

## **NOTE TO REVIEWER**

OFCCP is requesting Office of Management and Budget (OMB) approval of 1,297 hours (8.6 hours per contractor) in reporting burden for its approval process to allow contractors to develop function based affirmative action programs. This is an increase over the previous request of 926 hours (7.6 hours per contractor). The increase is primarily attributed to the addition of a certification requirement. Additionally, in response to contractor comments during the 60-day and 30-day comment periods, OFCCP removed the requirements in the proposed revised directive that contractors requesting approval to use functional or business unit affirmative action programs provide a copy of a Federal contract and modified its request for information on all subsidiaries. There are no recordkeeping or third party disclosure burdens associated with this Information Collection Request. Those requirements are assessed under 1250-0003.

## SUPPORTING STATEMENT

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

OMB Number 1250-0006

#### A. JUSTIFICATION

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

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for administering three equal employment opportunity authorities that prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran by Federal contractors and subcontractors.<sup>1</sup> Under certain circumstances, OFCCP also prohibits taking adverse employment actions against applicants and employees because they asked about, discussed, or shared information about their pay or the pay of their co-workers. Finally, OFCCP's legal authorities require that affirmative action be taken to provide equal employment opportunities. The three legal authorities OFCCP enforces are listed below.

- Executive Order 11246, as amended (referred to as "EO 11246"),<sup>2</sup>
- Section 503 of the Rehabilitation Act of 1973, as amended (referred to as "Section 503"),<sup>3</sup> and
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (referred to as "VEVRAA").<sup>4</sup>

OFCCP promulgated regulations implementing these authorities 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.dol.gov/dol/cfr/Title\\_41/Chapter\\_60.htm](http://www.dol.gov/dol/cfr/Title_41/Chapter_60.htm).

EO 11246 prohibits Federal contractors from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity or national origin. Additionally, EO 11246 prohibits Federal contractors from, under certain circumstances, taking

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<sup>1</sup> Unless otherwise stated, the term "contractor" includes both contractors and subcontractors, and the term "contract" also includes "subcontracts." See 41 CFR 60-1.3 (definitions of "contract" and "contractor").

<sup>2</sup> The regulations implementing EO 11246 that are applicable to supply and service contractors are found in 41 CFR parts 60-1, 60-2, 60-3, 60-20, and 60-50.

<sup>3</sup> The regulations implementing Section 503 that are applicable to supply and service contractors are found at 41 CFR part 60-741.

<sup>4</sup> The regulations implementing VEVRAA that are applicable to supply and service contractors are found at 41 CFR part 60-300.

adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers.<sup>5</sup> EO 11246 also requires Federal contractors to engage in affirmative action to provide equal employment opportunity. EO 11246 applies to Federal contractors and federally assisted construction contractors, holding a Government contract of more than \$10,000, or Government contracts that have, or can reasonably expect to have, an aggregate total value exceeding \$10,000 in a 12-month period.<sup>6</sup> EO 11246 also applies to Government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds.<sup>7</sup>

Section 503 prohibits employment discrimination based on disability, and requires Federal contractors to take affirmative action to hire and promote qualified individuals with disabilities. Its requirements apply to Federal contractors with Federal contracts in excess of \$15,000.<sup>8</sup>

VEVRAA prohibits employment discrimination against protected veterans and requires Federal contractors to take affirmative action to hire and promote protected veterans. Its requirements apply to Federal contractors with Federal contracts of \$150,000 or more.<sup>9</sup>

For purposes of this Information Collection Request (ICR), the regulations permit Federal supply and service contractors to develop affirmative action programs (AAPs) based on business functions or business units rather than establishments or facilities.<sup>10</sup> A functional or business unit refers to a component within an organization that operates autonomously in the ordinary course of the organization's business.

Multi-establishment supply and service contractors that are subject to AAP requirements may request an agreement with OFCCP that allows them to develop and use a function-based AAP. Some multi-establishment contractors may find it appropriate to develop AAPs based solely on functional or business units, while others may elect to use a combination of functional and establishment based AAPs. Functional Affirmative Action Program (FAAP) agreements are only available to supply and service contractors.

To develop a FAAP, Federal contractors must have an agreement approved by the director of OFCCP.<sup>11</sup> OFCCP issued guidance through an administrative notice (Transmittal Number 254)

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<sup>5</sup> On September 11, 2015, OFCCP published pay transparency regulations implementing Executive Order 13665, which amended Executive Order 11246, to prohibit Federal contractors and subcontractors from discharging, or in any other manner discriminating against any employee or applicant for inquiring about, discussing, or disclosing her compensation or the compensation of another employee or applicant. These regulations, which became effective on January 11, 2016, also contain two specific contractor defenses to a claim of pay transparency discrimination.

<sup>6</sup> 41 CFR 60-1.5(a).

<sup>7</sup> Ibid.

<sup>8</sup> 41 CFR 60-741.1(b). An adjustment to the coverage threshold for Section 503 went into effect on October 1, 2010. The threshold increased from \$10,000 to \$15,000 based on an inflationary adjustment made pursuant to 41 U.S.C. 1908. See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 CFR 53129 (Aug. 30, 2010).

