

### Note to Reviewer

The Office of Federal Contract Compliance Programs (OFCCP) is requesting approval from the Office of Management and Budget of 985,450 hours in combined recordkeeping, reporting, and third party disclosure burden for compliance with OFCCP's regulatory requirements by federal and federally assisted construction contractors. This compares with 803,725 hours for the last clearance request, an increase of 171,725 hours.

Although this Information Collection Request (ICR) incorporates two separate information collections, the increase in burden is attributable to the data sources used to retrieve the necessary information for calculating the public burden. For the previous ICR, OFCCP used data from the General Services Administration's System for Award Management (SAM) to determine the number of federal construction contractors covered by this collection. All firms must register in SAM before they can place a bid for a federal contract. As such, data from SAM was determined to be over-inclusive as it does not distinguish between companies who have placed a bid for a federal contract and those who have been awarded one. This ICR uses data from USAspending.gov and census.gov to determine the number of entities impacted by this ICR.

This ICR incorporates two amendments to Executive Order 11246. The ICR entitled "Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors" covers prohibitions against discrimination on the basis of sexual orientation and gender identity. That ICR was approved on September 30, 2015 under OMB Control Number 1250-0009 and expires on 9/30/2018. The ICR entitled "Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions" covers prohibitions against pay secrecy policies and actions. That ICR was approved on December 1, 2015 under OMB Control No. 1250-0008 and expires on 12/31/2018. The recordkeeping and reporting requirements of those information collections are now being merged with this ICR.

Lastly, this ICR introduces a new form for the reporting requirement found at 41 CFR 60-4.2, which requires contracting officers, applicants, and contractors to submit written notifications to OFCCP notifying the agency of new contract awards that exceed \$10,000. Written notices are currently submitted to OFCCP by fax, mail, or email. The new form will allow respondents to submit the notifications on the agency's website through the proposed Notification of Construction Contract Award Portal.

**Department of Labor  
Office of Federal Contract Compliance Programs  
Construction Recordkeeping and Reporting Requirements**

**OMB Control No. 1250-0001**

**A. JUSTIFICATION**

The Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP) administers three equal employment opportunity mandates that prohibit employment 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> Contractors are also prohibited from taking adverse employment actions against applicants or employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers.

- Executive Order 11246, as amended (EO 11246),
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), and
- Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA).

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.<sup>2</sup>

EO 11246 prohibits contractors 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 against applicants and employees for attempting to learn if they are victims of compensation discrimination and, in certain instances, sharing pay information with their co-workers. The authorities OFCCP enforces also require affirmative action to provide equal employment opportunities. EO 11246 applies to contractors, and to federally assisted construction 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 issuing and paying agents for U.S. savings bonds and notes in any amount.

Section 503 prohibits federal contractors from discriminating against applicants and employees on the basis of disability and requires contractors to take affirmative action to employ and

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<sup>1</sup> Future references to “contractors” will also include subcontractors unless otherwise stated.

<sup>2</sup> 241 CFR 60, [https://www.ecfr.gov/cgi-bin/text-idx?](https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=b686ff45080d69713c00bf18b651cc37&mc=true&tpl=/ecfrbrowse/Title41/41chapter60.tpl)

[gp=&SID=b686ff45080d69713c00bf18b651cc37&mc=true&tpl=/ecfrbrowse/Title41/41chapter60.tpl](https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=b686ff45080d69713c00bf18b651cc37&mc=true&tpl=/ecfrbrowse/Title41/41chapter60.tpl) (last accessed July 18, 2017).

advance in employment, qualified individuals with disabilities. Its requirements apply to contractors with a Government contract in excess of \$15,000.<sup>3</sup>

VEVRAA prohibits contractors from discriminating against protected veterans, namely, disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans. VEVRAA also requires contractors to take affirmative action to employ and advance in employment qualified protected veterans. Its requirements apply to contractors with a Government contract of \$150,000 or more.<sup>4</sup>

For purposes of OFCCP's recordkeeping and reporting requirements, the agency divides the obligations under these authorities into multiple ICRs,<sup>5</sup> which are based on OFCCP's enforcement authorities and related regulatory requirements. Pursuant to the expiration of OMB Control No. 1250-0001 on February 28, 2018, this ICR seeks reauthorization of the agency's construction recordkeeping and reporting requirements.

## 1. Legal and Administrative Requirements

### Changes since the last authorization:

- In 2014, EO 13665 amended EO 11246 to prohibit contractors from discharging or discriminating in any other way against employees or applicants who inquire about, discuss or disclose their own compensation or the compensation of another employee or applicant, with certain limitations.<sup>6</sup> As a result, the regulations at 41 CFR 60 were revised to reflect the new protections. These protections are found at Sections 60-1.4(a), 60-1.4(b), and 60-1.35. The information collection requirements associated with these Sections are currently approved under OMB Control No. 1250-0008, which expires on 12/31/2018. The requirements of OMB Control No. 1250-0008 are being incorporated into this information collection. There is no recurring public burden associated with this collection.

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<sup>3</sup>The Section 503 threshold is subject to Federal Acquisition Regulation, Inflation Adjustment of Acquisition-Related Thresholds, 41 U.S.C. 431(a), which adjusts certain acquisition-related thresholds for inflation. The threshold last increased from \$10,000 to \$15,000 on August 30, 2010 (75 FR 53129).

<sup>4</sup>The VEVRAA threshold is also subject to Federal Acquisition Regulation, Inflation Adjustment of Acquisition-Related Thresholds, 41 U.S.C. 431(a). Effective October 1, 2015, VEVRAA's threshold increased from \$100,000 to \$150,000. 80 FR 38298 (July 2, 2015).

<sup>5</sup>OFCCP's current information collections include: (1) OFCCP Construction Recordkeeping and Reporting Requirements (OMB No. 1250-0001); (2) Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor (OMB No. 1250-0002); (3) OFCCP Recordkeeping and Reporting Requirements-Supply and Service (OMB No. 1250-0003); (4) OFCCP Recordkeeping and Reporting Requirements Under VEVRAA (OMB No. 1250-0004); (5) OFCCP Recordkeeping and Reporting Requirements Under Section 503 (OMB No. 1250-0005); (6) Agreement Approval Process for Use of Functional Affirmative Action Programs (OMB No. 1250-0006); (7) Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions (OMB No. 1250-0008); and (8) Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors (OMB No. 1250-0009). Information collections approved under OMB Control Number 1250-0088 cover those authorized by DOL's generic clearance. Such collections include OFCCP's help desk email survey, help desk phone survey, and event evaluation form.

