

## NOTE TO REVIEWER

The Office of Federal Contract Compliance Programs (OFCCP) requests Office of Management and Budget (OMB) approval for 5,427,933 hours in combined recordkeeping and third party disclosure burden hours for compliance by federal contractors and subcontractors with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) (VEVRAA). This compares with 10,546,660 hours in the most recently approved clearance request in 2014, a decrease of 5,118,727 ( $5,427,933 - 10,546,660 = -5,118,727$ ) hours. This decrease reflects an adjustment in the number of affected federal contractors, which was overestimated in the previous information collection.

OFCCP will not be collecting any new or different information. The burden hours primarily represent those federal contractors and subcontractors that are required under VEVRAA to list their job openings with the appropriate employment service delivery system and to develop, update, and maintain an affirmative action program. Reporting requirements under VEVRAA are not included in this information collection, but rather, are included in the Scheduling Letter and Itemized Listing information collection request for nonconstruction supply and service Federal contractors, separately approved under OMB Control Number 1250-0003.

As explained in Section 15 of this supporting statement, the decrease in burden hours for this information collection is primarily a result of OFCCP's proposal to use data from the Employer Information Report EEO-1 (EEO-1 Report) to determine the number of covered federal contractors and contractor establishments. Previously, OFCCP averaged data from multiple sources but that methodology resulted in an overestimation of the number of affected contractors. The EEO-1 Report provides a more accurate estimate of contractors and establishments covered by VEVRAA. EEO-1 Report data from fiscal year 2014 shows 23,960 federal contractor parent companies filed reports, with 115,831 total contractor establishments. These numbers are significantly less than the estimates used in the previous information collection (57,104 contractor companies and 211,287 contractor establishments). In addition, the decrease in burden hours is a result of certain requirements in the VEVRAA regulations that are only applicable to new contractors.

## **SUPPORTING STATEMENT**

### **DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS**

#### **RECORDKEEPING AND REPORTING REQUIREMENTS—38 U.S.C. 4212, VIETNAM ERA VETERANS' READJUSTMENT ASSISTANCE ACT of 1974, AS AMENDED**

**OMB CONTROL NUMBER 1250-0004**

#### **A. JUSTIFICATION**

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for administering three equal opportunity laws that prohibit discrimination based on particular protected categories and require affirmative action to provide equal employment opportunities:

- Executive Order 11246, as amended (EO 11246),<sup>1</sup>
- Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503),<sup>2</sup> and
- Vietnam Era Veterans' Readjustment Assistance Act of 1974,<sup>3</sup> as amended, 38 U.S.C. 4212 (VEVRAA).

EO 11246 prohibits covered federal contractors<sup>4</sup> from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, and national origin. EO 11246 also prohibits contractors from taking discriminatory actions, including firing, against applicants and employees for asking about or sharing their own compensation information and, in certain instances, the compensation information of their co-workers.<sup>5</sup> EO

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1 The regulations implementing Executive Order 11246 applicable to supply and service contractors are found at 41 CFR Parts 60-1, 60-2, 60-3, 60-20, and 60-50.

2 The regulations implementing Section 503 applicable to supply and service contractors are found at 41 CFR Part 741.

3 The regulations implementing VEVRAA applicable to supply and service contractors are found at 41 CFR Part 60-300.

4 As used herein and unless otherwise specified, the term "contractors" refers to federal contractors and subcontractors subject to the laws enforced by OFCCP. For EO 11246, the term also included federally assisted construction contractors and subcontractors.

5 EO 13665 amended EO 11246 to include a prohibition on discrimination against any employee or applicant for inquiring about, discussing, or disclosing compensation or the compensation of another employee or applicant. Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information, 79 FR 20749 (April 11, 2014). The final rule published on September 11, 2015 and became effective on January 11, 2016. 80 FR 54934 (Sept. 11, 2015).

11246 applies contractors holding a Government contract in excess of \$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. EO 11246 also applies to Government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are paying agents for U.S. Savings Bonds.