<sup>9</sup> 41 CFR 60-300.1(b). An adjustment to the coverage threshold for VEVRAA went into effect on October 1, 2015. The threshold increased from \$100,000 to \$150,000 based on an inflationary adjustment made pursuant to 41 U.S.C. 1908. See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

<sup>10</sup> 41 CFR 60-2.1(d)(4).

establishing procedures for approving such requests on March 21, 2002.<sup>12</sup> On June 14, 2011, OFCCP replaced the 2002 guidance with Directive 296, titled *Functional Affirmative Action Programs (FAAPs)*, only to replace it in December 2012 with Directive 305, *Functional Affirmative Action Programs*.<sup>13</sup> This ICR addresses the burdens and costs associated with obtaining a new FAAP agreement and updating, modifying and certifying an existing FAAP agreement. Because OFCCP proposes making adjustments to the requirements for a FAAP agreement, OFCCP is proposing specific revisions to the FAAP directive that clarify the requirements of the program. The revised directive will be issued once the agency obtains an extension of the Office of Management and Budget’s (OMB) approval for this ICR. The collection of information associated with the development of AAPs and compliance evaluations of covered contractors are addressed in a separate ICR approved (see OMB Number 1250-0003), which expires March 31, 2016.<sup>14</sup>

## 1. Legal & Administrative Requirements

### Executive Order Regulations

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

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

Section 60-1.12 specifies that contractors must preserve any personnel or employment record made or kept for a period of not less than two years; however, if the contractor has fewer than 150 employees or does not have a contract of at least \$150,000, the minimum record retention period is one year.

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

1. has a contract of \$50,000 or more; or
2. has Government bills of lading which in any 12-month period total or can reasonably be expected to total \$50,000 or more; or
3. serves as a depository of Government funds in any amount; or
4. is a financial institution that is an issuing and paying agent for U.S. Savings Bonds and Savings Notes in any amount.

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<sup>11</sup> The “director” of OFCCP was formerly known as the “Deputy Assistant Secretary” when OFCCP was a part of the Employment Standards Administration (ESA).

<sup>12</sup> OFCCP ADM Notice: *Functional Affirmative Action Programs (FAAP)*, Transmittal Number 254.

<sup>13</sup> Directive Number 305 was renumbered on September 16, 2013 as DIR 2013-01.

<sup>14</sup> Non-construction Supply and Service Information Collection.

The detailed instructions for the development of an AAP are contained in 41 CFR Part 60-2.

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

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

Section 60-2.1(d)(4) allows for the development of AAPs based on functional or business units. Any multi-establishment supply and service contractor subject to AAP requirements in Part 60-2 may request a FAAP agreement. OFCCP's current FAAP guidance sets forth criteria the agency considers when determining whether to approve a contractor's request to develop a functional AAP.<sup>15</sup> To be considered suitable for a FAAP agreement, the contractor's functional or business unit must:<sup>16</sup>

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

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

Sections 60-2.11 through 2.17 describe the required recordkeeping element for developing, maintaining, and updating an AAP. The recordkeeping burdens for developing, maintaining, and updating an AAP are addressed in a separate ICR.<sup>17</sup>

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

Currently, through Directive 2013-01, OFCCP requires contractors to submit specific items of information with a written request for an agreement to develop and implement FAAPs. OFCCP uses this information to assess whether the contractor's organization is suitable for a FAAP agreement. The items of information, listed in Attachments B and C of the revised directive, include:

- A statement that the contractor is a covered Federal contractor under 41 CFR 60-1, 60-2, 60-300, and 60-741;
- A copy of the contractor's most recent consolidated Employer Information Report (EEO-1 Report);
- An organizational chart;

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<sup>15</sup> Functional Affirmative Action Programs, OFCCP Directive 2013-01, December 17, 2012.

<sup>16</sup> Ibid.

<sup>17</sup> OMB Control Number 1250-0003, expires March 31, 2016.

- A narrative description of the business or function of each FAAP unit and how it meets the definition of a functional or business unit;
- The company and subsidiary name covered by the FAAP agreement and the address, total number of employees within each proposed functional or business unit, including the identification of managing officials;
- A statement addressing the location where the FAAP unit will maintain personnel records including applicant processing activities;
- If the contractor maintains both functional and establishment based AAPs, a list of locations and number of employees and EEO-1 unit number for each establishment;
- A statement addressing how the contractor plans to transition from establishment based AAPs to functional AAPs including a timeline for completion;
- The dates of the proposed AAP year for the functional programs; and
- Copies of personnel policies relevant to the proposed functions or business units, including organization and unit-specific policies related to recruitment, hiring, promotion, compensation, and termination.
- Information on the reporting hierarchy, personnel procedures, equal employment opportunity (EEO) violations, plans for compliance with the Section 503 and VEVRAA requirements, and how the functional units manage their EEO responsibilities.

Additionally, OFCCP requires the contractor to update its FAAP agreement annually, notify OFCCP of any modifications to its FAAP structure, and certify its FAAP agreement every three years. In doing these activities, a contractor with an existing FAAP agreement provides OFCCP updated information related to contacts, Federal contracts and other specific demographic information.