<sup>6</sup>Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information, 79 FR 20749 (April 11, 2014).

- In 2014, EO 13672 amended EO 11246 to prohibit contractors from discriminating against applicants and employees on the basis of sexual orientation and gender identity. The order directed DOL to replace the words “sex, or national origin” with the words “sex, sexual orientation, gender identity or national origin” wherever they appeared in the regulations. These protections were codified throughout Part 60-1.<sup>7</sup> The requirements of OMB Control No. 1250-0009 are being incorporated into this information collection. Any public burden associated with this collection is included under paragraph 12.

In an effort to consolidate and streamline its ICRs, OFCCP will consolidate the information collections that are approved under OMB Control Nos. 1250-0008 and 1250-0009 with its construction and supply and service requirements following the approval of this ICR and of OMB Control No. 1250-0003, which covers OFCCP’s recordkeeping and reporting requirements for supply and service contractors.<sup>8</sup>

#### EO 11246, 41 CFR Part 60-1

41 CFR Part 60-1 sets out the nondiscrimination and affirmative action requirements under EO 11246. 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 contains recordkeeping, reporting and third party disclosure requirements for the construction program. The paragraphs that follow describe the requirements of the applicable Sections at this Part.

Section 60-1.4 describes the equal opportunity clause in Government contracts. Sections 60-1.4(a)(4) and 60-1.4(b)(4) require contractors to notify labor organizations of their obligations under EO 11246 and the implementing regulations.

Section 60-1.7 requires specific federal prime contractors and first-tier subcontractors to file an Employer Information Report (EEO-1 Report) annually. 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. Although the EEO-1 constitutes a joint data collection with OFCCP, the EEOC is the sponsor of the collection and carries the public reporting burden. The EEO-1 Report is approved under OMB Control No. 3046-0007. To view this information collection, visit [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201610-3046-001#](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201610-3046-001#).

Section 60-1.10 describes the reporting requirement for contractors when their employees or prospective employees are denied a visa of entry to a country in which or with which it is doing business, and it believes the denial is due to a basis covered by EO 11246, as amended by EO 13672.

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<sup>7</sup> Implementation of Executive Order 13672, Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors, 79 FR 72993 (Dec. 9, 2014).

<sup>8</sup> OFCCP will seek reauthorization of OMB Control No. 1250-0003 in calendar year 2018. Upon its approval, the agency will, at that point, have incorporated OMB Control Nos. 1250-0008 and 1250-0009 into its supply and service and construction programs and will seek discontinuation of these two ICRs.

Section 60-1.12 requires contractors to 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, this retention period is one year.

Section 60-1.12(c) provides that the contractor must be able to identify the gender, race and ethnicity of each employee for any record the contractor maintains. Where possible, the contractor must also identify the gender, race and ethnicity of each applicant or Internet applicant.

Uniform Guidelines on Employee Selection Procedures, 41 CFR Part 60-3.

The EEOC, the U.S. Office of Personnel Management (OPM), DOL, and the Department of Justice (DOJ) adopted the Uniform Guidelines on Employee Selection Procedures (UGESP) in 1978.<sup>9</sup> UGESP applies to tests and other selection procedures used as a basis to make any employment-related decision. Under UGESP, each contractor maintains records and other information for each job sufficient to permit analyses of the impact of its selection procedures on the employment opportunities of people based on race, sex, or ethnic group.<sup>10</sup> Using this information, contractors and OFCCP identify and evaluate selection procedures for adverse impact.

When a test or other selection procedure is determined to have an adverse impact, Section 60-3.4(c) requires the contractor to validate the test or procedure and Section 60-3.5(d) requires the contractor to retain its validation study documentation.

Section 60-3.15(a)(1) applies to contractors with 100 or fewer employees. It requires contractors to keep records on the number of persons hired, promoted, and terminated for each job, by sex and, where appropriate, by race and national origin. This Section also requires contractors to keep records showing the number of applicants for hire and promotion by sex and, where appropriate, by race and national origin, as well as records showing the selection procedures used. This Section does not require contractors to make adverse impact determinations.

Section 60-3.15(a)(2) requires contractors with more than 100 employees to keep records for each job that are sufficient to allow contractors to make an adverse impact determination. Contractors make this determination at least annually and make it for each racial or ethnic group constituting at least 2 percent of the labor force in the relevant labor area or 2 percent of the applicable workforce.

Construction Contractors , 41 CFR Part 60-4

41 CFR Part 60-4 sets out EO 11246's nondiscrimination and affirmative action requirements for construction contractors. This Part applies to all contractors, subcontractors, contracting agencies, and applicants<sup>11</sup> that are party to or seek to enter federal and federally assisted

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<sup>9</sup>The UGESP information collection is approved under OMB Control No. 3046-0017. To view the information collection, visit [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201503-3046-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201503-3046-001).

<sup>10</sup> Section 60-3.4(b) requires recordkeeping and analyses of the following race and ethnic groups: Black, American Indian, Asian/Pacific Islander Hispanic, and White, and totals for each group.

<sup>11</sup> An applicant is defined as an applicant for federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such federal assistance. 41 CFR 60-1.3.

construction contracts, as well as federal nonconstruction contractors awarding construction contracts.<sup>12</sup> It defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, and specifies certain recordkeeping and reporting requirements. The paragraphs that follow describe the requirements at this Part.

Section 4.2 requires all contracting officers, applicants for construction contracts and covered nonconstruction contractors to include the “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)” set forth in this Section, in all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts. This notice includes the minority and female participation goals for the construction work performed in the covered area, which also apply to construction work performed outside of the covered area by geographical area. In addition, construction contractors, contracting officers, applicants for construction contracts, and covered nonconstruction contractors must notify OFCCP with written notification within 10 working days of award of a covered contract in excess of \$10,000.