Section 503 prohibits employment discrimination against applicants and employees based on disability and requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on physical or mental disabilities. Its requirements apply to contractors with a Government contract in excess of \$15,000.<sup>6</sup>

VEVRAA prohibits employment discrimination against protected veterans, namely disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans, and requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on their status as a protected veteran. Its requirements apply to contractors with a Government contract of \$150,000 or more.<sup>7</sup>

OFCCP promulgated regulations implementing these programs consistent with the Administrative Procedure Act. These regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60 and are accessible on the Web at [http://www.dol.gov/dol/cfr/Title\\_41/Chapter\\_60.htm](http://www.dol.gov/dol/cfr/Title_41/Chapter_60.htm).

For purposes of OFCCP's recordkeeping and reporting requirements, the agency divides the obligations under these authorities into multiple information collection requests (ICRs).<sup>8</sup> These divisions are based on OFCCP's distinct enforcement authorities (e.g., EO 11246 and Section 503 each has its own recordkeeping ICR), programs, and related regulatory requirements.

The reporting requirements under VEVRAA are not included in this information collection, but rather, are included in the Scheduling Letter and Itemized Listing ICR for nonconstruction supply and service contractors, separately approved under OMB Control Number 1250-0003.

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<sup>6</sup>Effective October 1, 2010, the coverage threshold under Section 503 increased from \$10,000 to \$15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See*, Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 CFR 53129 (Aug. 30, 2010).

<sup>7</sup>Effective October 1, 2015, the coverage threshold under VEVRAA increased from \$100,000 to \$150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See*, Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

<sup>8</sup>OFCCP's other current ICRs include: Construction Recordkeeping Requirements (OMB No. 1250-0001), Complaint Procedures (OMB No. 1250-0002), Supply and Service Program (Scheduling Letter and Itemized Listing) (OMB No. 1250-0003), Section 503 Recordkeeping Requirements (OMB No. 1250-0005), Functional Affirmative Action Program Agreement Procedures (OMB No. 1250-0006), Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions (OMB No. 1250-0008), and Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors (OMB No. 1250-0009). In the future, and as appropriate, OFCCP proposes to consolidate several of these ICRs.

Due to the pending expiration of OMB No. 1250-0004, OFCCP is seeking approval of the agency's VEVRAA recordkeeping and third party disclosure requirements.

## **1. LEGAL AND ADMINISTRATIVE REQUIREMENTS**

### VEVRAA

41 CFR Part 60-300 –Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans

These regulations establish the basic nondiscrimination and affirmative action requirements under the VEVRAA program. They define coverage, specify clauses to be included in contracts, provide procedures to ensure compliance by covered contractors, specify reporting and recordkeeping requirements, establish a benchmark for veteran representation in the workforce, and outline the basic requirements for AAPs under VEVRAA.

Section 60-300.5 describes the equal opportunity clause in Federal contracts. Paragraphs 2 through 6 of the clause pertain to the mandatory job listing requirements. Each covered contractor must list job openings with the appropriate state or local employment service delivery system (ESDS) in a format permitted by the ESDS. Each covered contractor must also provide and update as necessary information to the appropriate ESDS. This information includes status as a Federal contractor; that the contractor desires priority referrals of protected veterans from the ESDS; the name and location of each hiring location within the state; and the contact information for the contractor official responsible for hiring at each location as well as any external job search organizations the contractor uses to assist in its hiring. Each contractor is required to include the EO clause in each of its subcontracts of \$150,000 or more, although the clause may be incorporated by reference or operation.

Section 60-300.40 requires contractors with 50 or more employees and a contract of \$150,000 or more to develop a VEVRAA AAP.

Section 60-300.42 requires contractors to invite job applicants at the pre-offer and post-offer stages to self-identify as protected veterans. The invitations to self-identify must state that the contractor is required to take affirmative action to employ and advance in employment protected veterans, and that the information sought is being requested on a voluntary basis.

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

- Develop and include an equal opportunity policy statement in the AAP.

- Review personnel processes to ensure that qualified protected veterans are provided equal opportunity
- Review all physical and mental job qualification standards to ensure that, to the extent any tend to screen out qualified disabled veterans, that the standards are job-related and consistent with business necessity.
- Provide reasonable accommodations for physical and mental limitations.
- Develop and implement procedures to ensure that employees are not harassed because of their veteran status.
- Develop procedures and practices to disseminate affirmative action policies, both internally and externally, and undertake appropriate outreach and positive recruitment activities designed to effectively recruit protected veterans.
- Establish an audit and reporting system to measure the effectiveness of the AAP.
- Designate a responsible official to implement and oversee the AAP.
- Provide training to all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes to ensure that the commitments in the contractor's affirmative action program are implemented.
- Conduct data collection analysis pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years, including: the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of protected veteran applicants hired; the total number of applicants hired; and the number of applicants who self-identified as protected veterans or who are otherwise known as protected veterans.

