

## OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

### EQUAL PAY REPORT INSTRUCTION BOOKLET

The Equal Pay Report requires covered contractors and subcontractors to provide summary data on the compensation, total work hours, and number of employees by sex, race, ethnicity, and specified job categories. OFCCP is collecting this information pursuant to its authority under Executive Order (EO) 11246 and its implementing regulations at 41 CFR. 60-1.1, *et seq.* The EO prohibits employment discrimination, by covered Federal contractors and subcontractors, against employees and job applicants on the basis of race, color, religion, sex, sexual orientation, and gender identity and national origin.<sup>1</sup> These prohibitions also include compensation discrimination on the basis race, color, religion, sex, sexual orientation, gender identity or national origin.<sup>2</sup>

The requirements in Executive Order 11246 generally apply to any business or organization that: (1) holds a single Federal contract, subcontract, or Federally assisted construction contract in excess of \$10,000; (2) has Federal contracts or subcontracts with a combined total exceeding \$10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount.

The Equal Pay Report is a critical tool for eradicating gender and race-based compensation discrimination by enhancing two enforcement objectives: (1) greater voluntary compliance, and (2) greater deterrence of noncompliant behaviors by contractors, and OFCCP uses the summary data in the Equal Pay Report to establish objective industry standards for employee compensation, and to prioritize contractors and subcontractors for compliance evaluations. This prioritization is based on the amount of difference between a contractor's pay standards when compared to the established industry standards. In this way, OFCCP is able to direct its limited enforcement resources toward contractors and subcontractors for which reported data suggest potential pay violations. OFCCP also shares summary information about the industry standards for contractors to use as a tool when conducting self-analysis.

The regulations at 41 CFR 60-1.7 state the Equal Pay Report reporting obligations for covered contractors and subcontractors. Pursuant to these provisions, a failure to file a timely, complete and accurate Equal Pay Report constitutes a violation of Executive Order 11246 and its implementing regulations that may subject the contractor to the sanctions identified in paragraph (6) of the Equal Opportunity clause and in § 60-1.4(a) and (b) and §60-1.27.

---

<sup>1</sup> 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.

<sup>2</sup> *Ibid.*

## **1. WHO MUST FILE**

The Equal Pay Report must be filed by each contractor or subcontractor that:

- a) is not exempt from reporting in accordance with 41 CFR 60–1.5;
- b) has more than 100 employees;
- c) has a covered contract or subcontract with a duration of more than 30 days that is in effect on December 31<sup>st</sup> of the reporting year. A covered contract or subcontract includes any of the following: (i) has a contract, subcontract or purchase order amounting to \$50,000 or more or (ii) serves as a depository of Government funds in any amount, or (iii) is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes; and
- d) is a prime contractor, first tier subcontractor, or a subcontractor on a federal or federally-assisted construction project below the first tier if it meets the requirements of this section.

## **2. HOW TO FILE**

The regulations at 41 CFR 60-1.7(b)(3) requires electronic filing of the Equal Pay Report. Contractors and subcontractors should submit the Equal Pay Report using the online filing system available at [Link TBD]. Contractors that are unable to use the online filing system may submit a hardship exemption request to OFCCP pursuant to § 60-1.7(b)(3)(iii). See “Alternate Reporting Formats” below for more information on how to request a hardship exemption. Single establishment contractors must file a single Equal Pay Report. Multiple establishment contractors must file an Equal Pay Report for each of its establishments (regardless of size) including a report for the headquarters location. No consolidated reporting for the corporation is required.

## **3. COVERED REPORTING PERIOD**

The filing period for this report is January 1 to March 31 of each year. The report should cover total W-2 Wage and Tax Statement (W-2) earnings and total work hours for the calendar year, January 1 – December 31, for all employees included in your most recent EEO-1 Report. This employee number should include all employees whether or not they are still employed by you on December 31st.

## **4. WHEN TO FILE**

The annual report must be submitted to OFCCP no later than March 31 of each year.

## **5. ADDITIONAL INFORMATION**

If you have additional questions related to completing the Equal Pay Report, you can either visit OFCCP’s Website at <http://www.dol.gov/ofccp>, call OFCCP's toll free Help Desk at 1-800-397-6251, or email OFCCP at [OFCCP-Public@dol.gov](mailto:OFCCP-Public@dol.gov).