## **2. USE OF MATERIALS**

OFCCP uses the information provided by contractors to evaluate their suitability for FAAP. For example, contract information establishes whether the requester is a covered Federal contractor. Information regarding structure and size of the contractor is used to determine if the requestor meets the size requirement. Policies and other information regarding the structure of the contractor are used to determine whether the entity acts as an autonomous functional or business unit and to determine if that functional or business unit maintains its own personnel activity and has its own managing official.

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

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

## **3. IMPROVED INFORMATION TECHNOLOGY**

In general, under OFCCP's regulations each contractor develops its own methods for collecting and maintaining information. Contractors have the option to use methods that best suit their needs as long as they can retrieve the information and provide OFCCP with the data needed when requesting a FAAP agreement.

According to the Government Paperwork Elimination Act (GPEA, P.L. 105-277, 1998), Government agencies must generally provide for the optional use and acceptance of electronic documents and signatures, and electronic recordkeeping, where practicable, by October 2003. OFCCP has fulfilled its GPEA requirements by permitting electronic transmission, via e-mail or computer disk, of a contractor's written request to enter into, update, modify or certify a FAAP agreement.

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

The reporting requirements in this ICR result exclusively from the implementation of EO 11246. This authority uniquely empowers the Secretary of Labor, and OFCCP by delegation through a Secretary's Order, 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.<sup>18</sup> No duplication of effort exists because no other Government agencies have these specific requirements.

Where possible, OFCCP participates in information sharing and standardized requirements. Examples are the joint collaboration on and use of the Equal Employment Opportunity Commission's (EEOC) EEO-1 Report and the use of the Uniform Guidelines on Employee Selection Procedures created with EEOC, Department of Justice, Office of Personnel Management, and DOL.<sup>19</sup>

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

#### **5. COLLECTION BY SMALL ORGANIZATIONS**

OFCCP minimizes the information collection and recordkeeping burden on a significant number of small businesses, as listed below.

- Contractors with fewer than 50 employees are exempt from AAP requirement; however, once OFCCP's authority covers one contractor's establishment, all of its employees must be accounted for in an AAP whether or not each of the contractor's establishments meet the minimum 50 employees threshold.

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<sup>18</sup> 30 Fed Reg 13441 (Oct. 24, 1965).

<sup>19</sup> 41 CFR 60-3.

- When preparing their Executive Order AAP, contractors with fewer than 150 employees are permitted to use their EEO-1 categories as job groups, thus reducing burden related to job group formulation.
- When preparing their Section 503 AAP, contractors with a total workforce of 100 or fewer employees are permitted to apply the 7 percent utilization goal to the entire workforce rather than each job group.

Contractors that exercise the option to develop functional AAP's benefit from that flexibility because it allows participating contractors to better tailor their AAPs to their specific business structure.

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

The approval process for obtaining a FAAP agreement allows OFCCP to determine if contractors seeking permission to use functional or business unit based AAPs are appropriate in terms of size, hierarchy, and autonomy. While function based AAPs are effective for entities that are structured by function, it is not appropriate for all contractors. If contractors were not required to obtain approval for implementing FAAPs, contractors could group their business units, functions, or establishments to mask potential discrimination. In addition, contractors could use FAAP to avoid selection for compliance evaluations. For example, if a contractor did not identify the structure of its FAAP agreement, a scheduled contractor could respond to a scheduling letter by stating the scheduled establishment was part of another business unit. Additional time would be spent by OFCCP and the contractor seeking to substantiate the assertion. Thus, without an approval process, OFCCP's ability to enforce the affirmative action and equal employment opportunity obligations of Federal contractors would be impeded.

Annual updates, modifications, and certifications are needed to ensure that OFCCP has current information regarding contract coverage and each functional unit's structure, size, and managing official. Less frequent updates or no updates would result in OFCCP scheduling FAAP contractors for compliance evaluations that may no longer have a covered Federal contract or business units that no longer exist. This would increase contractor burden because of time spent explaining why particular FAAP units should not be scheduled for evaluation. This could lead to less efficiency in determining Federal contractors' compliance with affirmative action and equal employment opportunity requirements.

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

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

**8. CONSULTATION OUTSIDE THE AGENCY**



OFCCP published a notice soliciting public comment in the Federal Register on July 16, 2015, on its request to renew OMB approval of its *FAAP Agreement Approval Process* for contractors wishing to develop AAPs based on business units or functions.<sup>20</sup> In response, OFCCP received one comment from an organization that represents Federal contractors. The commenter applauded OFCCP's continuation of the FAAP program as it allows contractors to develop more meaningful analyses and improved monitoring of their equal employment and affirmative action efforts. The commenter went on to suggest that OFCCP give conditional approval to every contractor with a complete and timely submitted FAAP application; remove the request for personnel policies from Attachment B; and remove the requirement to provide a copy of a qualifying Federal contract. OFCCP considered each of the commenter's suggestions, weighing the impact of those suggestions on OFCCP's ability to effectively evaluate a contractor's suitability to develop and implement affirmative action programs based on functional or business unit.

