register 58727(24 September 2013). OFCCP agrees with the commenter that most of the construction contractors affected by this ICR are small entities. Yet, the economic impact of this ICR is not significant. As the commenter asserts the Small Business Administration sets the small business size in construction based on average annual receipts. For the construction industry, the small business size ranges from \$15 million for Specialty Trade Construction to \$36.5 million for Heavy and Civil Engineer Construction. As discussed above, OFCCP determined that when it compared the estimated cost of the ICR \$499 to the smallest construction firms, those firms with receipts below \$100,000, OFCCP determined that this ICR would account for less than one percent of the average annual receipts. OFCCP's analysis of the impact on small contractors is not arbitrary and considers both firm size as well as economic impact.

#### d. Need to Regulate Construction Contractors and Subcontractors

Citing the labor shortage in the industry, the belief that employment discrimination is not prevalent, and the representation of minorities (Black or African American, Asian, or Hispanic or Latino) construction and extraction occupations, the commenter asserts that there is no need to regulate construction contractors and subcontractors.

Respectfully, OFCCP disagrees with this assertion. Generally, there are broad societal benefits to having antidiscrimination laws not only to those workers who are explicitly able to mobilize their rights and obtain redress, but also to the

workforce and the economy as a whole. In general discrimination is incompatible with an efficient labor market. Discrimination interferes with the ability of workers to find jobs that match their skills and abilities and to obtain wages consistent with a well-functioning marketplace.<sup>22</sup> Discrimination may reflect market failure, where collusion or other anti-discriminatory practices allow majority group members to shift the costs of discrimination to minority group members.<sup>23</sup>

For this reason, effective anti-discrimination enforcement can promote economic efficiency and growth. For example, a number of scholars have documented the benefits of the civil rights movement and the adoption of Title VII of the Civil Rights Act of 1964 on the economic prospects of workers and the larger economy.<sup>24</sup> One recent study estimated that improved workforce participation by women and minorities, including through adoption of civil rights laws and changing social norms, accounts for 15 to 20 percent of aggregate wage growth between 1960 and 2008.<sup>25</sup>

Additionally, occupational sex segregation remains widespread. In 2012 nontraditional occupations for women employed only six percent of all women, but 44 percent of all men.<sup>26</sup> A recent study shows that women make up 2.6 percent of workers in construction and extraction occupations. The study shows that women of color fair worse with Hispanic women constituting 0.4 percent, African American women 0.3 percent, Asian women 0.1 percent and American Indian/Alaskan Native 0.1 percent of all construction workers.<sup>27</sup> This sex segregation negatively affects women's income and the economy as a whole.

Moreover, sexual harassment continues to be a serious problem for women in the construction industry and a significant barrier to women's entry into and

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22 Shelley J. Lundberg and Richard Starz, "Private Discrimination and Social Intervention in Competitive Labor Markets," 73 *American Economic Review* 340 (1983); Dennis J. Aigner and Glen G. Cain, "Statistical Theories of Discrimination in Labor Markets," 30 *Industrial and Labor Relations Review*, 175 (1977).

23 Kenneth J. Arrow, "What Has Economics to Say about Racial Discrimination?" 12 *The Journal of Economic Perspectives* 91 (1998).

24 J. Houlton Verkerke, "Free to Search," 105 *Harvard Law Review* 2080 (1992); James J. Heckman and Brook S. Payner, "Determining the Impact of Federal Anti-Discrimination Policy on the Economic Status of Blacks: A Study of South Carolina," 79 *American Economic Review* 138 (1989).

25 Hsieh, C., Hurst, E. Jones, C. I., Klenow, P. J. "The Allocation of Talent and U.S. Economic Growth." NBER Working Paper. (2013).

26 Ariane Hegewisch & Heidi Hartmann, Institute for Women's Policy Research, *Occupational Segregation and the Gender Wage Gap: A Job Half Done* (2014), available at <http://www.iwpr.org/publications/pubs/occupational-segregation-and-the-gender-wage-gap-a-job-half-done> (last accessed Oct. 3, 2014) (citations omitted); see also Ariane Hegewisch et al., *The Gender Wage Gap by Occupation*, Fact Sheet #C350a, The Institute for Women's Policy Research, available at [http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2/at\\_download/file](http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2/at_download/file) (last accessed Oct. 3, 2014) [hereinafter IWPR Wage Gap By Occupation].