## **6. ALTERNATE REPORTING FORMATS**

OFCCP's Director may grant a hardship exemption from the requirement to submit the Equal Pay Report electronically where he or she concludes that electronic filing would impose an undue hardship on the contractor. The eligibility criteria and application procedures for the hardship exemption are available on the OFCCP website at [Link TBD].

Exemption requests should be sent to:

Division of Operations, Office of Federal Contract Compliance Programs, Room C-3325,  
200 Constitution Avenue, N.W., Washington, D.C. 20210.

OFCCP will grant hardship exemptions in exceptional circumstances such as unexpected technical difficulties that prevent a contractor or subcontractor from electronically submitting the Equal Pay Report by the filing deadline and, in the very rare instances, when a contractor's payroll and human resources systems or other necessary systems are not automated.

A contractor granted a hardship exemption must submit the Equal Pay Report in the format specified in the notification granting the exemption.

## **7. CONFIDENTIALITY**

OFCCP will treat information contained in the Equal Pay Report as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. It is the practice of OFCCP not to release contractor data where (1) the contractor is still in business, and (2) the contractor indicates, and through the Department of Labor review process it is determined, that the data are confidential and sensitive and that the release of data would subject the contractor to commercial harm.

OFCCP may publish aggregate information based on pay data collected from the Equal Pay Report, such as ranges or averages by industry, labor market, or other groupings, but only in such a way as not to reveal any particular establishment's data.

## **8. RECORDKEEPING**

In accordance with 41 CFR 60-1.7(c) and obligations in 41 CFR 60-1.12(a), each contractor shall retain its Equal Pay Report for a period of not less than two years from the date of the making of the report. 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.

## COMPLETING THE EQUAL PAY REPORT FORM

### **Section A: Type of Report**

In this section indicate, by marking in the appropriate box, the type of reporting unit for which the copy of the form is submitted. Mark only one box.

1. Single-establishment contractors are employers doing business at only one establishment in one location and should check the Single Establishment Equal Pay Report.
2. Multi-establishment contractors are employers doing business at more than one establishment. Multi-establishment contractors must complete a separate Establishment Equal Pay Report for each of its establishments regardless of the establishment's size and a headquarters report. Contractors should check the Establishment Equal Pay Report box for each of its establishments.
  - a) Headquarters Report: Multi-establishment contractors must complete an Equal Pay Report for their headquarters location. The report covering the headquarters office must be designated specifically as the Headquarters Equal Pay Report by checking the appropriate box. In addition, multi-establishment contractors must include the total number of Establishment Equal Pay Reports being filed by the contractor in response to Question 2 of this section. Include the Headquarters Equal Pay Report in the total number of reporting establishments.
  - b) Establishment Report: Multi-establishment contractors must report compensation data for all employees working at each company establishment or subsidiary establishment.

Multi-establishment contractors are not required to provide a consolidated or "rolled-up" Equal Pay Report to OFCCP.

### **Section B: Company Identification**

In this section indicate provide company identification information for the establishment completing the report and the Headquarters, if applicable. For single establishment contractors, complete the establishment portion of this section.

1. Headquarters: Provide the name and address of the headquarters office of multi-establishment contractor.
2. Establishment: Provide the name and address of the establishment. Additionally, provide the Employer Identification Number (Internal Revenue Service (IRS) 9-DIGIT Tax Number), and whether the Equal Pay Report was filed for the establishment last year.

**Section C: Contractor/Subcontractor Information**

In this section, enter the company's Dun and Bradstreet identification number if the company has one, the primary North American Industry Classification System (NAICS) Code, and the EEO-1 Number for the establishment (EEO-1 Unit Number) and the company (EEO-1 Company Number). EEO-1 numbers are found on the most recent submission of the EEO-1 Report.

**Section D: Male Employees and Female Employees**

This section includes two data tables. The first data table is used to report male employees and the second female employees. On each of these data tables, report the total number of employees, total work hours and total W-2 pay by race, ethnicity, and job category. The data to include in the tables is detailed below.

1. Total Employees:

- a) Include all full-time and part-time employees who were included in your most recent EEO-1 report for the reporting year. Do not include employees who were not covered in the EEO-1 Report.
- b) Every employee must be accounted for in only one of the job and race/ethnicity categories.