Generally, when OFCCP receives a complete FAAP application it takes 30 days to complete its review and determine eligibility for developing functional or business unit AAPs. In light of the limited amount of time currently required to reach a final decision on completed and timely applications, creating a conditional approval process for these applications would likely create unnecessary delays in the process without the contractors realizing any substantial benefits. Thus, OFCCP declines to adopt this suggestion.

The commenter also suggested that OFCCP remove the requirement that contractors submit copies of personnel policies related to recruitment, hiring, promotion, compensation and termination with their request to enter into a FAAP agreement. The commenter explains that while it is important that a functional unit have the ability to manage and monitor its personnel actions efficiently, the submission of such information would not necessarily be useful to OFCCP when evaluating the proposed functions or business units and/or a contractor's hiring and other personnel practices. As a part of the FAAP application package, OFCCP requests that a contractor provide copies of personnel policies relevant to evaluating the proposed functional or business units, including organizational and unit-specific policies related to recruitment, hiring, promotion, compensation, and termination. This information is used to determine if a FAAP structure is appropriate for a contractor, and helps OFCCP engage in meaningful and informed negotiations with the contractor about the scope and structure of the proposed FAAP. Without having this documentation in advance, the negotiations with OFCCP would be inefficient, requiring the contractor to expend additional time and resources explaining its policies and procedures and responding to requests for documentation. Therefore, OFCCP retains the requirement in its revised FAAP directive that contractors must provide copies of their personnel policies.

Lastly, the commenter suggested that the requirement that contractors submit a copy of a qualifying Federal contract be eliminated. The commenter asserted that the human resources and compliance professionals interacting with OFCCP during the approval process have limited access to contractual agreements. Therefore, according to the

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<sup>20</sup> 80 FR 42127.

commenter, OFCCP should consider the company's request to develop FAAPs as evidence of its status as a Federal contractor. The commenter also contends that providing a Federal contract could involve the submission of many "qualifying" contracts instead of just one. Contractors requesting a FAAP agreement must provide information on a current contract that is of \$50,000 or more in value. This information demonstrates that the contractor is a covered contractor and is eligible to enter into a FAAP agreement. There is no reason a contractor should submit more than one contract with its initial request for a FAAP agreement as the threshold requirement for developing an AAP is a contract of \$50,000 or more. This threshold is not an aggregated threshold. Yet, taking into consideration this commenters concerns regarding the potential burden contractors may experience when providing a copy of a contract and the availability of contract information online, OFCCP eliminated its request that contractor's provide a copy of a Federal contract. Instead, the agency will require that the requester provide specific information about contract coverage, this would include the contract number from a qualifying, and that contract's dollar amount, contract period, and the name of the prime contractor (if applicable).

On January 8, 2016, the Department of Labor submitted OFCCP's *FAAP Agreement Approval Process* for use of FAAPs to OMB for approval. Two employer organizations submitted comments during this 30-day OMB comment period that were transmitted by OMB to OFCCP for a response. The commenters' concerns are listed below with OFCCP's responses.

One of the two commenters originally submitted comments to OFCCP during the initial 60-day comment period. In considering that initial comment, OFCCP made changes to its proposed revised directive. Later, this same commenter raised three concerns during the 30-day OMB comment period, two of which were also in the commenter's 60-day comment submission to OFCCP.

#### Submission of information regarding Federal contracts when applying for a FAAP agreement.

The commenter raised this comment initially during the 60-day comment period and OFCCP modified its request by removing the requirement that the contract must submit an actual copy of a contract. Thus, OFCCP reduced the contractor's burden while maintaining its ability to effectively carry out its mission. In the 30-day comment submission, the commenter asserts that it is also burdensome, time-consuming and redundant for contractors to be required to submit information concerning a Federal contract and OFCCP should accept their application as evidence that they are a covered Federal contractor. The commenter further asserts that the human resources and compliance personnel assigned responsibility for working with OFCCP do not have access to contract information.

OFCCP's regulatory authority is limited to Federal contractors that have a Federal contract or subcontract that meet specific jurisdictional thresholds. Not every employer with a Federal contract meets these jurisdictional thresholds. Additionally, there is no single list or source of Federal contractors, Federal contracts, or Federal subcontracts. In

response to the commenters concern, OFCCP believes that it is necessary that a contractor requesting a FAAP agreement provide information concerning a qualifying Federal contract. OFCCP stresses that its enforcement authority rests with covered Federal contractors and subcontractors and the submission of information pertaining to a Federal contract or subcontract substantiates the agency's regulatory authority to negotiate a FAAP agreement. In addition, developing a FAAP agreement is voluntary for Federal contractors and it is the agency's position that a contractor requesting to enter into an agreement with OFCCP should submit information to confirm that they are a covered Federal contractor. Thus, information giving OFCCP some credible indication that the employer is a Federal contractor is a critical component of the application approval process. Should the contract submitted to OFCCP initially establishing eligibility for a FAAP agreement end before the contractor's three-year FAAP agreement expires or before the annual update requirement, and the contractor wishes to remain in the program, proof of new contract coverage would be required and would be submitted as a FAAP agreement modification request. This is not a redundancy, instead, this measure ensures that only eligible contractors participate in the program and also ensures that employers that are no longer contractors and not scheduled for compliance evaluations.