27 National Women's Law Center, *Women in Construction: Still Breaking Ground*, (2014), available at <http://www.nwlc.org/resource/women-construction-still-breaking-ground>, (last accessed November 21, 2014).

advancement in the construction trades.<sup>28</sup> A study by the Advisory Committee on Occupational Safety and Health regarding women in construction states that on many jobsites women are not welcome. Those women who are hired as construction workers tend to experience gender and sexual harassment on the job. The National Institute of Occupational Safety and Health and Safety (NIOSH) indicating that 41 percent of female construction workers suffer from gender harassment and the Chicago Women in the Trades study showing 88 percent of women reported sexual harassment.<sup>29</sup> Additionally, although the commenter is correct in its reference to the representation of minorities in broad category of construction and extraction occupations, a deeper look at the data shows that minorities are concentrated in the lower paying construction occupations. Thus, OFCCP believes that there is a need for regulating the construction industry.

In conclusion, after giving serious consideration to the comment received, OFCCP has reviewed its proposed ICR. It has retained its calculations of burden as proposed and requests that OMB approve its agency's construction recordkeeping and reporting requirements (OMB Number 1250-0001).

## **9. Gift Giving**

OFCCP provides neither payments nor gifts to respondents.

## **10. Assurance of Confidentiality**

Contractors who submit the required information during a compliance evaluation may view it as extremely sensitive information. OFCCP will evaluate all information pursuant to the public inspection and disclosure 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 contractors whose records are the subject of FOIA disclosure requests be notified in writing and that OFCCP make no decision to disclose information until contractors affected by the FOIA request have an opportunity to submit objections to the release of the information.

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<sup>28</sup> In FY 2013, the EEOC received 7,256 sexual harassment charges (out of 93,727) U.S. Equal Employment Opportunity Commission, Enforcement & Litigation Statistics, Sexual Harassment Charges FY 2010 - 2013, available at [http://www.eeoc.gov/eeoc/statistics/enforcement/sexual\\_harassment\\_new.cfm](http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm) (last accessed Nov. 2, 2014); U.S. Equal Employment Opportunity Commission, Enforcement and Litigation Statistics, Charge Statistics: FY 1997 Through FY 2013, available at <http://eeoc.gov/eeoc/statistics/enforcement/charges.cfm> (last accessed Nov. 2, 2014). In FY 2011 (the last year for which combined data is available), the EEOC and state and local fair employment practices agencies together received just over 11,300 charges of sexual harassment. The average number of such claims filed per year from FY 2000 through FY 2011 was 13,446. OFCCP calculations from data in U.S. Equal Employment Opportunity Commission, Enforcement & Litigation Statistics, Sexual Harassment Charges: EEOC & FEPA's Combined: FY 1997 - FY 2011, available at [http://www.eeoc.gov/eeoc/statistics/enforcement/sexual\\_harassment.cfm](http://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment.cfm) (last accessed Nov. 2, 2014).

<sup>29</sup> U.S. Department of Labor Advisory Committee on Occupational Safety and Health, *Women in the Construction Workplace: Providing Equitable Safety and Health Protection*, (1999),

Furthermore, it is OFCCP's position that it does not release any data obtained during the course of compliance evaluations until the matters 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 its compliance evaluations. Where allegations of employment discrimination are present, such evidence may become relevant. Under such circumstances, OFCCP may seek evidence concerning the attitudes or biases of selecting officials regarding race, sex, color, religion, national origin, disability or veteran status, as appropriate. OFCCP has no set of standardized questions and the gathering of such data is unique to each investigation.

OFCCP regulations require contractors to list employees and applicants by sex and by race or ethnicity in their employment activity data (see 41 CFR 60-1.12(c), 60-3.4, and 60-3.15). Contractors and the government require race, sex, and ethnicity data to evaluate the results of contractors' affirmative action efforts. Data are also required to investigate for indicators of potential employment discrimination. No equal employment opportunity program could operate without such data. Generally, contractors inform their employees that they collect and maintain race, sex, and ethnicity data strictly for purposes of meeting their nondiscrimination and affirmative action obligations.