Section 4.3 requires all contracting officers, applicants for construction contracts, construction contractors, and covered nonconstruction contractors to incorporate the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set forth in this Section, into all nonexempt federal contracts and subcontracts. Briefly, the specifications require covered contractors to engage in specific affirmative activities, which include:

- ensuring and maintaining a work environment free of harassment;
- establishing and maintaining a list of minority and female recruitment sources;
- maintaining a file of minority and female walk-in applicants;
- notifying OFCCP if a union is not referring minority or female applicants or is otherwise impeding the contractor’s efforts to meet its obligations;
- developing on-the-job training programs or participating in training programs which include minorities and women;
- disseminating the equal employment opportunity policy both externally and internally;
- reviewing EEO policy and affirmative action obligations with all employees who have personnel responsibilities;
- directing recruitment efforts to minority and female schools and organizations;
- encouraging minority and female employees to recruit minority and female applicants;
- validating all tests and other selection requirements;
- conducting annual assessments and inventories of current minority and female employees for promotional opportunities;
- ensuring that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect;
- ensuring that all facilities are nonsegregated;<sup>13</sup>
- documenting and maintaining records of solicitation; and
- conducting an annual review of supervisory performance and adherence to affirmative action obligations.

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<sup>12</sup> Nonconstruction contractors and subcontractors are required to comply with these requirements if, as a part of their federal contract or subcontract, construction work is necessary in whole or in part to the performance of a nonconstruction contract or subcontract. 41 CFR 60-4.1.

<sup>13</sup> This requirement includes an exception for separate or single-user toilet and necessary changing facilities.

Section 60-4.6 explains the goals and timetables set by OFCCP and their application to a contractor's workforce.

Section 60-4.7 explains the effect of the regulations in Part 60-4 on the requirements of Parts 60-1, 60-3, 60-20, and 60-50.

#### VEVRAA, 41 CFR Part 60-300

41 CFR Part 60-300 establishes the nondiscrimination and affirmative action requirements pertaining to protected veterans. This Part defines coverage, specifies clauses to be included in contracts, provides procedures to ensure compliance by covered contractors, specifies certain reporting and recordkeeping requirements, establishes an annual benchmark for veteran hiring, and specifies the basic requirements for affirmative action programs (AAPs) under VEVRAA. The paragraphs that follow describe the requirements of the applicable Sections at this Part.

Section 60-300.5 describes the equal opportunity clause for VEVRAA protected veterans in federal contracts.

Section 60-300.40 requires contractors with 50 or more employees and contracts of \$150,000 or more to implement the requirements of Subpart C of the regulation, including inviting applicants to self-identify and developing an AAP. A construction contractor may develop and maintain an AAP in one of two ways: company-wide, provided that the AAP can be disaggregated by trade and economic area (with the benchmark reported by trade and economic area); or by economic area, provided that the data is collected at the project level by trade and aggregated for the economic area.

Section 60-300.42 requires contractors to invite applicants to voluntarily self-identify their protected veteran status at the pre-offer and post-offer stages.

Section 60-300.44 identifies required elements of an AAP<sup>14</sup>, which include:

- developing and including an equal opportunity policy statement in the AAP;
- reviewing personnel processes to ensure that qualified protected veterans are provided equal opportunity;
- reviewing all physical and mental job qualification standards to ensure that those that screen out or tend to screen out qualified disabled veterans are job-related and are based on business necessity;
- providing reasonable accommodations for physical and mental limitations of an applicant or employee who is a qualified disabled veteran;
- developing procedures to ensure that employees are not harassed because of their veteran status;
- undertaking appropriate outreach and positive recruitment activities reasonably designed to effectively recruit protected veterans, documenting and assessing these activities on an annual basis, and disseminating the contractor's affirmative action policy to all subcontractors;

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<sup>14</sup> Detailed instructions for the development of a VEVRAA AAP are in Subpart C of 41 CFR Part 60-300.

- developing procedures and practices to disseminate affirmative action policies internally;
- establishing an audit and reporting system to measure the effectiveness of the AAP and determining progress and compliance;
- collecting and maintaining certain applicant and hiring data for three years;
- designating a responsible official to implement and oversee the AAP; and
- training all employees involved in personnel actions.

Section 60-300.45 requires contractors to either adopt the national hiring benchmark published on OFCCP's website, or establish their own hiring benchmark at each establishment for protected veterans using five factors: (1) the average percentage of veterans in the civilian labor force of the contractor's state; (2) the number of veterans who participated in the contractor's state's employment service delivery system; (3) applicant and hiring ratios; (4) recent assessments of external outreach and recruitment efforts; and (5) any other factors that may affect the availability of qualified protected veterans.

Section 60-300.60 identifies OFCCP's methods to assess contractors' compliance with the agency's regulations during a compliance evaluation. These methods range from an in-depth comprehensive evaluation of the contractor's employment practices (e.g., a compliance review), to a determination of whether the contractor maintained records consistent with Section 60-300.80 (e.g. a compliance check). Evaluation of compliance with VEVRAA is concurrent with evaluation of the contractor's compliance with EO 11246.

#### Section 503, 41 CFR Part 60-741

41 CFR Part 60-741 establishes the nondiscrimination and affirmative action obligations of contractors pertaining to individuals with disabilities. This Part defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, specifies certain reporting and recordkeeping requirements, establishes an aspirational utilization goal of 7 percent, and specifies the basic requirements for AAPs under Section 503. The paragraphs that follow describe the requirements of the applicable Sections at this Part.

Section 60-741.5 describes the equal opportunity clause for workers with disabilities in federal contracts.

Section 60-741.40 requires the development and maintenance of a Section 503 AAP. This Section requires each contractor and subcontractor that has 50 or more employees, and a contract of \$50,000 or more, to implement the requirements of Subpart C of these regulations, including inviting applicants and employees to self-identify and developing an AAP for each establishment. A construction contractor may develop and maintain an AAP in one of two ways: company-wide, provided that the AAP can be disaggregated by trade and economic area (with the goal reported by trade and economic area); or by economic area, provided that the data is collected at the project level by trade and aggregated for the economic area.

Section 60-741.42 requires contractors to invite applicants to voluntarily self-identify as an individual with a disability at the pre-offer and post-offer stages of the employment process.



Additionally, it requires contractors to invite employees in the first year of becoming subject to these requirements and at five year intervals thereafter to invite employees to voluntarily inform the contractor whether the employee believes that he or she is an individual with a disability.