#### Copies of personnel policies and procedures.

The commenter questioned the requirement that contractors submit copies of personnel policies and practices when applying for a FAAP agreement. The commenter explained that the personnel policies may not shed significant light on the extent to which the contractor's functions or business units operate independently. The commenter also raised this concern during the 60-day comment period and OFCCP responded to that comment.

As stated previously, operating autonomously and demonstrating the ability to efficiently manage and monitor all personnel actions is among the basic criteria and principals of OFCCP's FAAP agreements. The review and analysis of a contractor's personnel policies is a component of determining whether a contractor can operate under a FAAP agreement. Having this information during the initial review of the FAAP agreement request helps OFCCP understand the contractor's policies, and improves and expedites the FAAP negotiation process. Without this documentation, OFCCP would spend a portion of the negotiation process requesting this documentation, and reviewing it before discussion could begin. Therefore, the personnel policies must be submitted with the contractor's application for FAAP agreement.

#### Information on subsidiaries.

The commenter contends that the requirement to provide information on all subsidiaries is burdensome because human resource personnel may not have access to this information, and the information is unnecessary. The commenter further explains that corporate structures can be complex and fluid making it difficult to provide a comprehensive list of subsidiaries. Unlike the previous two concerns raised, this one was not raised during the 60-day comment period.

OFCCP has considered this requirement and its use of the information. Based on OFCCP's experience, organizational functions may cross "related companies" such as subsidiaries. In fact, many companies include these related companies in a functional unit. During the process of reaching a determination on a contractor's FAAP agreement request, OFCCP must be able to identify the names of the related companies and subsidiaries covered by a functional or business unit. While this information is still necessary, OFCCP is modifying its request to provide contractor subsidiary information by tailoring it to those subsidiaries that will be included in the FAAP. Therefore, in place of the requirement to provide information on all subsidiaries, OFCCP is requesting that the contractor provide for each proposed functional or business unit, the company or subsidiary name, street address, total number of employees and name and address of the managing official (see item 5 in Attachment B).

The second of the two organizations submitting comments during the 30-day comment period also raised concerns with providing information related to subsidiaries. As discussed above, OFCCP has revised its requirement to provide information for subsidiaries by eliminating item number 6 from Attachment B and revising item number 5.

The second commenter raised three other concerns that focused on OFCCP's proposed process for certification; the burden estimate; and requested clarification regarding provision of information on equal employment opportunity violations and the FAAP Branch's review of documentation provided. These additional concerns are addressed below.

#### Certifying a FAAP agreement.

The commenter asserts that the proposed certification process will mandate the submission of additional information every three years in order to renew an existing agreement. It also asserts that this process is unduly burdensome.

Over the three year term of a FAAP agreement, a contractor's circumstance as it relates to structure, employee numbers and Federal contract status changes. These types of changes may impact whether a FAAP is appropriate. Both the current and revised FAAP directives require contractors to submit a written request for renewal to OFCCP that confirms that they are still eligible to participate in OFCCP's FAAP program. When considering a renewal request, OFCCP requires a contractor to provide updated information regarding employee counts, facility names and addresses, as well as information on changes that may have occurred. Additionally, contractors are asked to provide information on a Federal contract or subcontract to show that they are a covered contractor. This information is either provided in the written request to renew the agreement or OFCCP follows up with the contractor after receiving the request. Contrary to the commenter's assertion, this was not an "as-needed" submission. Contract information is requested to establish a contractor's eligibility to continue in the FAAP program. Without this information, OFCCP would not be able to approve a contractor's request to renew a FAAP agreement.

The commenter overstates the burden associated with the process OFCCP proposes in the revised directive to renew a FAAP agreement. This overstatement results from focusing on the time and costs associated with all contractors required to renew their FAAP agreement in a given year instead of the time and costs for an individual contractor. The actual per contractor burden of the renewal certification is approximately 3.7 hours which OFCCP monetizes as \$150 compared to the commenter's assertion of 300 hours and \$12,137. As proposed, OFCCP believes the revised directive clarifies the process by which contractors renew their FAAP agreements. Therefore, the proposed renewal certification process remains unchanged.

Burden estimate.

The commenter asserts that OFCCP underestimates the burden related to the FAAP agreement and that the estimate does not account for the time and cost imposed by mandatory compliance reviews.

As explained above in the justification statement, the collection of information associated with the development of AAPs and compliance evaluations are addressed in a separate approved ICR (see OMB Number 1250-0003). Thus, the burden would not be accounted for in this ICR. Additionally, OFCCP based its estimates of burden related to requesting a FAAP agreement on its experience with contractors over the past several years. These estimates reflect the average experience of contractors that develop FAAP agreements and as such include the types of contractors described by the commenter. While the commenter asserts that the burden estimate is low, no alternative calculations are provided. Therefore, OFCCP makes no adjustment to its estimate of burden based on this comment.

Clarification regarding the provision of specific information.