A separate ICR covers employee complaint investigations approved by the OMB under OMB No. 1250-0002 – "Complaint of Discrimination in Employment Under Federal Government Contracts" (Form CC-4). Form CC-4 requires a description of an individual's disability, if disability discrimination is alleged. Consequently, OFCCP considers this a sensitive question. The disability information is necessary to establish jurisdiction under Section 503 of the Rehabilitation Act of 1973, as amended. As noted in number 10 above, OFCCP assures compliance with the Privacy Act of 1974.

## **12. Estimate of Information Collection Burden**

The following is a summary of the methodology used by OFCCP for the calculation of the recordkeeping, reporting, and third party disclosure burden requirements for OFCCP's construction ICR.

### **a. Recordkeeping and Disclosure Burden**

OFCCP's regulations impose a recordkeeping burden for developing, updating, and maintaining documentation and records related to contractors' efforts to comply with OFCCP's regulations. The below calculations of hours for each requirement is based on information provided by OFCCP field staff.

(1) Equal Opportunity Clause

Section 60-1.4(a)(7) requires all covered construction contractors to include the equal opportunity (EO) clause in all nonexempt subcontracts. The Federal government supplies to contract clause verbatim. The EO clause may be incorporated by reference or operation<sup>30</sup> into subcontracts, thus there is no burden associated with this requirement. The Department assumes contractors who choose not to use the language provided by the Government do so for internal reasons not related to the PRA, as a no burden option exists.

(2) Uniform Guidelines on Employee Selection Procedures

Four Federal agencies, in addition to OFCCP, use UGESP. However, nearly all of the burden hours are associated with the EEOC, OFCCP, and DOJ; the fourth agency, OPM, assumes little if any burden related to the collection and retrieval of employment data required under UGESP.

The EEOC, under OMB Number 3046-0017, accounts for all employers with 15 or more employees. Federal construction contractors with 1 - 14 employees are subject to OFCCP's recordkeeping requirements. Based on information in the SAM, OFCCP estimates that there are 29,642 construction contractors that employ between 1 and 14 employees; OFCCP estimates that, on average, contractors expend 2.18 hours meeting this obligation. Therefore, OFCCP believes that the burden for this provision is 64,620 hours (29,642 contractors x 2.18 hours = 64,620 hours).

(3) Solicitations

Section 60-4.2 requires all contracting officers, applicants for construction contracts, and covered nonconstruction contractors to include the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" set forth in section 4.2 in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts. This clause is information originally supplied by the Government and incorporated by operation of the order, thus there is no burden associated with its incorporation.<sup>31</sup>

(4) Maintenance of Documentation

Section 60-4.3(a)7 requires contractors to maintain records and documentation demonstrating efforts to comply with the 16 affirmative action specifications. The requirements and estimated hours of burden are detailed in numbers (5) through (19) below.

(5) Ensure Work Environment Free of Harassment

Section 4.3(a)7.a requires contractors to maintain a work environment free of harassment, intimidation, and coercion. In doing this, contractors are required to ensure that supervisory staff are aware of and carry out contractors' obligations.

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30 41 CFR 60-1.4(d) and 1.4(e).

31 5 CFR 1320.3(b)(2) and -.3(c)(2); 41 CFR 60-4.9.

Burden hours associated with supervisor training and evaluation are included in numbers (11) and (20) below. Thus, there is no burden associated with this requirement.

(6) Develop, Maintain and Use a List of Recruitment Resources

Section 4.3(a)7.b requires contractors to develop and maintain current lists of minority and female recruitment sources, provide written notification to these sources when a contractor or its unions have employment opportunities, and maintain records of the notification. OFCCP estimates that for first-time contractors it takes 0.33 hours (20 minutes) to identify and establish a list of sources. OFCCP also estimates that it takes 0.17 hours (10 minutes) for existing contractors to maintain their list. Based on its experience, OFCCP assumes that 1 percent of its universe is first-time contractors and 99 percent are existing contractors. Thus, the burden for developing and maintaining a current list of sources is estimated as 8,997 hours.  $52,429 \times 1 \text{ percent} = 524$  first time contractors.  $52,429 \times 99 \text{ percent} = 51,905$  existing contractors.  $((.33 \text{ hours} \times 524 \text{ first time contractors} = 173 \text{ hours}) + (.17 \text{ hours} \times 51,905 \text{ existing contractors} = 8,824))$ .