Section 60-741.44 identifies required elements of an AAP<sup>15</sup>, which include:

- developing and including an equal opportunity policy statement in the AAP;
- reviewing personnel processes to ensure that qualified individuals with disabilities are provided equal opportunity;
- reviewing all physical and mental job qualification standards to ensure that those that screen out qualified individuals with disabilities on the basis of disability are job-related and based on business necessity;
- providing reasonable accommodations for physical and mental limitations;
- developing procedures to ensure that employees are not harassed because of their disability;
- undertaking appropriate outreach and positive recruitment activities reasonably designed to effectively recruit individuals with disabilities, documenting and assessing these activities on an annual basis, and disseminating its affirmative action policy to all subcontractors;
- developing procedures and practices to disseminate affirmative action policies internally;
- establishing an audit and reporting system to measure the effectiveness of the AAP;
- collecting and maintaining certain applicant and hiring data for three years;
- designating a responsible official to implement and oversee the AAP;
- training employees involved in personnel actions

Section 60-741.45 requires contractors to apply a 7 percent utilization goal to each of their job groups, or to their entire workforce if the contractor has 100 or fewer employees.

Section 60-741.60 identifies the methods OFCCP uses to assess contractors' compliance with the agency's regulations during compliance evaluations. These methods range from an in-depth comprehensive evaluation of contractors' employment practices (e.g., a compliance review), to a determination of whether the contractor maintained records consistent with Section 60-741.80 (e.g., a compliance check). Evaluation of compliance with Section 503 is concurrent with evaluation of contractors' compliance with EO 11246.

## **2. Use of Collected Material**

### Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity – 41 CFR 60-4.2.

This requirement ensures that all construction contractors are aware of the affirmative action requirements and obligations in the solicitation for offers and bids on all federal and federally assisted construction projects. Without this notification, construction contractors may not be

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<sup>15</sup> Detailed instructions for the development of a Section 503 AAP are in Subpart C of 41 CFR Part 60-741.

fully aware of their obligations before they develop their bids and proposals. Further, the required notice of subcontract awards provides OFCCP with accurate and current information regarding which employers are working on federal contracts. This information serves two purposes: (1) to identify those construction employers that would benefit from technical assistance; and (2) to contribute to the formulation of OFCCP's pool for selecting construction contractors for compliance evaluations.

#### Standard Federal Equal Employment Opportunity Construction Contract Specifications – 41 CFR 60-4.3

The 16 affirmative action specifications listed under Section 60-4.3(a)7 describe the required steps that contractors must take to ensure nondiscrimination and equal employment opportunity. The recordkeeping requirements associated with executing these specifications are critical to the final evaluation and assessment of a contractor's compliance. During a compliance evaluation, OFCCP examines contractors' compliance with the 16 specifications, supporting documentation, compensation data, and documents related to personnel actions, and employment policies and practices 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.

#### VEVRAA and Section 503 AAPs

Sections 60-300.44 and 60-741.44 describe the required contents of each contractor's written AAPs under VEVRAA and Section 503, respectively. During a compliance evaluation, OFCCP reviews contractors' AAPs to determine whether each contractor is complying with its obligations of nondiscrimination and affirmative action to ensure equal employment opportunity. This evaluation entails examination of various supporting documentation, including:

- assessments of personnel processes under 41 CFR 60-300.44(b) and 60-741.44(b);
- assessments of physical and mental job qualification standards under 41 CFR 60-300.44(c) and 60-741.44(c)
- results of evaluation of the effectiveness of outreach and recruitment efforts under 41 CFR 60-300.44(f) and 60-741.44(f) and;
- records of activities to comply with audit and reporting system requirements under 41 CFR 60-300.44(h) and 60-741.44(h);
- details of computations and calculations contained in the data collection analysis under 41 CFR 60-300.44(k) and 60-741.44(k);
- utilization analysis evaluating the representation of individuals with disabilities in each job group or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, as provided in 41 CFR 60-741.45; and
- documentation of the hiring benchmark adopted, including the methodology used to establish it if using the five factor approach, as described in 41 CFR 60-300.45.

### **3. Use of Information Technology**

- As stated above, construction contractors, contracting officers, applicants for construction contracts, and covered nonconstruction contractors are required to give written notice to OFCCP within 10 working days of awarding a federal or federally assisted construction

contract or subcontract in excess of \$10,000, as required by 41 CFR 60-4.2. Written notices are currently submitted to OFCCP's regional, district, and area offices by fax, mail, or email. OFCCP has developed a Notification of Construction Contract Award Portal ("NCAP") for contracting officers, applicants, and contractors to electronically submit written notifications on its website. The information requested on the NCAP reflects the requirements of 60-4.2(c). The reporting of this information is covered by this collection and respondents are currently submitting it to OFCCP in one of the methods listed above. The new portal will streamline the process, is convenient and cost-effective, and will provide respondents with confirmation that their notice was successfully transmitted – confirmation that is currently not available when submitting by fax, mail, or email. In addition to making the process easier, the NCAP both eliminates the mailing costs for respondents and reduces the burden on federal staff because it decreases the number of notices that they have to manually enter into a database. Respondents who choose not to use the portal maintain the option to submit the construction contract award notification via one of the other methods. The NCAP form is included in this ICR for authorization.

- Generally, contractors are able to develop and use any method that best suits their needs for collecting and maintaining information, as long as they can retrieve and provide to OFCCP the data required by its regulations. Since the majority of federal contractors are repeat contractors, they have developed their information technology systems to generate the required data. Information technology systems used to comply with regulatory requirements should be capable of:
  - monitoring hours worked on construction projects;
  - facilitating calculations of utilization;
  - collecting employment activity data (for example, applicants, hires, promotions, and terminations) related to EO 11246, and if applicable, Section 503 and VEVRAA;
  - conducting Section 503 utilization analysis,
  - analyzing outreach and recruitment;
  - tracking self-identification;
  - disseminating EO policies;
  - providing notice to subcontractors and vendors; and
  - facilitating calculations of the annual VEVRAA hiring benchmark.
- OFCCP provides compliance assistance to all contractors by utilizing information technology. For example, OFCCP's website provides access to a plethora of compliance resources and information, including:
  - webinar trainings on a variety of compliance related topics, available at <https://www.dol.gov/ofccp/>;
  - customer relations management tool that allows stakeholders to use the online self-service function to submit a question to OFCCP;
  - the Federal Contracts Compliance Advisor, available at <http://webapps.dol.gov/elaws/ofccp.htm>;

- o the Small Business Guide, available at <https://www.dol.gov/ofccp/TAGuides/sbguide.htm>;
- o the 2006-2010 EEO Tabulation, available at <https://www.census.gov/people/eetabulation/data/eetables20062010.html>;
- o the Contractors' VEVRAA Hiring Benchmark Database, available at <https://ofccp.dol-esa.gov/errd/VEVRAA.jsp>; and
- o Employment Resource Referral Directory, available at <https://ofccp.dol-esa.gov/errd/index.html>.

