

**DEPARTMENT OF LABOR, OFCCP  
OFCCP EQUAL PAY REPORT  
EXECUTIVE ORDER 11246, AS AMENDED  
CONTROL NUMBER: 1250-AA03  
SUPPORTING STATEMENT**

This Information Collection Request (ICR) is associated with the Department of Labor's (DOL) notice of proposed rulemaking titled "Government Contractors, Requirement to Report Summary Data on Employee Compensation" and published in the Federal Register on September 8, 2014 (79 FR 45462, RIN 1250-AA03). As the agency anticipates public comment, OMB is requested to file comment on this ICR so that DOL may consider views received from the public.

**A. JUSTIFICATION**

**1. CIRCUMSTANCES THAT MAKE THIS INFORMATION COLLECTION NECESSARY**

On April 8, 2014, President Obama issued a Presidential Memorandum - Advancing Pay Equity through Compensation Data Collection. The Memorandum directed DOL to propose a rule that would require Federal contractors and subcontractors to submit summary compensation data paid to employees. In response to the President's directive, DOL's Office of Federal Contract Compliance Programs (OFCCP) published a notice of proposed rulemaking (NPRM) on August 8, 2014 (79 FR 45462). The NPRM proposed requiring certain Federal contractors and subcontractors to submit to DOL on an annual basis summary compensation data paid to their employees by gender, race, ethnicity, and specified job categories. The NPRM proposed that covered entities would submit this information to DOL using the Equal Pay Report. The NPRM also proposed requiring contractors and subcontractors that wish to submit an Equal Pay Report to OFCCP using paper or other means instead of through an online electronic system to submit a hardship exemption request to OFCCP.

This information collection request supports a proposed rule revising the regulations implementing Executive Order 11246 at 41 CFR 60-1.7. These regulations set forth the reports and other required information required of covered prime contractors, first tier subcontractors, subcontractors on federal construction projects, bidders, and prospective prime contractors. DOL discusses the specific sections of the revised part 60-1.7, which include these information collection requirements below.

Section 60-1.7(b) outlines the requirement that contractors and subcontractors submit the Equal Pay Report to DOL. Subsection (2) identifies which contractors and subcontractors must file the Equal Pay Report. Subsection (3) identifies how and when contractors and subcontractors file the report and it provides a hardship exemption for those contractors that are not able to file the report in the manner (online) preferred by DOL.

Section 1.7(c) describes the recordkeeping obligations related to the Equal Pay Report.

Section 1.7(d)(1) outlines the requirements for bidders and prospective prime contractors regarding certification of compliance with the Equal Pay Report filing requirements.

Section 1.7(e) describes the sanctions for failing to file the Equal Pay Report. Contractors that do not file a report, do not file the report in a timely manner, file inaccurate reports, certifications or representations may be subject to the sanctions set forth in paragraph (6) of the Equal Opportunity Clause in 41 CFR 60-1.4(a) and (b).

## **2. USE OF MATERIALS**

The Equal Pay Report is a critical tool for eradicating compensation discrimination. The collection of data will allow DOL to conduct analysis and establish objective industry standards that would be made available to contractors and subcontractors. DOL would use the information from the reports to make data-driven enforcement decisions that support the efficient use of DOL's enforcement resources. It would enable DOL to direct its enforcement resources toward entities for which reported data suggest potential violations.

Additionally, it would support a more effective enforcement of the prohibition against compensation discrimination through greater voluntary compliance and greater deterrence of noncompliant behaviors by contractors and subcontractors. Contractors would be encouraged to use the published industry standards to conduct self-assessments by comparing their pay to the standards, identifying indicators of potential issues, examining their pay practices to determine if problems or potential violations actually exist.

Those contractors that are unable to submit their data through DOL's web-based filing system would use the hardship exemption to request permission to submit the data in an alternative manner. The hardship exemption request would be used by DOL to determine the nature of the hardship and the appropriate alternative format or method for submission.