In addition, OFCCP estimates it takes 0.25 hours (15 minutes) to notify the sources on the list when opportunities occur and 0.08 hours (5 minutes) to maintain records of the notifications. Thus, OFCCP estimates the burden for notification and maintaining documentation is 17,302 hours  $(.33 \text{ hours} \times 52,429 \text{ contractors})$ .

In sum, OFCCP estimates the total burden hours for complying with this requirement (including developing and maintaining the list of sources, contacting the sources, and maintaining copies of the notices sent) at 26,299 hours.  $(8,997 \text{ hours} + 17,302 \text{ hours})$ .

(7) Maintain Current Files of Minority and Female Applicants

Section 4.3(a)7.c requires contractors to maintain a current file of minority and female applicants and referrals from all sources and to document in the file the actions taken with respect to each individual. OFCCP estimates it takes 0.25 hours (15 minutes) to maintain the file. Therefore, OFCCP estimates the burden for this requirement is 13,107 hours  $(0.25 \text{ hours} \times 52,429 \text{ contractors})$ .

Additionally, OFCCP estimates that, on average, contractors take no more than 0.17 hours (10 minutes) for each applicant and make no more than 10 decisions annually. Therefore, OFCCP estimates 89,129 hours  $(.17 \text{ hours} \times 10 \text{ decisions} \times 52,429 \text{ contractors})$  to comply with this requirement.

OFCCP estimates the total burden hours for complying with this requirement is 102,236 hours  $(13,107 \text{ hours} + 89,129 \text{ hours})$ .

(8) Notify OFCCP's Director

Section 4.3(a)7.d requires contractors to notify OFCCP's Director in writing when the union or unions with which any contractor has a collective bargaining agreement has not referred a minority or female applicant that was sent by the contractor. Similarly, contractors must notify OFCCP's Director if any contractor has information that the union is impeding its efforts to meet the obligations of these requirements. OFCCP receives very few such requests, thus it estimates the total burden for such a request to as 10 hours, which includes both the recordkeeping and the reporting.

(9) Develop On the Job Training

Section 4.3(a)7.e requires contractors to develop on the job training opportunities or participate in training programs for the job areas which expressly include minorities and women. In addition, contractors must provide notice of these opportunities and job programs to its recruitment sources, state employment offices, and other referral sources that have been compiled under 41 CFR 60-4.3(a)7.b. OFCCP estimates the burden hours associated with documenting the development of training programs or enrolling minorities and women in existing training programs is 0.75 hours (45 minutes). OFCCP estimates the burden associated with maintaining records of employees' participation in training is 0.25 hours (15 minutes). Additionally, OFCCP estimates that maintaining records of contributions to training programs takes 0.25 hours (15 minutes). Therefore, OFCCP estimates the hours associated with this burden as 65,536 hours (1.25 hours x 52,429 contractors).

(10) Disseminate EEO Policy Statement to Unions and Training Programs

Section 4.3(a)7.f requires contractors to broadly disseminate its EEO policy statement, including, but not limited to: sending it to unions and training programs; publishing it in policy manuals; and including it in collective bargaining agreements. It also requires contractors to review the EEO policy with all management and minority and female employees, and to post it for all employees.

In estimating the burden, OFCCP believes that first-time contractors make up 1 percent of the construction contractor universe (524 contractors). OFCCP estimates it would take 0.33 hours (20 minutes) for a first time contractor to develop an EEO policy statement. OFCCP believes existing contractors require 0.17 hours (10 minutes) to review and update their existing EEO policy statement. Thus, OFCCP estimates 8997 hours  $((.33 \text{ hours} \times 524 \text{ first time contractors} = 173 \text{ hours}) + (.17 \text{ hours} \times 51,905 \text{ existing contractors} = 8,824 \text{ hours}))$  for contractors to either update or develop an EEO policy statement.