Pursuant to the Government Paperwork Elimination Act, Government agencies must provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable.<sup>16</sup> OFCCP fulfills its GPEA requirements by permitting electronic transmission of contractors' documentation.

#### **4. Description of Efforts to Identify Duplication**

The reporting and recordkeeping requirements in this request result exclusively from the implementation of EO 11246, Section 503, and VEVRAA. These authorities uniquely empower the Secretary of Labor, and by a Secretary's Order, OFCCP, 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. No duplication of effort exists because no other Government agencies have these specific data collection requirements. Where possible, OFCCP participates in information sharing and standardized requirements. Examples include use of the EEO-1 Report and UGESP.

#### **5. Impact on Small Businesses**

OFCCP believes that this information collection does not have a significant economic impact on a substantial number of small entities. To determine the number of small contractors OFCCP based this estimate on companies with 500 or fewer employees, which is consistent with a commonly used number of employees for determining small businesses used by the Small Business Administration.<sup>17</sup> OFCCP compared the number of small business entities involved in construction to its construction contractor universe. Based on data obtained from census.gov, there are 681,894 small construction firms that employ fewer than 500 people.<sup>18</sup> Further, data obtained from USAspending.gov revealed that there are approximately 14,426 small construction firms that are federal contractors. Thus, comparing the number of small construction contractors to the number of small construction firms, OFCCP estimates that this ICR impacts approximately two percent of small construction firms.

#### **6. Consequences of a Less Frequent Collection**

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<sup>16</sup> Government Paperwork Elimination Act (Public Law 105-277, 1998), <https://www.gpo.gov/fdsys/pkg/PLAW-105publ277/pdf/PLAW-105publ277.pdf> (last accessed August 15, 2017).

<sup>17</sup> <https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/summary-size-standards-industry-sector> (last accessed July 14, 2017)

<sup>18</sup> The latest data available from census.gov is covers calendar year 2015.

Less frequent collection would lead to outdated contractor employment data and could negatively affect civil rights enforcement activities. Current information is imperative if OFCCP to accurately assess contractors' compliance with the agency's regulations. Likewise, less frequent collection could undermine the success of contractors' affirmative action activities and undermine OFCCP's ability to provide the appropriate technical assistance. As a result, construction contractors' would fail to meet their obligations and their efforts to recruit, hire, and retain minority and female employees could be inadequate or misdirected.

## **7. Special Circumstances**

Section 41 CFR 60-4.3(a)7.d requires contractors to immediately notify OFCCP's Director in writing when the union or unions with which contractors have a collective bargaining agreement has not referred a woman or minority individual that was sent by that contractor. Similarly, contractors must notify OFCCP when they have information that the union referral process has impeded contractors' efforts to meet the obligations under these regulations.

This requirement is necessitated by Section 207 of EO 11246. Pursuant to this Section, OFCCP is required to take action to ensure that any union or other agency referring workers on federal contracts cooperates with the implementation of EO 11246. Further, when appropriate, OFCCP must notify the EEOC, DOJ, or other appropriate federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of federal law.

## **8. Consultation Outside the Agency**

On September 25, 2017, OFCCP published a 60-day notice in the Federal Register (82 FR 44663) inviting comments on the proposed renewal of this information collection. OFCCP received no public comments relevant to this request.<sup>19</sup>

## **9. Gift or Payments**

OFCCP does not provide payments or gifts to respondents.

## **10. Confidentiality of Information**

Some of the information contractors submit to OFCCP during a compliance evaluation may be considered business confidential 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 DOL's implementing regulations at 29 CFR Part 70. OFCCP notifies in writing contractors whose records are the subject to FOIA. OFCCP makes no decision to disclose the information until contractors have an opportunity to submit objections to its release.

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<sup>19</sup>OFCCP received one public comment that was unrelated to this information collection or to the agency's jurisdiction.

Furthermore, it is OFCCP's position that it does not release any data obtained during the course of compliance evaluations until the matters are completed.

## **11. Questions of Sensitive Nature**

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 its compliance evaluations. Where allegations of employment discrimination are present, such evidence may become relevant. Under such circumstances, OFCCP may seek evidence concerning race, sex, color, religion, sexual orientation, gender identity, national origin, disability, or veteran status, as appropriate. OFCCP has no standardized questions and the gathering of such data is unique to each investigation.

As outlined above, OFCCP's regulations require contractors to list employees and applicants by sex and by race or ethnicity in their employment activity data to evaluate contractors' nondiscrimination and affirmative action efforts. Contractors inform their employees that they collect and maintain such data for purposes of meeting their nondiscrimination and affirmative action obligations.

## **12. Information Collection Hour Burden**

The following outlines the methodology used by OFCCP for the calculation of the recordkeeping, reporting, and third party disclosure burden requirements for this ICR.

### **a. Recordkeeping and Disclosure Burden**

OFCCP's regulations impose a recordkeeping burden for developing, updating, and maintaining documentation and records related to contractors' efforts to comply with the regulations. The paragraphs that follow break down the calculations for each requirement.

#### **(1) Equal Opportunity Clause**

Section 60-1.4(a)(8) requires contractors to include the equal opportunity (EO) clause in all nonexempt subcontracts. The federal government supplies the contract clause verbatim. The EO clause may be incorporated by reference or operation<sup>20</sup> into subcontracts, thus there is no burden associated with this requirement.<sup>21</sup>

#### **(2) Uniform Guidelines on Employee Selection Procedures**

In addition to OFCCP, the EEOC, DOJ, and OPM use UGESP. The EEOC, under OMB Control No. 3046-0017, accounts for the burden associated with all employers with 15 or more employees. Federal construction contractors with 1 to 14 employees are subject to OFCCP's

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20 41 CFR 60-1.4(d) and 1.4(e).

21 OMB Control No. 1250-0008 included contractor burden associated with amending the equal opportunity clause to include the pay transparency provision; OMB Control No. 1250-0009 included contractor burden associated with amending the equal opportunity clause and the tag line in job advertisements and solicitations to include the terms "sexual orientation, gender identity" in the protected bases. OFCCP calculated in those ICRs a recurring burden associated with these changes beyond the initial implementation of the rules. Upon reconsideration of the burden calculation methodology used, OFCCP does not claim those burden estimates in this ICR.

recordkeeping requirements and are included in this ICR. Based on FY 2016 information from USAspending.gov, OFCCP estimates that there are 8,018 construction contractors that employ 1 to 14 employees. OFCCP estimates that, on average, contractors expend 2.18 hours meeting the UGESP obligations, as described above. Therefore, the burden for this provision is 17,479 hours (8,018 construction contractors x 2.18 hours = 17,479 hours).