The commenter asserts that the revised directive includes an open ended request for information regarding the structure of a contractor's organization (proposed directive paragraph 7.E.1(e)). This assertion does not take into consideration the clarifying footnote that explains the FAAP Branch will determine if a conference to discuss the documents provided is needed. To clarify and reduce possible confusion, OFCCP modified the relevant paragraph in the revised directive. The commenter also asserts that no burden was assessed for information regarding equal employment opportunity violations included in Attachment B. Attachment B does not ask that the contractor provide equal employment opportunity violations. That item is included in Attachment C and burden is and was assessed in section 12 below.

**9. Gift Giving**

OFCCP provides neither payments nor gifts to respondents.

**10. ASSURANCE OF CONFIDENTIALITY**

While the agency makes no express assurance of confidentiality in relation to this information collection, OFCCP recognizes that the contractor who submits the required

information may view it as sensitive information. The information obtained from a contractor will be evaluated pursuant to the public inspection and copying provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR Part 70. OFCCP requires that impacted contractors be notified in writing when a FOIA request has been made for contractor data. OFCCP makes no decision to disclose such documents until the contractor has had an opportunity to submit objections to the release of the document.

## **11. SENSITIVE QUESTIONS**

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

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

The burdens associated with this information collection are related to reporting. The recordkeeping burdens that result from OFCCP's regulations related to developing, updating and maintain AAPs are included in OFCCP's ICR for supply and service contractors OMB Number 1250-0003 and they are not changed. Additionally, the Uniform Guidelines on Employee Selection Procedures are used by four agencies other than OFCCP; however, nearly all of the burden hours are associated with three agencies: OFCCP, EEOC, and Department of Justice. The EEOC, under OMB Number 3046-0017, accounts for all employers with 15 or more employees. Because the recordkeeping burdens are covered in another ICR, OFCCP is assessing no recordkeeping burden in this ICR.

### **Reporting Burden**

A contractor seeking to use AAPs based on functional or business units must obtain prior approval. To do this, the contractor sends a written request to OFCCP explaining why it believes FAAPs are appropriate. In addition to this explanation, OFCCP needs specific documents and information from the contractor in order to determine whether FAAPs are appropriate for the contractor's organization. Thus, the reporting burden assessed below accounts for the written submission requesting approval for an agreement and the retrieval and copying of information needed by OFCCP to make its determination. The estimates of time were needed to complete the tasks are based on the experience of OFCCP's FAAP Branch which works with contractors going through the approval process. Additionally, based on OFCCP's experience, 80 percent of contractors submit this information electronically and 20 percent submit paper documents.

Seeking approval to develop AAPs along functional or business unit lines is a decision a contractor voluntarily makes. OFCCP has FAAP agreements with 82 contractors that cover over 1,900 functional units. OFCCP estimates that there will be approximately 10 requests for new FAAP agreements each year. This estimate is based on the volume of FAAP agreements requested in the previous years.

**a) Requesting a FAAP Agreement:**

For contractors wanting to develop an AAP based on business functions or business units, OFCCP requires that they submit a written request explaining that it is a covered federal contractor or subcontractor under 41 CFR 60-1, 60-2, 60-300, and or 60-741, including specific information regarding a federal contract or subcontract of \$50,000 or more, identifying the name of the federal contracting agency, the contract number, the contract period, and the name of the prime contractor if the contractor is a subcontractor. OFCCP estimates that it will take 1 hour per contractor to prepare this statement.

In addition to the written request, contractors are required to submit the items listed in Attachment B as listed below.

Most Recent Consolidated EEO-1 Report

The contractor is required to provide a copy of its most recent consolidated Employer Information Report (EEO-1 Report). The consolidated EEO-1 report provides information relative to the total size of a corporation. The report is required reporting for Federal contractors and subcontractors. The burden for developing a consolidated EEO-1 Report is covered under OMB Control Number 3046-0007. Therefore, there is no burden associated with collecting the records or completing this report. However, a copy of the consolidated report is included in the information provided to OFCCP, therefore OFCCP estimates it will take 0.5 hours to find and copy the report.

Organization Chart and Description of the Function

The contractor is required to provide a copy of its organizational chart that identifies all of the proposed functional or business units to be covered by the requested FAAP and how an explanation of how they are related to each other within the corporation's overall structure. In addition, contractors are required to provide a narrative description of the business or function of each proposed FAAP unit and how it meets the definition of a functional or business unit. OFCCP estimates that it will take 12 hours for a contractor to develop and provide this item.

The Total Number of Employees

The contractor is required to provide for each proposed functional or business unit the company and subsidiary name covered by the FAAP agreement and the address, total number of employees by location (company or subsidiary name and street address) including the identification of the managing official of each functional or business unit. OFCCP estimates that it will take 8 hours for a contractor to provide this information.

Statement Identifying the Location of Personnel Records

Because a FAAP generally reflects more than a single establishment, OFCCP requires that the contractor provide a statement addressing the location (including

city and state) where personnel records, including applicant data, are located. OFCCP estimates that it will take 1 hour for a contractor to provide this information.

#### List of Establishment Based AAPs

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

#### Transition Plan

A requesting contractor is required to provide a transition plan describing the process and schedule for moving from establishment-based AAPs to functional-based AAPs. OFCCP estimates that it will take 2.5 hours per contractor to develop this request.