## **3. IMPROVED INFORMATION TECHNOLOGY**

The Equal Pay Report would be an electronic form filed through a web-based filing system. Based on the Equal Employment Opportunity Commission's (EEOC) estimates of its online filing of the EEO-1 Report, DOL assumes that 99 percent of contractors will file their Equal Pay Report using the web-based filing system thus reducing the burden of filing this report. Upon approval of the paper based form and the build out of the Web portal, a non-material request will be submitted to obtain OMB approval of that option. The Web portal will ask for the same information as the paper based form.

## **4. DESCRIPTION OF EFFORTS TO IDENTIFY DUPLICATION**

The reporting and recordkeeping requirements in this request result exclusively from the implementation of Executive Order 11246. This authority uniquely empowers the Secretary of Labor, and by a Secretary's Order, OFCCP, to require collection, analysis, and reporting of data and other information in connection with the enforcement of the laws and regulations requiring Federal contractors to take affirmative action and to ensure equal employment opportunity.

In developing its Equal Pay Report, DOL used the framework of the EEO-1 Report. Thus, there is some overlap in the structure of the two reports and in the reporting of numbers of

employees. DOL will coordinate with EEOC and consider all comments to ensure that duplication is minimized.

## **5. MINIMIZING BURDEN ON SMALL ORGANIZATIONS**

DOL minimizes the information collection and recordkeeping burden on a significant number of small businesses by exempting contractors and subcontractors that do not file EEO-1 Reports and those that do not have more than 100 employees. These contractors and subcontractors must also have a contract that covers a period of at least 30 days.

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

The proposed Equal Pay Report would be an annual reporting requirement. Less frequent collection could negatively affect DOL's civil rights enforcement activities because the agency would not have access to the most current data. The data from the Equal Pay Report informs the agency's compliance evaluation selection process that typically occurs twice year. Receiving this report less frequently may result in less accurate data, thus limiting the agency's accuracy and ability in prioritizing its enforcement efforts.

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

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

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

Concurrent with the submission of this ICR, DOL published a Notice of Proposed Rulemaking (NPRM) on August 8, 2014 in the *Federal Register* seeking public comment on the proposals related to the Equal Pay Report. DOL is asking commenters to send their views on the ICR to the agency in the same way as all other comments. The NPRM also invited comments on the information collection requirements to be sent to the Office of Management and Budget within thirty (30) days of NPRM publication.

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

Assuming OMB files a comment on this ICR that asks the agency to consider comments sent in response to the NPRM, comments received from the public would be addressed under this paragraph for an ICR submitted at the Final Rule stage.

## **9. INCENTIVES**

DOL provides neither payments nor gifts to respondents.

## **10. ASSURANCE OF CONFIDENTIALITY**

Respondents are informed that no express assurance of confidentiality is provided, and DOL recognizes that contractors that submit the required information may view it as extremely sensitive information. DOL 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. The Equal Pay Report includes information that DOL regulations provide that a contractor affected by a FOIA

disclosure request be notified in writing and no decision to disclose information is made until the contractor has an opportunity to submit objections to the release of the information.

## **11. SENSITIVE QUESTIONS**

Generally, DOL does not collect information of a personal nature, however information related to compensation may be considered by some as private. In its proposed Equal Pay Report, DOL is requesting that contractors provide compensation information summarized by gender, race, ethnicity, and job category. DOL does not require contractors to provide individual employee level data in this report. DOL proposes requiring contractors provide the information in this manner as it is the most efficient and effective way to enforce the laws prohibiting compensation discrimination and to encourage voluntary compliance.

The information provided in the Equal Pay Report will be used to establish objective industry standards that would be used to make data-driven enforcement decisions. Additionally, the industry standards would be made available to contractors and others for self-assessments. Although DOL may publish aggregate information (e.g., benchmarks) based on data collected in the report, the publication will be in such a manner that it does not reveal specific contractor or individual data.

DOL recognizes that contractors that submit the required information may view it as extremely sensitive information. DOL 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 DOL's implementing regulations at 29 CFR Part 70.

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

The following is a summary of the methodology used by DOL for the calculation of burden associated with this information collection requirement.