Section 60-300.45 requires contractors to either adopt the a hiring benchmark equal to the national percentage of veterans in the civilian labor force, or establish a hiring benchmark for protected veterans taking into account five factors specified in the regulation.

Section 60-300.60 identifies the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. These methods range from an in-depth comprehensive evaluation of the contractor's employment practices (i.e., compliance review) to a narrowly focused analysis of a selected employment practice or policy (i.e., compliance check), among others. Evaluation of compliance with VEVRAA is concurrent with evaluation of the contractor's compliance with EO 11246 and Section 503.

## **2. USE OF COLLECTED MATERIAL**

The EO Clause, located at section 60-300.5, requires contractors to list job openings with the appropriate state or local ESDS in a format permitted by the ESDS. Each covered contractor must also provide and update as necessary information to the appropriate ESDS, including: its status as a Federal contractor; that it desires priority referrals of protected veterans from the ESDS; the name and location of each hiring location within the state; and the contact information for the contractor official responsible for hiring at each location as well as any external job search organizations the contractor uses to assist in its hiring. The mandatory job listing requirement is a critical component to helping veterans find work with federal contractors. Providing the ESDS with the name and

location of the contractor's hiring locations and contact information enables the ESDS to develop a centralized list of federal contractors and ensures that they have appropriate contact information if there are any questions that need to be resolved in the job listing or priority referral process.

Section 60-300.42 outlines the requirements for contractors' obligations to invite individuals to self-identify as a protected veteran. This process enables the contractor and OFCCP to collect valuable data on the number of protected veterans who apply for or are hired into federal contractor positions. This allows for assessment of the effectiveness of the contractor's recruitment and affirmative action efforts over time, and promotes successful recruitment and affirmative action.

Section 60-300.44 describes the required contents of a contractor's written affirmative action program. During a compliance evaluation, OFCCP reviews the contractor's affirmative action program to determine whether the contractor is complying with its obligations not to discriminate in employment and to take affirmative action to ensure equal employment opportunity.

Section 60-300.45 requires contractors to set a benchmark for hiring protected veterans by using the national average for the number of veterans in the civilian labor force which OFCCP will provide (and periodically update) on its public website, or by setting a benchmark that fits the company's specific needs. This requirement provides contractors with a yardstick by which they can objectively measure the effectiveness of their efforts.

### **3. USE OF INFORMATION TECHNOLOGY**

In general, under OFCCP 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 and provide OFCCP with data upon request during a compliance evaluation.

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

Information technology systems used to comply with data requirements under OFCCP's VEVRAA regulations should be capable of performing the below functions.

- Collecting and analyzing employment activity data related to VEVRAA
- Analyzing outreach and recruitment
- Tracking self-identification
- Disseminating internal and external EO policies
- Providing notice to subcontractors and vendors

- Facilitating calculation of VEVRAA benchmarks
- Auditing and reporting of AAP program elements

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

- VEVRAA Contractor Resources  
<http://www.dol.gov/ofccp/regs/compliance/Resources.htm>
- Fact Sheets, Frequently Asked Questions and Webinar training  
<http://www.dol.gov/ofccp/regs/compliance/vevraa.htm>
- Sample AAPs  
<http://www.dol.gov/ofccp/regs/compliance/AAPs/AAPs.htm>
- Contractors' VEVRAA Hiring Benchmark Database  
<https://ofccp.dol-esa.gov/errd/VEVRAA.jsp>
- Disability and Veterans Community Resources Directory  
<https://ofccp.dol-esa.gov/errd/Resources.503VEVRAA.html>
- Employment Resource Referral Directory  
<https://ofccp.dol-esa.gov/errd/index.html>

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

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

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

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

opportunity. No duplication of effort exists because no other Government agency has these specific data collection requirements.

While contractors maintain other employment data in the normal course of business, affirmative action programs under VEVRAA are unique in that contractors create them specifically to meet the requirements of OFCCP regulations. This comprehensive document is not available from any other source. Therefore, no duplication of effort exists.