#### Dates of the Proposed AAP Year

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

#### Copies of Personnel Policies

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

In addition to the written request, contractors are required to discuss the following items, found in Attachment C of the proposed revised directive with OFCCP when negotiating the agreement.

#### Reporting Hierarchy

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

#### Personnel Procedures

To assess whether the proposed FAAP meets the criteria of operating autonomously, OFCCP requests that contractors be prepared to discuss their



personnel procedures for recruitment, hiring, promotion, compensation, termination, record retention, and data analysis for each functional or business unit. If functional units have different personnel or compensation practices, OFCCP requires that those be identified as well. OFCCP estimates that it will take 2.4 hours per contractor to provide this information.

#### Human Resources and Equal Employment Opportunity

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

#### Compliance with Section 503 and VEVRAA Requirements

During the conference, OFCCP asks the contractor to discuss its plan for ensuring those establishments covered by the FAAP agreement will comply with the requirements of Section 503 of the Rehabilitation Act and VEVRAA after its transition to a functional format. This information allows OFCCP to determine the impact the transition to a function-based AAP may have on individuals with disabilities and covered veterans. OFCCP estimates that it will take 2.8 hours per contractor to prepare to discuss this item.

#### EEO Violations

In determining whether the contractor's request for a FAAP agreement should be approved, OFCCP will consider the contractor's compliance history and requires the contractor be prepared to discuss information regarding any ongoing or prior EEO violations with local, state, or Federal agencies.<sup>21</sup> OFCCP estimates that it will take 2 hours per contractor to provide this item.

Taking into consideration the burden for preparing the initial request for a FAAP agreement and the burden for preparing the additional items discussed during the approval process, OFCCP estimates the burden for requesting approval of a FAAP agreement a 380 hours (38 hours x 10 contractor requests = 380 hours).

### **b) Updating, Modifying, and Certifying FAAP Agreements**

#### Updating an Agreement

Contractors with existing FAAP agreements are required to report annually the changes to the agreement including the names of functional units, changes of managing officials and contact information, updated contract information, employee counts, facility names and addresses. In addition, the contractor must indicate if it is adding new functional units or removing existing functional units and provide

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<sup>21</sup> Information for prior EEO violations is requested for the past three years from the date the FAAP request letter is sent to the director of OFCCP.

updated contract information. OFCCP estimates that it would take each contractor 5.3 hours to provide the required information.

OFCCP has on average 81 FAAP agreements. Since the update is an annual requirement, the annual burden to contractors is estimated as 429 hours (5.3 hours x 81 Contractors with Existing FAAP agreements = 429 hours).

Modifying an Agreement

Contractors with approved FAAP agreements are required to modify their agreements if there is a significant change in their corporate structure. Written notice is given within 60 days of the effective date of the change. The notice must include information indicating how the corporate structure was modified, indicate new functions or business units, the date of the changes, and if the modification is related to a merger, the contractor must indicate how the employees of the former company will be merged into its AAP structure. OFCCP estimates that it would take 5.8 hours per contractor to provide this information.

Based on experience, approximately 40 percent of FAAP contractors modify their FAAP agreements in a year. OFCCP estimates the annual burden as 188 hours ((5.8 hours x 81 contractors) x40 percent = 188 hours)).

Certifying a FAAP Agreement

FAAP agreements are approved for three-year terms. Prior to the expiration of that term, contractors that wish to continue developing AAPs under their FAAP agreement must submit a written request to the director of OFCCP certifying that there have been no changed circumstances to the business structure affecting the existing agreement. As a part of this certification, a contractor is required to include updated information on a Federal contract, employee counts, facility names and facility addresses in each functional unit. If there have been changes in the contractor structure, then the contractor also must provide the rationale explaining the changes. OFCCP estimates that it would take a contractor 3.7 hours to prepare this request.

OFCCP estimates that all of the FAAP contractors will need to certify their FAAP agreement. Therefore, the annual burden as 300 hours ((3.7 hours x 81 contractors) = 300 hours)).

**c) Third Party Disclosure Burden**

No third party disclosure burdens are associated with the FAAP directive.

**Total Reporting Burden by Contractor Activity**

	Total Number of Respondents	Recordkeeping Hours	Reporting Hours	Third Party Disclosure	Total Hours
Initial request for approval of an Agreement	10	0	380	0	<b>380</b>

Updating Agreement	81	0	429	0	<b>429</b>
Modifying Agreement	32	0	188		<b>188</b>
Certifying Agreement	27	0	300		<b>300</b>
<b>Total</b>				0	<b>1,297</b>

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

The estimated annualized cost to contractors is based on Bureau of Labor Statistics data in the publication, “Employer Costs for Employee Compensation” - June 2014, which lists total compensation for management, professional, and related occupations as \$54.95 per hour and administrative support as \$24.76 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support. We have calculated the total estimated annualized cost as follows:

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

	Total	
	Hours	Monetization
Initial Agreement	380	\$15,375
Updating an Agreement	429	\$17,357
Modifying an Agreement	188	\$7,606
Certifying an Agreement	300	\$12,137
<b>Total</b>	<b>1,297</b>	<b>\$52,475</b>

**13. ANNUAL OPERATION AND MAINTENANCE COST**

Currently, OFCCP is unaware of any capital or start-up costs associated with this collection of information. Generally, the information that contractors provide OFCCP is maintained in the normal course of business.