In the NPRM, DOL proposed requiring Federal contractors and subcontractors with a contract or subcontract valued at \$50,000 or more and have more than 100 employees, that are required to file either an EEO-1, and have a contractor or subcontract that covers a period of at least 30 days, to file, on an annual basis, the proposed Equal Pay Report. In addition, DOL is also interested in amending the regulation by adding the requirement that employers who file the Department of Education's Integrated Postsecondary Education Data System (IPEDS) report, have more than 100 employees, a contract, subcontract, or purchase order amounting to \$50,000 or more that covers a period of at least 30 days also file DOL's Equal Pay Report. DOL estimates that 21,224 contractor companies or 67,578 contractor establishments would be required to file EEO-1 Reports.<sup>1</sup> If the final rule were to require postsecondary institutions that file IPEDs reports to file an Equal Pay Report, DOL estimates that 27 postsecondary educational institutions would file an Equal Pay Report each year.<sup>2</sup>

### **a. Information Collection**

Proposed section 60-1.7(b)(1) through (3)(ii) requires covered Federal contractors and subcontractors to submit to DOL on an annual basis a report summarizing compensation

---

<sup>1</sup> Estimates based on number of contractors and contractor establishments with more than 100 employees who filed EEO-1 reports for 2012 and answered "Yes" to Question 3.

<sup>2</sup> The number of postsecondary educational institutions included in this NPRM is based on OFCCP's average number of compliance evaluations at postsecondary institutions over a four-year period (2010 through 2013).

paid to employees aggregated by gender, race, ethnicity, and job categories. DOL estimates that 99 percent of contractors would file the proposed report using the web-based data tool while 1 percent would be granted a hardship exemption and would file the report in another manner. The estimated burden hours for those filing using the web-based data tool is 401,574 hours ( $66,929 \times 6 \text{ hours} = 401,574 \text{ hours}$ ). The estimated burden hours for those contractors that do not use the web-based data tool to file is 5,408 hours ( $676 \times 8 \text{ hours} = 5,408 \text{ hours}$ ). The estimated total burden for this provision is 406,982 hours, which accounts for those contractors who use a web-based data tool to file the report and those granted a hardship exemption to electronic filing. Even though the proposed rule seeks public comment on requiring post-secondary institutions that file IPEDs reports to submit an Equal Pay Report, the burden hour estimates in this section include such institutions for informational purposes.

Section 60-1.7(b)(3)(iii) proposes to require contractors that cannot file using the web-based data tool to request a hardship exemption from OFCCP's director. Contractors that request such an exemption must write to the director acknowledging the responsibility, explaining their circumstances and requesting the exemption. DOL estimates it would take a contractor 30 minutes to prepare the request, including the time required to print, copy, and send the document. The estimated total burden for this provision is 338 hours ( $676 \times 0.5 \text{ hours} = 338 \text{ hours}$ ).

Section 60-1.7(c) proposes to require contractors to maintain the records related to its submission of the proposed Equal Pay Report. DOL believes contractors will save a copy of the report either electronically or manually. The estimated burden of this proposed requirement is included in the above estimates for filing an Equal Pay Report.

Section 60-1.7(d)(1)(iv) proposes to require bidders or prospective prime contractors or proposed subcontractors to certify compliance with the reporting requirements if applicable. The General Services Administration maintains the System for Award Management (SAM), which consolidated eight Federal procurement systems and the catalog of Federal domestic assistance into one database. Companies that want to do business with the Federal government are required register in SAM. As a part of the registration, these companies self-certify their compliance with DOL's current requirements. Thus, compliance with the proposed requirements, bidders and prospective prime contractors will check one additional box when registering and self-certifying in SAM. DOL believes that there is no additional burden associated with responding to one additional question in the registration process. Thus, DOL estimates that there is no additional burden associated with this certification.

Proposed section 60-1.7(e) details the sanctions for failing to file the Equal Pay Report. Contractors that do not file a report, do not file the report in a timely manner, file inaccurate reports, certifications or representations may be subject to the sanctions set forth in paragraph (6) of the Equal Opportunity Clause in 41 CFR 60-1.4(a) and (b). DOL believes that there is no additional burden associated with these sanctions. These are the same sanctions for other EO 11246 violations. Thus, no additional burden is assumed.