OFCCP estimates it will take 0.25 hours (15 minutes) for first-time contractors to incorporate the policy statement into employee handbooks and policy manuals. Therefore it estimates the burden of this requirement as 131 hours (0.25 hours x 524 first-time contractors). In addition, OFCCP estimates it will take 0.25 hours



for all contractors to provide notification to unions and other recruitment sources. Thus the burden of notification is 13,107 hours (0.25 hours x 52,429 contractors).

OFCCP estimates it will take 0.5 hours (30 minutes) for all contractors to document the discussion of the policy with employees and its internal posting. Thus OFCCP estimates the burden of this requirement to be 26,215 hours (0.5 hours x 52,429 contractors).

In sum, OFCCP estimates the total burden for this provision to be 48,450 hours (8,997+ 131 + 13,107 + 26,215).

- (11) Review EEO Policy Annually with Employees Having Hiring Responsibilities  
Section 4.3(a)7.g requires contractors annually to review the EEO policy with all employees having hiring responsibilities for personnel activities (e.g., hiring, promotion, termination, lay-off, etc.). OFCCP estimates it will take an average of 2 hours to develop, deliver and document the annual training. Thus, OFCCP estimates the burden to be 104,858 hours (2 hours x 52,429 contractors).
- (12) Disseminate EEO Policy Externally  
Section 4.3(a)7.h requires contractors to disseminate EEO policy statements in advertisements in the news media and to other contractor and subcontractors. OFCCP estimates it will take all contractors 0.5 hours to develop correspondence and send it. Thus, OFCCP estimates the burden for this requirement to be 26,215 hours (0.5 hours x 52,429 contractors).
- (13) Direct Recruitment Efforts to Community Organizations and Schools  
Section 4.3(a)7.i requires contractors to direct its recruitment efforts to community organizations and schools with minority and female participants and students. Actions associated with this requirement are accounted for in the burden assessment for section 41 CFR 60-4.3(a)7.b. Therefore, OFCCP estimates no additional burden for this requirement.
- (14) Encourage Employee Referrals  
Section 4.3(a)7.j requires contractors to encourage current minority and female employees to recruit other minority and female employees. It also requires contractors, where reasonable, to provide summer and afterschool employment to minority and females. OFCCP estimates that it takes contractors 0.25 hours to comply with this requirement. Thus, the burden estimate is 13,107 hours (0.25 hours x 52,429 contractors).
- (15) Validate Tests  
Section 4.3(a)7.k requires contractors to comply with the UGESP requirements. As explained above, the burden associated with complying with the UGESP burden is assumed under OMB Number 3046-0017 for contractors with 15 or more employees. Further, OFCCP accounts for employers with 1 to 14

employees in its calculation of UGESP burden found in this ICR at Item number 12 a (2). Thus, there is no additional assessment of burden for this requirement.

(16) Conduct an Annual Inventory of Employees

Section 4.3(a)7.l requires contractors to conduct an annual inventory of minority and female employees for promotional and developmental opportunities. OFCCP estimates it takes 0.5 hours to conduct the assessment and maintain documentation. Thus, the burden estimate for this requirement is 26,215 hours (0.5 hours x 52,429 contractors).

(17) Ensure Personnel Practices Do Not Have a Discriminatory Effect

Section 4.3(a)7.m requires contractors to ensure that its personnel practices (e.g., seniority, job classifications, work assignments, etc.) do not have a discriminatory effect. OFCCP estimates that on average contractors spend 0.5 hours (30 minutes) documenting its activities that comply with this requirement. Thus, the burden estimate for this requirement is 26,215 hours (0.5 hours x 52,429 contractors).

(18) Ensure Facilities are Not Segregated

Section 4.3(a)7.n requires contractors to ensure that its facilities are non-segregated. The exception is the provision for separate or single user toilet and changing facilities to provide privacy between the sexes. OFCCP estimates it takes contractors 0.25 hours (15 minutes) to maintain material evidence of compliance with this requirement. Thus OFCCP estimates the burden as 13,107 hours (0.25 hours x 52,429 contractors).