## **5. IMPACT ON SMALL BUSINESSES**

OFCCP's information collection does not have a significant economic impact on a substantial number of small entities. OFCCP minimizes the information collection and recordkeeping burden on a significant number of small businesses by exempting contractor establishments with fewer than 50 employees from the 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.<sup>9</sup>

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

The requirements outlined in this ICR ensure that covered contractors meet their equal opportunity obligations to protected veterans. The nondiscrimination requirements of VEVRAA apply to all covered contractors. *See* 41 CFR 60-300.4. The requirement to prepare and maintain an affirmative action program, the specific obligations of which are detailed at 41 CFR 60-300.44, apply to those contractors with a Government contract of \$150,000 or more and 50 or more employees.

If this information is collected less frequently than required, it could compromise OFCCP's enforcement of VEVRAA and its implementing regulations. OFCCP reviews contractor compliance through its compliance evaluation process. *See* 41 CFR 60-300.60. In order to accurately determine compliance, both OFCCP and the contractor must be able to analyze contractor actions taken and results obtained. Additionally, the data collection frequency for this ICR mirrors that of OFCCP's other programs, particularly the EO 11246 and Section 503 supply and service program, as VEVRAA compliance evaluations are conducted concurrently with that program.

As noted under Control Number 1250-0003, the older the data, the greater the chances that more qualified workers are the victims of any discrimination that has occurred and that the discrimination continues for a longer period. A consequence of such older data may be that the scope of the violation, resulting harm and the overall burden of contractor compliance are greater.

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

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<sup>9</sup> 41 CFR 60-300.40 – Applicability of the affirmative action program requirement.

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

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

OFCCP received two comments on the VEVRAA ICR. One of the comments was from the Equal Employment Advisory Council (EEAC), a nonprofit employer association. The other comment was from a disability rights attorney.

Though the EEAC did not indicate any desired alterations to the recordkeeping requirements outlined in the ICR, the association offered one recommendation for OFCCP to consider when developing future guidance. The EEAC recommends that OFCCP further clarify the meaning of the terms “hires” and “jobs filled,” as used in the ICR and 41 CFR 300.44(k), via Frequently Asked Questions (FAQs) on OFCCP’s Web site. In response to EEAC’s comment, OFCCP clarifies the distinction between employees “hired” and “jobs filled,” as currently explained in the FAQs. The number of those “hired” refers to those internal and external applicants who are selected for a position through a competitive process. “Jobs filled,” on the other hand, refers to all jobs the company filled by any means, be it through a competitive or non-competitive process. It, therefore, should take into account jobs filled by both internal and external candidates who competed and were selected for a new position – those who were “hired” -- as well as those positions that were filled via non-competitive placements, promotions, transfers, and reassignments. As part of its continuous development of guidance to assist contractors in conducting data collection and analysis required by 41 CFR 60-300.44(k), and in response to EEAC’s comment, OFCCP will consider whether further refinement of its FAQs on these definitions is needed.

The disability rights attorney suggested that OFCCP “state in its regulations that any civilian poisoned at Camp LaJeune will be considered a service-disabled veteran for purposes of the eligibility for DOL programs.” The current regulations define a “disabled veteran” as one who is: (1) a veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or (2) a person who was discharged or released from active duty because of a service-connected disability. This ICR did not propose any amendments to its VEVRAA regulations; rather, it is seeking authorization, in part, for information collections associated with the current VEVRAA regulations. Accordingly, OFCCP does not revise the VEVRAA regulations through this submission.

## **9. GIFTS OR PAYMENTS**

OFCCP provides neither payments nor gifts to respondents.

## **10. CONFIDENTIALITY OF INFORMATION**

Contractors who submit the required information may view it as sensitive information. OFCCP will evaluate all information pursuant to the public inspection and disclosure provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR Part 70. OFCCP requires that 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. Furthermore, it is OFCCP's position that it does not release any data obtained during the course of a compliance evaluation until the matter is completed.

## **11. QUESTIONS OF SENSITIVE NATURE**

VEVRAA requires contractors to invite applicants to self-identify as a protected veteran and indicate whether a reasonable accommodation is required. The protected veteran category includes disabled veterans. Generally, a contractor informs its protected veteran employees that it collects and maintains their data strictly for affirmative action purposes. Race and sex data is not required under VEVRAA.

