

MEMORANDUM FOR: BRENDA AGUILAR

Chief
Food, Labor, and Health Branch
Office of Management and Budget—OIRA

FROM:

EDWARD HUGLER
Deputy Assistant Secretary—
Office of the Assistant Secretary for Administration and Management

THROUGH:

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Departmental Clearance Office
Office of the Assistant Secretary for Administration and
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SUBJECT:

Paperwork Reduction Act Emergency Clearance Procedures for the
Fair Pay and Safe Workplaces Executive Order (E.O. 13673)

The U.S. Department of Labor (DOL), Office of the Assistant Secretary for Administration and Management (OASAM) requests that OMB approve an Information Collection Request (ICR) using the Paperwork Reduction Act (PRA) emergency processing procedures specified in regulations 5 C.F.R. § 1320.13 for the Fair Pay and Safe Workplaces Preassessment Program information collection.

Summary

The Fair Pay and Safe Workplaces Executive Order (E.O. 13673) was signed by President Barack Obama on July 31, 2014, to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by ensuring that they understand and comply with labor laws. Labor laws are designed to promote safe, healthy, fair, and effective workplaces. The Federal Acquisition Regulatory (FAR) Council and the DOL are directing implementation via the FAR Rule and DOL Guidance. As part of the E.O. implementation scheme, current and prospective Federal contractors will be able to participate in a voluntary Preassessment Program wherein they disclose their labor law history to DOL independent of a contract award solicitation. DOL will assess whether any of the prospective contractor's violations are "serious," "repeated," "willful," and/or "pervasive"; and whether a labor compliance agreement may be warranted.

In order to collect Preassessment data from contractors, OASAM is requesting use of a newly developed Preassessment Intake Form (Form DL1-7013 (attached)), which will consist of two parts. Part A will obtain general information about the contractor, including identifying information and a primary representative, and a general "Fair Pay and Workplaces Representation" Part B will also collect identifying information, details on any covered labor law violations, and mitigating factors and/or remedial measures the contractor may want considered in the preassessment process.

The data collected under this submission is necessary for DOL to conduct its work under the preassessment process, and use of a form is the only practical and effective intake method for

DOL. The information collected will be sent for processing within the Labor Compliance Advisor (LCA) Hub case management system for analysis and recommendations, to include possible remedial action under the Preassessment Program.

To this end, the Agency has determined the collection of information is needed prior to the expiration of the time periods established by the PRA. The collection is essential to the mission of the Agency, and the Agency cannot reasonably comply with normal PRA clearance procedures because public harm is reasonably likely to result if normal clearance procedures are followed. Our analysis is as follows.

Regular Clearance Procedures Not Feasible in this Situation

The FAR Rule and DOL Guidance, which direct the Fair Pay and Safe Workplaces E.O. implementation, are being published in the Federal Register on or about August 25, 2016, and Preassessment would begin on September 12, 2016. Given the publication timeline, DOL could not use the regular clearance procedures. DOL OASAM requests OMB approval for emergency clearance to remove the requirement for a public comment period, and to approve DOL OASAM's request by September 9, 2016. The Agency will seek public comment once the collection is in place in anticipation of extending the approval for the information collection.

Collection Essential to Agency's Mission

With its mission to, "foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights," DOL was specifically named as the lead implementing agency for the Fair Pay and Safe Workplaces E.O. Providing prospective contractors the opportunity to receive advice from DOL on labor law history violations and compliance, as well as methods proactively to remediate issues independent of a specific acquisition is a central principle to the E.O. and the FAR Rule and DOL Guidance.

Approving an emergency clearance will allow DOL OASAM to fulfill its mission, as well as fulfill all responsibilities dictated in the Fair Pay and Safe Workplaces E.O.

Public Harm

Without the Preassessment Form, current and prospective government contractors will not feasibly be able to request a review of their labor law compliance history independent of a solicitation. The Preassessment program was developed to benefit contractors and help keep them competitive and compliant with the law. Participation in Preassessment is at the option of the contractor and enables prospective contractors to develop a labor compliance agreement and start taking steps to mitigate issues before there is a specific acquisition, as well as use the Preassessment outcome and/or labor compliance agreement as a mitigating factor in future acquisitions.

In addition, if a contractor that has been assessed by DOL subsequently submits a contract bid, and the contracting officer initiates a responsibility determination for the contractor, the contracting officer and the ALCA may rely on the DOL assessment that the contractor has a satisfactory record of labor law compliance unless additional labor law decisions have been disclosed. Without approval of this collection, a prospective contractor may be less competitive.

Finally, DOL strongly believes that agreements reached under the Preassessment Program can be an important tool in ensuring that workers on covered Federal contracts will receive the worker protections to which they are entitled by law.

Estimates of Burden

The Agency has taken all practical steps to minimize the burden of the collection of information. Specifically, the data collected under this ICR will be the same as that which a prospective contractor will enter in the Systems for Award Management (SAM). Those requirements were subject to notice and public comment. SAM cannot be used for the Preassessment Program, because it is designed only for solicitations for a Federal procurement action. The Agency does not anticipate any annual cost burden to contractors beyond the value of respondent time, and believes it will take contractors an average of two (2) hours to complete all the information requested.