OFCCP estimates that contractors will have some operating and maintenance costs associated with this collection. Contractors requesting FAAP agreements and those updating, modifying, and certifying existing agreements are expected to provide information, including documentation to OFCCP.

Based on OFCCP’s experience, approximately 50 percent of contractors that are requesting initial FAAP approval send paper copies through the mail. The remaining 50 percent sent it electronically. Contractors that are updating, modifying or certifying an existing agreement will send the documents electronically. Therefore, OFCCP assesses costs for the initial mailing copying costs for the 50 percent of contractors that will be sending paper copies of the documents.

OFCCP estimates the average size of their organizational plan and other supporting documentation for the initial request to be 20 pages. Based on a survey of copying costs

at local office supply stores, OFCCP estimates the average copying cost of \$ 0.60 per page.<sup>22</sup> Thus, the estimated total copying cost for the initial FAAP agreement request is \$60 (20 pages x 5 contractors x \$0.60 per page = \$60).

In addition, OFCCP estimates an average mailing cost of \$5.75 per contractor. This assumes the information is provided using USPS Priority Mail, flat rate envelope. Therefore OFCCP estimates the cost of mailing the FAAP agreement to OFCCP is \$29 (5 FAAP agreement requests x \$5.75 = \$29).

The total estimated operating and maintenance cost for all contractors related to FAAP is an estimated \$89 (\$29 copying costs + \$60 mailing costs = \$89).

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

We have estimated the cost to the Government as follows:

40 Hours per Approved FAAP Agreement x 10 Agreements = 400 Hours

8 Hours per Updated FAAP Agreement x 81 Agreements = 648 Hours

8 Hours per Modified FAAP Agreement x 32 Agreements = 256 Hours

8 Hours per Certified FAAP Agreement x 81 Agreements = 648 Hours

We estimate the hourly rate at \$29.46.<sup>23</sup> The total hourly cost would be \$35.03 per hour x 1,952 hours = \$68,379. This cost is incorporated into the agency’s existing funding for personnel.

**15. CHANGES IN BURDEN HOURS**

We are requesting OMB approval of 1,297 burden hours and \$89 in costs. This is a renewal of an existing approval (OMB Number 1250-0006). This is an increase in burden from the previous approval of 926 hours. The average per contractor burden increases from 7.6 hours in 2013 to 8.6 hours. Changes in burden from OMB’s last review, which concluded in December 2012, are reported in the tables below.

Activity	Currently Approved Hours	Change	Explanation
<b>Total Recordkeeping</b>	0	No change	

<sup>22</sup> Based on an online survey of copying prices at office supply stores as of May 22, 2015.

<sup>23</sup> This estimate is based on the Office of Personnel Management’s 2012 Salary Table and assumes a GS-13, step 1, annual salary of \$73, 115, excluding locality pay.

<b>Activity</b>	<b>Currently Approved Hours</b>	<b>Change</b>	<b>Explanation</b>
Reporting Burden (in hours)			
Initial Request for an Agreement	535	Decreased by 155 hours	The number of contractors requesting FAAP agreements has decreased.
Modifying, Updating, or Renewing an Agreement	391	Decreased by 391 hours	In the previous package these activities were combined, in the current package the activities are reflected separately.
Updating an Agreement	See combined category above	Increased by 429	This activity is reflected as a separate calculation.
Modifying an Agreement	See combined category above	Increased by 188 hours	This activity is reflected as a separate calculation.
Certifying an Agreement	0	Increased by 300 hours	OFCCP replaced the renewal process with the certification process for FAAP agreements.
<b>Total Reporting Burden</b>	<b>926</b>	<b>1,297</b>	<b>OFCCP accounted for each activity separately.</b>
<b>Total Third Party Disclosure</b>	0	No change	
<b>Total Annual Burden (in hours)</b>	<b>926</b>	<b>1,297</b>	<b>OFCCP accounted for each activity separately. Additionally, in</b>

Activity	Currently Approved Hours	Change	Explanation
			<p><b>response to contractor comments, OFCCP removed the requirement to provide a copy of a current covered contract and modified its request for information on subsidiary entities.</b></p>

Summary of Costs	Current Cost Dollars	Change	Explanation
Annual Operations and Maintenance Costs	\$210	Decrease of \$121	More contractors are submitting requests and information via email, thus reducing costs.
Annualized Start-up and Capital Cost	\$0	No change	
<b>Total Estimated Annual Costs</b>	<b>\$210</b>	<b>Decrease of \$121</b>	<p><b>More contractors are submitting requests and information via email, thus reducing costs.</b></p>

**16. STATISTICAL USES AND PUBLICATION OF DATA**

OFCCP will not publish the data collected as a result of the items contained in this request as statistical tables.

**17. APPROVAL NOT TO DISPLAY THE EXPIRATION DATE**

OFCCP is not seeking such approval.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

There are no exceptions to the certification statement.

**PART B—STATISTICAL METHODS**

This information collection does not employ statistical methods.