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

The following is a summary of the methodology for the calculation of the recordkeeping and third party disclosure requirements for OFCCP's VEVRAA ICR.

As noted at the beginning of this supporting statement, the total in combined recordkeeping and third party disclosure burden hours for this ICR (5,398,974) is less than total number of hours approved in 2014 (10,546,660), as detailed in Sec. 15 below.

### **A. Information Collections**

#### **Section 60-300.5 Equal Opportunity Clause**

Paragraph 2 of the Equal Opportunity Clause (EO Clause) requires contractors to list their job openings with the state or local employment service delivery system (employment service). OFCCP estimates that gathering records and providing the job listing to the employment service will take 25 minutes for approximately 15 listings per year. The burden for this third-party disclosure is 723,944 hours (115,831 contractor establishments  $\times$  25 minutes  $\times$  15 listings/60 = 723,944 hours).

Paragraph 4 of the EO Clause requires contractors to provide the appropriate employment service with the name and location of each of the contractor's hiring locations, a statement of its status as a federal contractor, the contact information for the hiring official at each location in the state, and a request for priority referrals of protected veterans. Paragraph 4 also requires contractors that use job search organizations to provide the employment service with the contact information for each job search organization. These requirements apply to new contractors, which OFCCP estimates to be 1 percent of all covered contractors. Existing contractors (or 99 percent of contractors) would have already provided the required information to the appropriate

employment service or job search organization, as accounted for in the previous information collection. OFCCP estimates a total of 15 minutes for a new contractor to ensure that its information is provided to the employment service. The annual burden for this provision is 290 hours (1,158 new contractor establishments  $\times$  15 minutes/60 = 290 hours). OFCCP further estimates that 25 percent of new contractors, or 290, will use outside job search organizations and incur an additional 5-minute burden to notify the employment service of the contact information for its outside job search organizations. The annual burden for this provision is 24 hours (290 contractor establishments  $\times$  5 minutes/60 = 24 hours). This is a third-party disclosure.

#### Section 60-300.42 Invitation to Self-Identify

Section 60-300.42(a) requires contractors to extend a pre-offer invitation to self-identify as a “protected veteran.” In the previous information collection, OFCCP estimated that contractors working at the company level will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample “as is” or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor’s application form. Existing contractors will no longer need to take these steps to comply with the pre-offer invitation requirement, so the estimated burden in this information collection applies to only new contractor parent companies, or 1percent of the 23,960 contractor companies. The burden for this provision is 360 hours (240 new contractor companies  $\times$  1.5 hours = 360 hours).

Applicants for available positions with covered contractors will have a minimal burden complying with § 60-300.42(a) in the course of completing their application for employment with the contractor. Section 60-300.42(a), on pre-offer self-identification, requires contractors to invite all applicants to self-identify whether or not they are a protected veteran. OFCCP estimates that there will be an average of 24 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision, assuming that all applicants complete the form, is 3,474,930 hours (115,831 contractor establishments  $\times$  15 listings  $\times$  24 applicants  $\times$  5 minutes/60 = 3,474,930 hours). This is a third-party disclosure.

OFCCP further estimates that it will take contractors 15 minutes to maintain self-identification forms. This time includes either manually storing the forms in a filing cabinet or saving them to an electronic database. The burden for this provision is 28,958 hours (115,831 contractor establishments  $\times$  15 minutes/60 = 28,958 hours).

#### Section 60-300.44 Required Contents of the Affirmative Action Program

OFCCP estimates that it takes existing contractors (99 percent of all contractor establishments), or 114,673, approximately 7.5 hours to document and maintain material evidence of annually updating a joint section 503 and VEVRAA affirmative action program. The burden for this requirement is 860,048 hours (114,673 contractor establishments  $\times$  7.5 hours = 860,048 hours).

OFCCP estimates that 1 percent of all contractors, or 1,158, are new contractors that will need to initially develop a joint section 503 and VEVRAA affirmative action program. OFCCP estimates that it takes approximately 18 hours to document and maintain material evidence of developing the program. Therefore, the recordkeeping burden for this provision is 20,844 hours (1,158 contractor establishments × 18 hours = 20,844 hours).