(3) Solicitations

Section 60-4.2 requires all contracting officers, applicants for construction contracts, and covered nonconstruction contractors to include the “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity” set forth in this Section in all solicitations for offers and bids on all federal and federally assisted construction contracts or subcontracts. This clause is information originally supplied by the Government and incorporated by operation of the order, thus there is no burden associated with its incorporation.<sup>22</sup>

(4) Maintenance of Documentation

Section 60-4.3(a)7 requires construction contractors to maintain records and documentation demonstrating efforts to comply with the 16 affirmative action specifications. The requirements and estimated hours of burden are detailed in numbers (5) through (20) below.

(5) Ensure Work Environment Free of Harassment

Section 60-4.3(a)7.a requires construction contractors to maintain a work environment free of harassment, intimidation, and coercion. In doing this, contractors are required to ensure that supervisory staff are aware of and carry out contractors’ obligations. Burden hours associated with supervisor training and evaluation are included in numbers (11) and (20) below. Thus, there is no burden associated with this requirement.

(6) Develop, Maintain, and Use a List of Recruitment Resources

Section 60-4.3(a)7.b requires construction contractors to develop and maintain current lists of minority and female recruitment sources, provide written notification to these sources when a contractor or its unions have employment opportunities, and maintain records of the notification. OFCCP estimates that for first-time contractors it takes 0.33 hours (20 minutes) to identify and establish a list of sources. OFCCP also estimates that it takes 0.17 hours (10 minutes) for existing contractors to maintain their list. Based on its experience, OFCCP assumes that 1 percent of its universe are first-time contractors and 99 percent are existing contractors. Thus, the burden for developing and maintaining a current list of sources is estimated at 2,673 hours (15,582 x 1 percent = 155 first time construction contractors and 15,582 x 99 percent = 15,427 existing construction contractors; 0.33 hours x 155 for first time contractors = 51 hours + 0.17 hours x 15,427 for existing contractors = 2,622).

In addition, OFCCP estimates it takes contractors 0.25 hours (15 minutes) to notify the sources on the list when opportunities occur and 0.08 hours (5 minutes) to maintain records of the notifications. Thus, OFCCP estimates the burden for notification and maintaining documentation is 5,142 hours (0.33 hours x 15,582 construction contractors).

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<sup>22</sup> 5 CFR 1320.3(b)(2) and -.3(c)(2); 41 CFR 60-4.9.

In sum, OFCCP estimates the total burden hours for complying with this requirement (including developing and maintaining the list of sources, contacting the sources, and maintaining copies of the notices sent) at 7,815 hours (2,673 hours + 5,142 hours).

(7) Maintain Current Files of Minority and Female Applicants

Section 60-4.3(a)7.c requires construction contractors to maintain a current file of minority and female applicants and referrals from all sources, and to document in the file the actions taken with respect to each individual. OFCCP estimates it takes 0.25 hours (15 minutes) to maintain the file. Therefore, OFCCP estimates this burden at 3,895 hours (0.25 hours x 15,582 construction contractors).

OFCCP estimates that, on average, contractors take no more than 0.17 hours (10 minutes) for each applicant and make no more than 10 decisions annually. Therefore, OFCCP estimates an additional 26,489 hours (0.17 hours x 10 decisions x 15,582 construction contractors) to comply with this requirement.

OFCCP estimates the total burden hours for complying with this requirement is 30,384 hours (3,895 hours + 26,489 hours).

(8) Notify OFCCP's Director

Section 60-4.3(a)7.d requires construction contractors to notify OFCCP's Director in writing when the union or unions with which any contractor has a collective bargaining agreement has not referred a minority or female applicant that was sent by the contractor. Similarly, contractors must notify OFCCP's Director if any contractor has information that the union is impeding its efforts to meet the obligations of these requirements. OFCCP receives very few such requests, thus it estimates the total burden for such a request at 10 hours, which includes both the recordkeeping and the reporting.

(9) Develop On-the-Job Training

Section 60-4.3(a)7.e requires construction contractors to develop on-the-job training opportunities or participate in training programs for the job areas which expressly include minorities and women. In addition, contractors must provide notice of these opportunities and job programs to its recruitment sources, state employment offices, and other referral sources that have been compiled under 41 CFR 60-4.3(a)7.b. OFCCP estimates the burden hours associated with documenting the development of training programs or enrolling minorities and women in existing training programs is 0.75 hours (45 minutes). OFCCP estimates the burden associated with maintaining records of employees' participation in training is 0.25 hours (15 minutes). Additionally, OFCCP estimates that maintaining records of contributions to training programs takes 0.25 hours (15 minutes). Therefore, OFCCP estimates the hours associated with this burden at 19,477 hours (1.25 hours x 15,582 construction contractors).

(10) Disseminate EEO Policy Statement to Unions and Training Programs

Section 60-4.3(a)7.f requires construction contractors to broadly disseminate its EEO policy statement, including, but not limited to: sending it to unions and training programs; publishing it in policy manuals; and including it in collective bargaining agreements. It also requires



contractors to review the EEO policy with all management and minority and female employees, and to post it for all employees.

As stated previously, OFCCP estimates that first-time contractors make up 1 percent of the construction contractor universe (155 construction contractors). OFCCP estimates it would take 0.33 hours (20 minutes) for a first time contractor to develop an EEO policy statement and 0.17 hours (10 minutes) to review and update their existing EEO policy statement. Thus, OFCCP estimates 2,673 burden hours (0.33 hours x 155 first time contractors = 51 hours) + 0.17 hours x 15,427 existing construction contractors = 2,622 hours) for construction contractors to either update or develop an EEO policy statement.

OFCCP estimates it will take 0.25 hours (15 minutes) for first-time contractors to incorporate the policy statement into employee handbooks and policy manuals. Therefore, it estimates the burden of this requirement at 38 hours (0.25 hours x 155 first-time construction contractors). In addition, OFCCP estimates it will take 0.25 hours for all contractors to provide notification to unions and other recruitment sources. Thus, the burden of notification is 3,895 hours (0.25 hours x 15,582 construction contractors).