(19) Document and Maintain a Record of All Solicitations of Offers for Subcontractors

Section 4.3(a)7.o requires contractors to maintain documentation of all solicitations and offers from minority and female construction contractors or suppliers. OFCCP estimates that it takes 0.5 hours (30 minutes) to maintain a file of documentation that includes all solicitation and offers as required. Thus OFCCP estimates the burden as 26,215 hours (0.5 hours x 52,429 contractors).

(20) Evaluate Supervisor Performance

Section 4.3(a)7.p requires contractors to evaluate annually the performance of its supervisory personnel on their performance under the EEO and affirmative action requirements of these specifications. OFCCP estimates that, on average, it takes contractors 0.75 hours (45 minutes) to compile written evidence that supervisory personnel have been notified regarding their performance with regard to each contractor's EEO and affirmative action obligations. Thus, OFCCP estimates the burden as 39,322 hours (.75 hours x 52,429 contractors).

(21) Hometown Plans

Sections 4.4 and 4.5 detail the requirements of contractors that participate in approved Hometown Plans. OFCCP no longer approves Hometown Plans, thus no burden is assessed for this provision.

**Recordkeeping Total**

The table below summarizes the recordkeeping burden hours.

<u>Hours</u>	<u>Item</u>
0	EO Clause
64,620	UGESP Recordkeeping
0	Solicitation
554,099	16 Affirmative Action Provisions
<u>0</u>	Hometown Plans
618,719	Total Recordkeeping Burden

OFCCP estimates the combined recordkeeping burden for compliance with the construction requirements of EO 11246 as 618,719 hours, or approximately 12 hours per contractor.<sup>32</sup>

b. Reporting Burden

OFCCP’s reporting burden for construction contractors, as detailed below, includes providing notification of subcontract awards, filing EEO-1 Reports, providing documentation during compliance evaluations, notifying the OFCCP Director as prescribed at 41 CFR 60-4.3(a)7.d, and a third party reporting provision.

(1) Notification of Subcontract Awards

Subsection 60-4.2(d)3 requires contracting officers, applicants for construction contracts, covered nonconstruction contractors, and Federal construction contractors to notify OFCCP within 10 working days of awards of covered contracts and subcontract awards in excess of \$10,000. OFCCP estimates it would take 0.5 hours (or 30 minutes) to identify the needed information, develop it, and send the notification to OFCCP. Using data from USASpending.gov to further inform OFCCP’s estimate of burden, OFCCP determined that there are 63,411 Federal construction contracts and 8,309 federally assisted grants awarded annually on average.<sup>33</sup> Thus, there are approximately 71,720 prime construction contract awards. There is no reliable source of data for subcontract awards;

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<sup>32</sup> Per contractor burden is determined by dividing the total hours (631,826) by the construction contractor universe of 52,429.

<sup>33</sup> OMB established USA Spending as a single searchable website of Federal spending activities accessible to the public. The website details information on individual awards of federal monies including contracts and grants. The average construction contracts are based on fiscal years 2010 through 2012 (65,964+65,136+59,134) divided by 3. The average federal assistance was based on an examination of each agencies individual list of grants for the same period of time (7,612+8,189+9,127), identifying the number of grants that are described as construction, repair, and remediation. Thus the number is approximated as not all agencies provide complete descriptions of the funded work.

absent hard data, OFCCP estimates there are approximately 4 subcontracts for each prime contract award, and thus OFCCP estimates that there are 286,880 notifications (71,720 construction contracts x 4 notifications) sent annually. To determine the average number of notifications sent by each contractor, OFCCP divided 286,880 notifications by the contractor universe of 52,429, which results in an average of roughly five notifications sent to OFCCP annually. Thus, the estimated burden associated with this requirement is 131,073 hours (0.5 hours x 5 notifications annually x 52,429 contractors).

(2) EEO-1 Reports

Construction contractors with 50 or more employees and a contract of \$50,000 or more are required to file EEO-1 Reports with the Joint Reporting Committee. The burden associated with this Information Collection, submitted by EEOC, is approved under OMB No. 3046-0007. Therefore, OFCCP does not assess burden for this requirement as a part of this ICR.