#### 60-300.44(f) External dissemination of policy, outreach and positive recruitment

Section 60-300.44(f)(1)(ii) requires contractors to send written notification of the company's affirmative action program policies to subcontractors, vendors, and suppliers. OFCCP estimates that contractors will take 15 minutes to prepare the notification and send it to subcontractors, vendors, and suppliers, and an additional 15 minutes to update email address changes in the company's email system. Likewise, the burden for any information technology assistance needed to send the written communication is estimated at 15 minutes. The burden for this request is 86,873 hours (115,831 contractor establishments × 45 minutes/60 = 86,873 hours). This is a third-party disclosure.

Section 60-300.44(f)(4) requires contractors to document all outreach activities it undertakes for protected veterans, and retain these documents for a period of 3 years. OFCCP estimates that it will take contractors 15 minutes to retain the required documentation. Retaining these records means storing the records generated either electronically or in hardcopy, consistent with the contractor's existing business practices for how to store records. The annual recordkeeping burden for this provision is 28,958 hours (115,831 contractor establishments × 15 minutes/60 = 28,958 hour).

#### Section 60-300.44(h) Audit and Reporting System

Section 60-300.44(h)(1)(vi) requires contractors to document the actions taken to meet the requirements of 60-300.44(h). OFCCP estimates that it will take contractors 10 minutes to document compliance with this provision to create an audit and reporting system. Documentation may include, as an example, the standard operating procedure of the system including roles and responsibilities, and audit and reporting timeframes and lifecycles. The annual recordkeeping burden of this provision is 19,305 hours (115,831 contractor establishments × 10 minutes/60 = 19,305 hours).

#### Section 60-300.44(k) Data Collection and Analysis

Section 60-300(k) requires contractors to collect and analyze certain categories of data. OFCCP believes that most contractors have the capability to conduct the required calculations electronically. However, some companies may have to calculate this information manually. Therefore, OFCCP estimates that the average time to conduct the analysis and maintain the relevant documentation would be 1 hour 25 minutes. Relevant documentation could include the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations. The recurring

burden for this provision is 164,094 hours (115,831 contractor establishments × 85 minutes/60 = 164,094 hours).

Section 60-300.45 Benchmarks for Hiring

Section 60-300.45 requires the contractor to establish benchmarks in one of two ways. A contractor may use as its benchmark the national average number of veterans in the civilian labor force, which OFCCP will provide (and periodically update) on its public Web site. Or, alternatively, the contractor may establish its own individual benchmark using the five-factor method set forth in Section 60-300.45(b)(2)(i) – (v). OFCCP estimates that it will take contractors on average 10 minutes to maintain material evidence of compliance with this provision. The burden of this provision would be 19,305 hours (115,831 establishments × 10 minutes/60 = 19,305 hours).

Section 60-300.81 Access to Records

Section 60-300.81 requires contractors who are the subject of a compliance evaluation or complaint investigation to specify all available record formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation. Pursuant to 5 CFR 1320.4(a)(2), this information collection is excluded from the PRA requirements because it is related to an “administrative action, investigation, or audit involving an agency against specific individuals or entities.”

**B. Summary of Costs**

The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (December 2015), which lists total compensation for management, professional, and related occupations as \$55.47 per hour and administrative support as \$24.75 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, for a weighted average of \$40.72 per burden hour.

**Table 1: Summary of Recordkeeping Burden Hours and Costs for Contractors**

<b>Requirements</b>	<b>Burden Hours</b>	<b>Burden Costs</b>
<b>300.42 (Invitation to Self-Identify)</b>	29,318	\$14,659.20
<b>300.44 – Existing Contractors (Written Affirmative Action Program)</b>	860,048	\$35,021,154.56
<b>300.44 – New Contractors (Written Affirmative Action Program)</b>	20,844	\$848,767.68
<b>300.44(f)(4) (Outreach and Recruitment Recordkeeping)</b>	28,958	\$1,179,169.76
<b>300.44(h) (Audit &amp; Reporting System Recordkeeping )</b>	19,305	\$786,099.60