OFCCP estimates it will take 0.5 hours (30 minutes) for all contractors to document the discussion of the policy with employees and its internal posting. Thus, OFCCP estimates the burden of this requirement to be 7,791 hours (0.5 hours x 15,582 construction contractors).

In sum, OFCCP estimates the total burden for this provision to be 14,397 hours (2,673 + 38 + 3,895 + 7,791).

#### (11) Review EEO Policy Annually with Employees Having Hiring Responsibilities

Section 60-4.3(a)7.g requires construction contractors annually to review the EEO policy with all employees having hiring responsibilities for personnel activities (e.g., hiring, promotion, termination, lay-off, etc.). OFCCP estimates it will take an average of 2 hours to develop, deliver, and document the annual training. Thus, OFCCP estimates the burden to be 31,164 hours (2 hours x 15,582 construction contractors).

#### (12) Disseminate EEO Policy Externally

Section 60-4.3(a)7.h requires construction contractors to disseminate EEO policy statements in advertisements in the news media and to other contractor and subcontractors. OFCCP estimates it will take all contractors 0.5 hours to develop correspondence and send it. Thus, OFCCP estimates the burden for this requirement to be 7,791 hours (0.5 hours x 15,582 construction contractors).

#### (13) Direct Recruitment Efforts to Community Organizations and Schools

Section 60-4.3(a)7.i requires construction contractors to direct their recruitment efforts to community organizations and schools with minority and female participants and students. Actions associated with this requirement are accounted for in the burden assessment for Section 41 CFR 60-4.3(a)7.b. Therefore, OFCCP estimates no additional burden for this requirement.

#### (14) Encourage Employee Referrals

Section 60-4.3(a)7.j requires construction contractors to encourage current minority and female employees to recruit other minority and female employees. It also requires contractors, where reasonable, to provide summer and afterschool employment to minorities and females. OFCCP estimates that it takes contractors 0.25 hours to comply with this requirement. Thus, the burden estimate is 3,895 hours (0.25 hours x 15,582 construction contractors).

(15) Validate Tests

Section 60-4.3(a)7.k requires construction contractors to comply with the UGESP requirements. As explained above, the burden associated with complying with UGESP is assumed under OMB Control No. 3046-0017 for contractors with 15 or more employees and OFCCP accounts for contractors with 1 to 14 employees in its calculation of UGESP burden, which is found in item number 12.a.(2) above.

(16) Conduct an Annual Inventory of Employees

Section 60-4.3(a)7.l requires construction contractors to conduct an annual inventory of minority and female employees for promotional and developmental opportunities. OFCCP estimates it takes 0.5 hours to conduct the assessment and maintain documentation. Thus, the burden estimate for this requirement is 7,791 hours (0.5 hours x 15,582 construction contractors).

(17) Ensure Personnel Practices Do Not Have a Discriminatory Effect

Section 60-4.3(a)7.m requires construction contractors to ensure that its personnel practices (e.g., seniority, job classifications, work assignments, etc.) do not have a discriminatory effect. OFCCP estimates that on average contractors spend 0.5 hours (30 minutes) documenting their activities that comply with this requirement. Thus, the burden estimate for this requirement is 7,791 hours (0.5 hours x 15,582 construction contractors).

(18) Ensure Facilities are Not Segregated

Section 60-4.3(a)7.n requires construction contractors to ensure that its facilities are nonsegregated. The exception is the provision for separate or single user toilet and changing facilities to provide privacy between the sexes.<sup>23</sup> OFCCP estimates it takes contractors 0.25 hours (15 minutes) to maintain material evidence of compliance with this requirement. Thus, OFCCP estimates the burden at 3,895 hours (0.25 hours x 15,582 construction contractors).

(19) Document and Maintain a Record of All Solicitations of Offers for Subcontracts

Section 60-4.3(a)7.o requires construction contractors to maintain documentation of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers. OFCCP estimates that it takes 0.5 hours (30 minutes) to maintain a file of documentation that includes all solicitation and offers as required. Thus, OFCCP estimates the burden at 7,791 hours (0.5 hours x 15,582 construction contractors).

(20) Evaluate Supervisor Performance

Section 60-4.3(a)7.p requires construction contractors to evaluate annually the performance of its supervisory personnel on their adherence to the EEO and affirmative action requirements of

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<sup>23</sup> The Sex Discrimination Guidelines at 41 CFR Part 60-20 further clarify that, "if the contractor provides restrooms, changing rooms, showers, or similar facilities, the contractor must provide same sex or single-use facilities".

these specifications. OFCCP estimates that, on average, it takes contractors 0.75 hours (45 minutes) to compile written evidence that supervisory personnel have been notified regarding their performance with regard to each contractor’s EEO and affirmative action obligations. Thus, OFCCP estimates the burden at 11,686 hours (0.75 hours x 15,582 construction contractors).

Recordkeeping Total

The table below summarizes the recordkeeping burden hours.

<u>Hours</u>	<u>Item</u>
0	EO Clause
17,479	UGESP Recordkeeping
0	Solicitation
153,887	16 Affirmative Action Provisions
171,366	Total Recordkeeping Burden

OFCCP estimates the combined recordkeeping burden for compliance with the construction requirements of EO 11246 to be 171,366 hours, or approximately 11 hours per construction contractor (171,366 hours / 15,582 construction contractors).

**b. Reporting Burden**

OFCCP’s reporting burden for construction contractors, as detailed below, includes providing notification of subcontract awards, filing EEO-1 Reports, providing documentation during compliance evaluations, reporting of foreign visa denials, notifying the OFCCP Director as prescribed at 41 CFR 60-4.3(a)7.d, and a third party reporting provision.

(1) Notification of Subcontract Awards

Section 60-4.2(c) requires contracting officers, applicants for construction contracts, covered nonconstruction contractors, and federal construction contractors to notify OFCCP within 10 working days of awards of covered contracts and subcontract in excess of \$10,000.<sup>24</sup> OFCCP estimates it would take 0.5 hours (30 minutes) to identify the needed information and send the notification to OFCCP. Using data from USAspending.gov to further inform OFCCP’s estimate of burden, OFCCP determined that there were 132,995 federal construction contracts awarded in FY 2016. Based on data obtained from USAspending.gov, OFCCP estimates that there are approximately 12 subcontractors for each prime contract. Therefore, OFCCP estimates this burden at 797,970 hours (12 notifications x 132,995 awards x 0.5 hours).<sup>25</sup>

(2) EEO-1 Reports

Construction contractors with 50 or more employees and a contract of \$50,000 or more are required to file EEO-1 Reports with the Joint Reporting Committee. The burden associated with

<sup>24</sup>This requirement includes construction contractors, as explicitly prescribed at 41 CFR 60-4.2(d)3.