(3) Compliance Evaluations

Section 60-1.20 describes OFCCP's compliance evaluation process. During compliance evaluations of construction contractors, OFCCP does not request documentation when scheduling the evaluation. Rather, the evaluation is scheduled and documents and information are gathered during the onsite investigation. Although OFCCP believes that this request for documentation would be considered exempt from the requirements of the Paperwork Reduction Act of 1995 (see 44 U.S.C. 3518), it estimates burden for contractors analyzing requests for information (1 hour) and retrieving documents (2 hours).<sup>34</sup> Thus, OFCCP estimates the reporting burden during a compliance evaluation as 3 hours. OFCCP further asserts that it has conducted, on average, 498 compliance evaluations annually.<sup>35</sup> Therefore, OFCCP estimates the burden associated with this reporting requirement as 1,494 hours (3 hours x 498 compliance evaluations).

(4) Notifying OFCCP's Director

Section 4.3(a)7.d requires contractors to notify OFCCP's Director in writing if the union or unions with which any contractor has a collective bargaining agreement are impeding a contractor's efforts to comply with the requirements. Based on OFCCP's experiences with this provision, it estimates a total of an additional 10 hours burden for compliance.

c. Third Party Disclosure to Labor Unions

OFCCP's third party disclosure burden hours are based on 41 CFR 60-1.4(a)(3), 60-300.5(a)10, and 60-741.5(a)5, which require contractors to notify its labor organizations that it must comply with EO 11246, VEVRAA, and Section 503, respectively. Contractors may notify the organizations by mail, telephone,

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<sup>34</sup> The two hours includes retrieval of Section 503 and VEVRAA AAPs if the contractor scheduled has more than 50 employees and a direct contract of \$50,000 or more for the Section 503 AAP and a direct contract of \$100,000 or more for the VEVRAA AAP.

<sup>35</sup> OFCCP averaged the number of construction compliance evaluations during fiscal years 2010 through 2013 (515, 550,511, and 414) to determine the number of construction compliance evaluations.

facsimile, or e-mail. Assuming it takes 30 minutes to compose and 30 minutes to distribute written notification by mail to its labor organizations, OFCCP estimates an average of 1 hour per contractor, or 52,429 hours for notifying labor organizations. This is almost certainly an overestimation because it assumes that all contractors are a party to a collective bargaining agreement and further assumes they would use mail distribution, which takes longer than electronic distribution.

### **Reporting and Third Party Disclosure Total**

<u>Hours</u>	<u>Item</u>
131,073	Notification of Subcontract Award
0	EEO-1 Reporting
1,494	Compliance Evaluations
10	Notifying OFCCP's Director
<u>52,429</u>	Third Party Disclosure
185,006	Total Reporting Burden

OFCCP estimates that the combined reporting and third party disclosure provisions of the construction ICR are 185,006 hours or approximately 4 hours per contractor.

### **Summary of Recordkeeping, Reporting and Third Party Disclosure**

The table below shows the sum of OFCCP's estimate of recordkeeping, reporting and third party disclosure burden for its construction ICR.

309,360	Total Recordkeeping Burden Hours. Assumes half of the time spent in 12a activities are for recordkeeping and the other half to meet substantive disclosure requirements. (618,719/2 = 309,359 Item 12a hours allocation)
132,577	Total Reporting Burden Hours
361,788	Total Third Party Disclosure Burden Hours Assumes half of the time spent in 12a activities are for recordkeeping and the other half to meet substantive disclosure requirements. (618,719 – 309,360 = 309,359 Item 12a hours allocation.) 309,359 + 52,429 = 361,758 hours.
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803,725	Total Recordkeeping, Reporting, and Third Party Disclosure Burden Hours

d. Burden Hours monetization

The contractors’ estimated annualized cost is based on Bureau of Labor Statistics data in the publication, “Employer Costs for Employee Compensation” - December 2013 ([http://www.bls.gov/news.release/archives/ecec\\_03122014.htm](http://www.bls.gov/news.release/archives/ecec_03122014.htm)), which lists total compensation (including wages and benefits) for management, professional, and related occupations as \$51.58 per hour and administrative support as \$24.23 per hour. Based on OFCCP’s experience conducting compliance evaluations, OFCCP estimates that 30 percent of the burden hours will be management, professional, and related occupations (Mgmt. Prof.) and 70 percent will be administrative support (Adm. Supp.).<sup>36</sup> OFCCP has calculated the total estimated annualized cost as follows:

$$\text{Mgmt. Prof.: } 803,725 \text{ hours} \times .30 \times \$51.58 = \$12,436,841$$

$$\text{Adm. Supp.: } 803,725 \text{ hours} \times .70 \times \$24.23 = \$13,631,980$$

$$\text{Total annualized cost estimate} = \$26,068,820$$

Estimated average cost per contractor is \$497 (\$26,068,820/52,429).