<b>Requirements</b>	<b>Burden Hours</b>	<b>Burden Costs</b>
<b>300.44(k) (Data Collection Analysis)</b>	164,094	\$6,681,907.68
<b>300.45 (Benchmarks Recordkeeping)</b>	19,305	\$786,099.60
<b>Total</b>	<b>1,141,872</b>	<b>\$46,497,027.80</b>

**Table 2: Summary of Third Party Disclosure Burden Hours and Costs for Contractors**

<b>Requirements</b>	<b>Burden Hours</b>	<b>Burden Costs</b>
<b>300.5 (EO Clause, Parag 2 – Mandatory Job Listing)</b>	723,944	\$29,478,999.68
<b>300.5 (EO Clause, Parag 4 – Contact Information)</b>	290	\$11,808.80
<b>300.5 (EO Clause, Parag 4 – Job Search Orgs Contact Information)</b>	24	\$977.28
<b>300.44(f)(1) (Notice to Subcontractors, etc.)</b>	86,873	\$3,537,468.56
<b>Total</b>	<b>811,131</b>	<b>\$33,029,254.32</b>

**Table 3: Summary of Third Party Disclosure Burden Hours and Costs for Non-Contractors**

<b>Requirement</b>	<b>Burden Hours</b>	<b>Burden Costs</b>
Section 60-300.42 (Self-Identification)	3,474,930	\$116,688,149.40

The total estimated cost for applicants to fill out the self-identification form is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (December 2015), which lists an average total hourly compensation for all civilian workers of \$33.58.

**Table 4: Total Burden for §§60-300.5; 60-300.42; 60-300.44; and 60-300.45**

Recordkeeping Burden Hours	1,141,872
Reporting Burden Hours	0
Third Party Disclosure Burden Hours	4,286,061
Total Burden Hours	5,427,933

### 13. OPERATIONS AND MAINTENANCE COSTS

OFCCP estimates that contractors will have some operations and maintenance costs in addition to the burden calculated above.

#### 60-300.42 Invitation to Self Identify

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitations to self-identify. The contractor must invite all applicants to self-identify at both the pre-offer and post-offer stage of the employment process. Given the increasingly widespread use of electronic applications, any contractor that uses such applications would not incur copy costs. However, to account for contractors who may still choose to use paper applications, OFCCP includes in this estimate printing and/or copying costs. Therefore, OFCCP estimates a single one-page form for both the pre- and post-offer invitation. Assuming 20 percent of all contractors will use a paper-based application system, and receive 24 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be \$667,186.56 ((115,831 establishments × 20percent) × 360 copies × \$0.08 = \$667,186.56).

#### **14. ESTIMATE OF ANNUAL COST TO FEDERAL GOVERNMENT**

OFCCP associates no unique federal costs with this information collection. OMB Control Numbers 1250-0001 and 1250-0003 currently include the annual costs of federal contractor compliance evaluations to ensure their compliance with the information collection requirements contained herein.

#### **15. PROGRAM CHANGES OR BURDEN ADJUSTMENTS**

OFCCP is requesting OMB approval of 5,427,933 burden hours. The 2014 clearance contained approval of 10,546,660 hours. The decrease in hours of the current request is attributable to OFCCP's proposal to use data from EEO-1 Reports to determine the number of covered contractors and contractor establishments instead of the methodology used in the previous information collection, which averaged data from multiple sources. EEO-1 data from fiscal year (FY) 2014 shows 23,960 federal contractor parent companies filed reports, with 115,831 total contractor establishments. These numbers are significantly less than the estimates used in the previous information collection (57,104 contractor companies and 211,287 contractor establishments).

OFCCP believes that the EEO-1 Report provides the more accurate estimate of Federal contractors and establishments covered by this VEVRAA information collection. Section 60-1.7 requires specified Federal prime contractors and subcontractors to file an EEO-1 Report annually.<sup>10</sup>

Employers use the EEO-1 Report (question 3) to self-identify as federal contractors and subcontractors and indicate whether they meet the thresholds under EO 11246 for AAP

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<sup>10</sup> The U.S. Equal Employment Opportunity Commission (EEOC) and OFCCP use EEO-1 Report data to analyze employment patterns for women and minorities and as a civil rights enforcement tool. OMB approved the EEO-1 Report information collection under OMB No. 3046-0007. The information collection can be viewed at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201610-3046-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201610-3046-001).