2. Race and Ethnicity Categories:

The race/ethnicity categories are the same as those used to file EEO-1 reports. Contractors should report employees on this report in the same manner (gender, race and ethnicity categories) as they were reported on the most recent EEO-1 Report. Refer to the Appendix for additional information on race and ethnicity categories.

3. Job Categories:

In order to simplify and standardize the method of reporting, all jobs are considered as belonging in one of the broad job categories shown in the reporting form. These job categories are the same as those used to file EEO-1 reports. Contractors should report employees in the same job categories as they were reported on the most recent EEO-1 Report. Refer to the Appendix for additional information on job categories.

4. W-2 Pay:

- a) Include the total W-2 pay reported for work from January 1 to December 31 of the previous year for all employees included in your most recent EEO-1 Report.
- b) W-2 pay is based on the pay listed in Box 1 of the W-2 form submitted annually to the IRS. Further information on what constitutes compensation data to be reported on the W-2 form (and therefore reported in the Equal Pay Report) can be found in the W-2 filing instructions and on the Employer Filing Instructions and Information website at <http://www.ssa.gov/employer/index.htm>.

5. Work Hours

- a) Include the total work hours from January 1 to December 31 for employees included in your most recent EEO-1 report for the reporting year.

- b) To calculate total work hours, add all the work hours for each employee within the race/ethnicity and job categories. In calculating work hours, you should use the following method:
- i. For salaried workers, provide actual hours of work if available. If the actual hours worked are not available, you may assume 2,080 hours for full-time employees and 1,040 for part-time employees.
  - ii. For hourly workers, provide actual hours of work.
  - iii. Reported hours may also be adjusted for part year work using date of hire or dates of absence (e.g., vacation or leave), but this is not required.

**Section E: Remarks**

In this section, include any remarks, explanations, or other pertinent information regarding this report.

**Section F: Representation and Certification**

In this section, the contractor's responsible official must make a representation about the accuracy of the report. This representation includes selecting the appropriate check box showing whether the report was completed at the headquarters or at the establishment. If the report was completed by the company headquarters, the contractor's responsible official will check the first box. By checking the second box the responsible official is representing that the report was completed by the establishment and not by company headquarters.

The contractor then must provide the name, title, signature and date of the company official certifying the report. In addition, provide the name, phone number and email address that OFCCP may contact if additional information is needed.

## APPENDIX

### 1. DEFINITIONS

Contract: Any government contract or subcontract or any federally-assisted construction contract or subcontract. 41 CFR 60-1.3

Employee: For the purposes of this report, employee means any individual on the payroll of an employer who is an employee for purposes of the employers withholding of Social Security taxes except insurance sales agents who are considered to be employees for such purposes solely because of the provisions of 26 USC 3121 (d) (3) (B) (the Internal Revenue Code). Leased employees are included in this definition. Leased Employee means a permanent employee provided by an employment agency for a fee to an outside company for which the employment agency handles all personnel tasks including payroll, staffing, benefit payments and compliance reporting. The employment agency shall, therefore, include leased employees in its Equal Pay Report. The term employee shall not include persons who are hired on a casual basis for a specified time, or for the duration of a specified job (for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employees work at the site); persons temporarily employed in any industry other than construction, such as temporary office workers, mariners, stevedores, lumber yard workers, etc., who are hired through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement, or persons (except leased employees) on the payroll of an employment agency who are referred by such agency for work to be performed on the premises of another employer under that employers direction and control.

Executive Order 11246, as amended, does not authorize an exemption of religious organizations from this reporting requirement. The exemption for religious organizations applies to discrimination on the basis of religion. Therefore, since the Equal Pay Report does not provide for information as to the religion of employees, religious organizations must report all information required by this form.

Employer: Any entity subject to Executive Order 11246 who is a federal government prime contractor or subcontractor at any tier (including a bank or other establishment serving as a depository of federal government funds, or an issuing and paying agent of U.S. Savings Bonds and Notes, or a holder of a federal government bill of lading) or a federally-assisted construction prime contractor or subcontractor at any tier.