**b. Summary of Burden Hours and Time Value**

The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (December 2013), which lists total compensation for management, professional, and related occupations as \$51.58 per hour and for administrative support as \$24.23 per hour. DOL estimates that 25 percent of the burden hours will be management, professional, and related occupations engaged in reviewing and approving reports and 75 percent will be administrative support engaged in identifying data and completing reports.

**Table 1—Summary of Annual Burden Hours**

<b>Table 1: Annual Burden</b>		
<b>Section</b>	<b>Burden Hours</b>	<b>Time Value</b>
60-1.7(b)(1) (complete compensation report)	406,982	\$12,643,913
60-1.7(b)(3)(iii) (electronic exemption)	338	\$10,501
60-1.7(c) (recordkeeping)	0	0
60-1.7(d) (certification of filing)	0	0
60-1.7(d)(2) (recordkeeping requirement)	0	0
60-1.7(e) (sanctions)	0	0
<b>Total Recurring Burden</b>	<b>407,320</b>	<b>\$12,654,414</b>

**Initial or Start-up Activities**

For purposes of this estimate, DOL assumes that the initial start-up work will occur at the company level. The start-up costs include modifying a contractor company’s existing human resources information and payroll systems in order to generate the information needed for the Equal Pay Report. Thus, DOL estimates it will take an average of 30 hours to have a professional make the needed systems modifications. The modifications include writing code, developing queries, and creating a standard report that matches the employee demographic and job information to their W-2 wages and hours worked. The report will also summarize the data. Assuming all contractor companies will need to make changes to their existing human resources and payroll system, DOL believes that the burden for making the modifications is 637,530 hours (21,251 contractor companies x 30 hours = 637,530 hours). The estimated costs for these modifications are based on data from the Bureau of Labor Statistics in the publication “Employer Costs for Employee Compensation” (December 2013), which lists total compensation for a professional as \$47.22 per hour. Thus OFCCP estimates the costs for these modifications is \$30,104,167 (637,530 hours x \$47.22 per hour = \$30,104,167) or \$1,417 per contractor company. Annualized over three years the burden equates to 212,510 hours and \$10,034,722.

**Familiarization with Information Collection Requirements**

DOL acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors and subcontractors to review and understand the instructions for compliance.

In order to minimize the burden, DOL will publish compliance assistance materials including, but not limited to, fact sheets and “Frequently Asked Questions.” DOL will also host webinars for the contractor community that will describe the new requirements and conduct listening sessions to identify any specific challenges contractors believe they face, or may face, when complying with the requirements.

DOL estimates it will take a minimum of 1 hour to have a management professional at each establishment either read compliance assistance materials provided by DOL or participate in a DOL webinar to learn more about the new requirements. The estimated cost of this burden is based on data from the Bureau of Labor Statistics in the publication “Employer Costs for Employee Compensation” (December 2013) which lists total compensation for management professionals at \$51.58. Therefore, the estimated burden for rule familiarization is 67,605 hours (67,605 contractor establishments x 1 hour = 67,605 hours). We calculate the total estimated cost as \$3,487,066 (67,605 hours x \$51.58/hour = \$3,487,066) or \$52 per establishment. Annualized over three years the burden equates to 22,535 hours and \$1,162,355.

**Table 2—Total Annual Time Burden Summary**

<b>Activity</b>	<b>Burden Hours</b>	<b>Time Value</b>
Recurring Activities	407,320	\$12,654,414
Initial/Start-Up Activities	212,510	\$10,034,722
Familiarization	67,605	\$1,162,355
<b>Total</b>	<b>687,435</b>	<b>\$23,851,491</b>

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

DOL estimates that contractors will have operations and maintenance costs associated with this collection. Those costs are associated with contractors that request exemption from electronic filing.