coverage: 50 or more employees and \$50,000 or more contract value.<sup>11</sup> The \$50,000 contract threshold is less than the \$150,000 contract value threshold for AAP coverage under VEVRAA. Thus, the number of contractors identified in the EEO-1 Reports will be greater than the number of contractors required to establish a VEVRAA AAP. Nevertheless, the number of contractors identified in the EEO-1 Reports provides a reasonable estimate for calculating the burden in this information collection, even if it overestimates the universe of contractors.<sup>12</sup> Any overestimate will be offset to some degree by the requirement that covered contractors must develop AAPs to cover employees at all of their establishments, even those with fewer than 50 employees. Any overestimate will be further offset to a small degree by the estimates for section 60-300.5 (Equal Opportunity Clause), which applies to contracts of \$150,000 or more but has no employee threshold. Taking these considerations into account, OFCCP believes that the 115,831 contractor establishment total is a reasonable, if not perfect, estimate.

In the previous information collection approved in 2014 and in the VEVRAA final rule published in September 2013, OFCCP estimated the number of affected contractors and establishments to be 57,104 and 211,287, respectively. OFCCP now believes that these figures are an overestimate of the number of contractors with recordkeeping and third party disclosure burdens under this information collection. The numbers estimated in the final rule derived from a combination of data from FY 2009 EEO-1 Reports, the Federal Procurement Data System, the Veterans Employment and Training Services annual report, and other sources. See 78 FR 58658. The data from these sources is no longer current. Moreover, the methodology used to arrive at the estimates was based in large part on how OFCCP develops its Scheduling List of contractors for compliance evaluations. OFCCP develops its list of contractors for scheduling compliance evaluations by using multiple sources of information such as Federal acquisition and procurement databases, EEO-1 Reports, Dun & Bradstreet (D&B) data, and the U.S. Census Bureau tabulations. Statistical thresholds such as industry type and employee counts of contractor establishments are also used. The list may be further refined by applying a number of neutral factors such as contract expiration date and contract value on the number of establishments per contractor that will be scheduled in any one cycle. This methodology is appropriate for scheduling compliance evaluations, but it does not accurately reflect the number of contractors required to develop AAPs.

This distinction is recognized in the most recent Scheduling Letter and Itemized Listing ICR (Control Number 1250-0003), in which OFCCP estimated the number of contractors required to develop AAPs under EO 11246 using data from only the EEO-1 Reports, instead of the more complex methodology OFCCP uses to create its Scheduling Letter and Itemized Listing. Thus, to be consistent with that approach, OFCCP will now use data from only the EEO-1 Reports to estimate the number of contractors affected by this information collection, which consists primarily of recordkeeping and third party disclosures resulting from the VEVRAA AAP requirements.

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11 41 CFR 60-1.7 – Reports and other required information.

12 The number of contractors with contracts of at least \$150,000 cannot be separately identified using the EEO-1 survey.

A summary of the change in hours is below.

**a. Recordkeeping Burden Hours**

The previous submission included 2,205,468 hours. The current request is 1,141,872 hours for an adjustment decrease of 1,063,596 hours. This decrease is primarily a result of the use of the contractor totals from the EEO-1 Reports data, discussed above, but also includes adjustments due to requirements that are no longer applicable to existing contractors.

**b. Third Party Disclosure Burden Hours**

The previous submission included 8,341,192 hours. The current request is 4,286,061 hours for an adjustment decrease of 4,055,131 hours. This decrease is primarily a result of the use of the contractor totals from the EEO-1 Reports data, discussed above, but also includes adjustments due to requirements that are no longer applicable to existing contractors.

**c. Other Burden Hours and Costs**

The previous submission included 1,670,297 hours in initial capital or start-up costs and \$1,217,002 in printing/copying costs. The current request no longer includes any initial capital and start-up costs, and estimates \$667,186.56 for printing/copying. This is an adjustment decrease of 1,670,294 hours and \$549,815.44. This decrease in printing/copying costs is exclusively a result of the use of the contractor totals from the EEO-1 Reports data, discussed above.

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

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

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

OFCCP is not seeking such approval.

**18. EXCEPTIONS TO THE CERTIFICATION STATEMENT**

OFCCP is able to certify compliance with all provisions.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This information collection does not employ statistical methods.