Establishment: For the purposes of this report, an establishment is an economic unit which produces goods or services, such as a factory, office, store, or mine. In most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity (definition adapted from the North American Industry Classification System, 2002).

Units at different physical locations, even though engaged in the same kind of business operation, must be reported as separate establishments. For locations involving construction,

transportation, communications, electric, gas, and sanitary services, oil and gas fields, and similar types of physically dispersed industrial activities, however, it is not necessary to list separately each individual site, project, field, line, etc., unless it is treated by you as a separate legal entity. For these types of activities, list as establishments only those relatively permanent main or branch offices, terminals, stations etc., which are either: (a) directly responsible for supervising such dispersed activities; or (b) the base from which personnel and equipment operate to carry out these activities. (Where these dispersed activities cross State lines, at least one such establishment should be listed for each State involved.)

Headquarters: For the purposes of this report, a Headquarters refers to the location that the contractor or subcontractor listed on its most recent EEO-1 Headquarters Report.

OFCCP: Refers to the Office of Federal Contract Compliance Programs, U.S. Department of Labor, established to implement Executive Order 11246, as amended.

Prime Contractor: means any entity holding a contract subject to Executive Order 11246. 41 CFR 60-1.3

Responsible Official: An official with authority to sign on behalf of the contracting entity.

Subcontract: means any agreement or arrangement between a contractor and any entity (in which the parties do not stand in the relationship of an employer and an employee): (1) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or (2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed. 41 CFR 60-1.3

Subcontractor: means any entity holding a subcontract subject to Executive Order 11246. A "first-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor 41 CFR 60-1.3

## **2. RESPONSIBILITIES OF PRIME CONTRACTORS**

At the time of an award of a subcontract subject to these reporting requirements, the prime contractor shall inform the subcontractor of its responsibility to submit the annual Equal Pay Report in accordance with these instructions.

If prime contractors are required by their Contracting Officer or subcontractors by their prime contractors, to submit notification of filing, they shall do so by ordinary correspondence. However, such notification is not required by and should not be sent to OFCCP.

## **3. RACE AND ETHNIC IDENTIFICATION**

The Equal Pay Report uses the same race and ethnicity designations as the EEO-1 Survey. Information about the race and ethnicity designations can be found in the Appendix of the EEO-1 Instruction booklet: <http://www.eoc.gov/employers/eo1survey/2007instructions.cfm>.



#### **4. DESCRIPTION OF JOB CATEGORIES**

The Equal Pay Report uses the same job categories as the EEO-1 Survey. Information about the job categories can be found in the Appendix of the EEO-1 Instruction booklet: <http://www.eeoc.gov/employers/eo1survey/2007instructions.cfm>.

#### **5. LEGAL BASIS FOR REQUIREMENTS**

The Equal Pay Report is authorized by Executive Order 11246 and the implementing regulations. Executive Order 11246 requires that specific terms be included in all covered contracts concerning the nondiscrimination and affirmative action obligations of Federal contractors and subcontractors. Executive Order 11246, Sec. 202. Each non-exempt Federal contractor and subcontractor agrees, as a condition of its Government contract, that it “will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin,” and that it “will take affirmative action to ensure that applicants are employed and employees are treated during their employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin.” *Id.* The nondiscrimination and affirmative action obligations of Federal contractors and subcontractors cover all aspects of employment, including rates of pay and other compensation.

Pursuant to the Executive Order, receiving a Federal contract comes with a number of responsibilities. Section 202 of the Executive Order requires every contractor to agree to: (1) comply with all provisions of the Executive Order and the rules, regulations, and relevant orders of the Secretary of Labor; (2) provide all information and reports required by the Executive Order and implementing rules, regulations, and orders, and (3) provide access to its books, records, and accounts to the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

Under Section 203 of the Executive Order, the Secretary of Labor has also been granted broad authority to require compliance reports from contractors that contain such information regarding their practices, employment policies, programs, and employment statistics, in such form as the Secretary of Labor may prescribe. Likewise, the implementing regulations at 41 CFR 60-1.12(a) provide that the Director may require a contractor to keep employment or other records, including records on compensation and other rates of pay by race and gender, and must supply this information to OFCCP upon request. A contractor in violation of the Executive Order may have its contracts canceled, terminated, or may be subject to debarment.