Section 60-1.7(b)(1) Equal Pay Report: DOL estimates that 67,605 contractor establishments will respond annually and 99 percent of them will do so electronically. Contractors using the web-based data tool will not incur copying and mailing costs. However, DOL is estimating their printing, copying, and mailing costs to account for the estimated 1 percent of contractors filing without using the web-based filing system for some reason (e.g., no access, compatibility, etc.). DOL estimates an average copying cost of \$0.08 per page based on an informal market survey of companies providing copying services. DOL estimates a contractor establishment will print the two-page report and copy those pages for a total of four pages per contractor establishment. The estimated cost for printing and copying would be \$216 (676 contractor establishments x 4 pages x \$0.08 per page = \$216). DOL estimates that the contractor will submit the report by sending it registered mail and estimates the cost to be \$3,887 (676 contractor establishments x \$5.75 = \$3,887). The total estimated operations and maintenance cost for the Equal Pay Report would be \$4,103.

Section 60-1.7(b)(3)(iii) Hardship Exemption: DOL recognizes that some contractor establishments do not have automated HRIS or payroll systems or may have systems that would be incompatible with DOL’s web-based data tool. Contractors facing this challenge

must annually request from DOL a hardship exemption to the electronic filing requirement. The request for exemption would be a one-page letter to the Director, OFCCP acknowledging the obligation to submit the report, explaining why the report cannot be submitted electronically and requesting exemption for that year's filing. DOL estimates that 1 percent of its contractor establishment universe or 676 contractor establishments will request a hardship exemption to the electronic filing requirement. Therefore, DOL estimates that the cost for printing and copying the one page letter would be \$108 (676 contractor establishments x 2 pages x \$0.08 = \$108). In addition, DOL estimates the mailing cost would be \$331 (676 contractor establishments x 1 letter x \$0.49 per letter = \$331). The total estimated operations and maintenance cost for the hardship exemption would be \$439.

**Table 3—Operations and Maintenance Costs Summary**

Section	Costs
60-1.7(b)(1) Equal Pay Report (copying and mailing)	\$4,103
60-1.7(b)(3)(iii) Hardship Exemption (copying and mailing)	\$439
60-1.7(d)(1)(iv) Bidders or Prospective Prime Contractors Certification	0
Total	\$4,542

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

DOL estimates that implementing the proposed Equal Pay Report will increase the costs related to staffing and replacing its existing case management and information system. In terms of staffing, DOL anticipates hiring four full-time positions at its National Office. These staff members will be involved in providing technical assistance to contractors completing the forms, managing the content of the online portal, reviewing exemption requests, and analyzing data. DOL estimates the staffing costs to be \$359,696.<sup>3</sup> (\$89,924 x 4)

Additionally, as a part of an ongoing effort by DOL to enhance services provided to Federal contractors, DOL anticipates that it will be upgrading its existing case management and information systems. DOL is proposing an increase of \$3.4 million to improve its information systems. This upgrade accomplishes several goals including updating DOL's current information system to support web-based features and accommodating the online submission of the Equal Pay Report. These enhancements will allow DOL to integrate with other DOL Information Technology systems and will allow users greater security and ease of use. Therefore, DOL estimates the total cost to the Federal Government to be \$3,759,696 (\$359,696 staff costs + \$3,400,000). Annualized over three years the burden equates to \$1,253,232.

#### **15. Reasons for Burden Changes**

This is a new information collection request. As stated above, on April 8, 2014 President Obama issued a Presidential Memorandum - Advancing Pay Equity through Compensation

<sup>3</sup> OFCCP believes that it will fill these positions at its National Office at the GS-13 level. Therefore, the estimate of wages is based on a GS-13, Step 1 for the Washington-Baltimore-Northern Virginia area, (2014 General Schedule Locality Pay Table, <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/DCB.pdf> , last accessed July 28, 2014.).



Data Collection. The Memorandum directed DOL to propose a rule that would require Federal contractors and subcontractors to submit summary compensation data paid to employees. This information collection request is associated with the NPRM published by DOL in response to the President's directive.

This is a new information collection in support of the new Executive Order 11246 regulation found at 41 CFR 60-1.7.

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

DOL seeks permission to publish aggregate compensation data collected by the Equal Pay Report as statistical tables at the industry level.

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

DOL will display the expiration date.

**18. Exceptions to the Certification Statement**

There is no exception sought.

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

This information collection does not employ statistical methods.