### 13. Annual Operations and Maintenance Cost Burden to Respondents

OFCCP estimates that contractors will have operations and maintenance costs associated with this collection. Those costs are associated with the notification of subcontract awards, notifying OFCCP’s Director, and the third party disclosure.

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<sup>36</sup> Generally construction companies are small and the recordkeeping activities are performed by administrative support staff. Management involvement occurs as oversight to recordkeeping activities and during compliance evaluations (reporting). Thus, 30 percent of the total hour calculation (performed by management level employees) is 245,050 hours, and 70 percent is 571,782 hours.

OFCCP estimates that the notifications will be sent by United States Postal Service (USPS) and email. Based on its experience, OFCCP receives approximately 50 percent of its notices by email and 50 percent by USPS. There are no mailing costs associated with email transmissions. The table below shows the operations and maintenance cost for those contractors that use USPS to send their notifications.

Activity	Number of transmissions	Postage	
Notice of Subcontract Awards	143,440 (286,880 x .50)	0.49	\$70,286
Notice to OFCCP Director	1 (1 x .50)	0.49	\$0.49
Third party Disclosure	26,215 (52,429 x .50)	0.49	\$12,845
Total			\$83,131

The total estimated costs would be \$83,131, or approximately \$2 per contractor.

#### 14. Estimate of Cost to the Federal Government

OFCCP has estimated the cost to the Government as follows:

30 Hours per compliance evaluation	X	498 Compliance Evaluations	=	14,940 Hours
		TOTAL HOURS		14,940

OFCCP estimates the hourly rate at \$33.30 (GS-12, step 1), annual salary of \$69,497, based on the Office of Personnel Management’s 2014 Salary Table for the Rest of the U.S ([http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/RUS\\_h.pdf](http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/RUS_h.pdf) ) consisting of the portions of the lower 48 United States not located within another locality pay area as defined by the Office of Personnel Management. The total cost would be \$33.30 per hour x 14,940 hours = \$497,502. This dollar amount is part of the normal cost of OFCCP’s enforcement work at the field level.

#### 15. Changes in Burden

##### a. Recordkeeping Burden Hours

The previous submission in 2011 included 1,324,660 hours for recordkeeping and disclosures to subcontractors. The current request is for 618,719 hours. This

decrease of 705,941 hours in the burden is due to a decrease in the number of covered contractors in the universe. Specifically, OFCCP estimates that its universe decreased by 23,267 Federal construction contractor respondents.

b. Reporting Burden Hours

The previous submission in 2011 included 1,660 hours for reporting. The current request is for 132,577 hours, an increase of 130,917 hours. This increase is related to OFCCP revising its calculation related to the burden hours associated with contractors complying with the notification of subcontract awards found at 41 CFR 60-4.2(c).

c. Third Party Disclosure to Employee Burden Hours

The previous submission in 2011 included no hours for third party disclosures to employees. The current request is for 52,429 hours. This increase of 52,429 hours is due to recognition that the third party disclosure is not the same notification as found in 41 CFR 60-4.3(a)7.f.

d. Other Costs

The last submission did not include mailing costs that the agency now recognizes. This adjustment in the estimate reflects an \$83,131 increase.

**16. Statistical Uses and Publication of Data**

OFCCP does not publish the data collected by way of the items contained in this request as statistical tables.

**17. Approval Not to Display the Expiration Date**

OFCCP is not seeking such approval.

**18. Exceptions to the Certification Statement**

OFCCP is able to certify compliance with all provisions.

**B. Collections of Information Employing Statistical Methods**

This information collection does not employ statistical methods.