<sup>25</sup>The total burden for this item is over-inclusive as the 132,995 awards are not limited only to contracts of \$10,000 or more. However, as this estimate does not include grants, the overestimation adequately covers the absence of data specific to grants.

this information collection is sponsored by the EEOC and approved under OMB Control No. 3046-0007. Therefore, OFCCP includes no additional burden for this requirement.

(3) Compliance Evaluations

Section 60-1.20 describes OFCCP's compliance evaluation process. During compliance evaluations of construction contractors, OFCCP does not request documentation when scheduling the evaluation. Rather, the evaluation is scheduled and documents and information are gathered during the onsite investigation. Although OFCCP believes that this request for documentation could be considered exempt from the requirements of the PRA,<sup>26</sup> it estimates the burden for contractors analyzing requests for information (1 hour) and retrieving documents (2 hours). Thus, OFCCP estimates the reporting burden during a compliance evaluation as 3 hours. OFCCP further asserts that it has conducted, on average, 174 construction compliance evaluations annually.<sup>27</sup> Therefore, OFCCP estimates the burden associated with this reporting requirement at 522 hours (3 hours x 174 construction compliance evaluations).

(4) Notifying OFCCP's Director

Section 4.3(a)7.d requires contractors to notify OFCCP's Director in writing if a union with which a contractor has a collective bargaining agreement impedes a contractor's efforts to comply with EEO and affirmative action requirements. Based on OFCCP's experience with this provision, it estimates a total of 10 notices (10 hours burden) for compliance.

(5) Section 60-1.10 requires contractors to report to the Department of State and OFCCP if an employee or prospective employee is denied a visa of entry to a country in which or with which it is doing business, and the contractor believes the denial is due to a basis covered by EO 11246. To date, OFCCP has not received any visa denial notifications related to the existing protected categories.<sup>28</sup>

**c. Third Party Disclosure to Labor Unions**

OFCCP's third party disclosure burden hours are based on 41 CFR 60-1.4(a)(4), 60-300.5(a)10, and 60-741.5(a)5, which require contractors to notify its labor organizations that it must comply with EO 11246, VEVRAA, and Section 503, respectively. Contractors may notify the organizations by mail, telephone, facsimile, or email. Assuming it takes 30 minutes to compose and 30 minutes to distribute written notification by mail to its labor organizations, OFCCP estimates an average of 1 hour per contractor, or 15,582 hours, for notifying labor organizations. This is an overestimation because it assumes that all contractors are party to collective bargaining agreements and that they would use mail distribution, which takes longer than electronic distribution.

Reporting and Third Party Disclosure Total

<u>Hours</u>	<u>Item</u>
797,970	Notification of Subcontract Award

<sup>26</sup> See 44 U.S.C. 3518(c)(1)(B)(ii)

<sup>27</sup> Number of construction compliance evaluations in FY 2016.

<sup>28</sup> This reporting burden was previously covered under OMB Control No. 1250-0008.

0	EEO-1 Reporting
522	Compliance Evaluations
10	Notifying OFCCP’s Director
<u>15,582</u>	Third Party Disclosure
814,084	Total Reporting Burden

OFCCP estimates that the combined reporting and third party disclosure provisions of the construction ICR are 814,084 hours, or approximately 52 hours per construction contractor (814,084 hours / 15,582 construction contractors).

**Summary of Recordkeeping, Reporting and Third Party Disclosure**

The table below shows the sum of OFCCP’s estimate of recordkeeping, reporting and third party disclosure burden for its construction ICR.

171,366	Total Recordkeeping Burden Hours
814,084	Total Reporting and Third Party Disclosure Burden Hours
<u>985,450</u>	Total Recordkeeping, Reporting, and Third Party Disclosure Burden Hours

**d. Burden Hours monetization**

The contractors’ estimated annualized cost is based on data from the Bureau of Labor Statistics, which lists total compensation (including wages and benefits) for management, professional, and related occupations as \$58.46 per hour and administrative support as \$25.98 per hour.<sup>29</sup> Based on OFCCP’s experience with conducting compliance evaluations, OFCCP estimates that 30 percent of the burden hours will be Management, Professional, and Related Occupations and 70 percent will be Administrative Support.<sup>30</sup> OFCCP calculates the total estimated annualized cost as follows:

a. 985,450 total burden hours x 30 percent x \$58.46 per hour = \$17,282,822 for management, professional, and related occupations

b. 985,450 total burden hours x 70 percent x \$25.98 per hour = \$17,921,393 for administrative support

Total cost: \$35,204,215

**13. Information Collection Cost Burden**

OFCCP estimates that contractors will have operations and maintenance costs associated with this collection. Those costs are associated with the notification of subcontract awards, notifying OFCCP’s Director, and the third party disclosure, as outlined above.

<sup>29</sup> “Employer Costs for Employee Compensation - March 2017”, <https://www.bls.gov/news.release/pdf/ecec.pdf> (last accessed August 15, 2017).

<sup>30</sup> Generally, recordkeeping activities are performed by administrative support staff. Management involvement occurs as oversight to recordkeeping activities and during compliance evaluations. Thus, 30 percent of the total hour calculation is estimated to be performed by management level employees and 70 percent is estimated to be performed by administrative support staff.

OFCCP estimates that approximately 80 percent of the notifications of construction contract awards will be received through the new electronic portal (NCAP) and that the other 20 percent will be divided among fax, mail, and email. For calculating the cost associated with this item, OFCCP determines that approximately 10 percent of the notifications will be mailed using the United States Postal Service (USPS). OFCCP further estimates that the notifications to the OFCCP Director and the third party disclosure notices will be submitted equally via email and mail.

The table below shows the cost for respondents who use USPS to send their notifications.

Activity	Number of transmissions	Postage	
Notice of Contract Awards	79,797 (10 % of 797,970)	0.49 cents	\$39,101
Notice to OFCCP Director	5 (10 / 2)	0.49 cents	\$2.45
Third party Disclosure	7,791 (15,582 / 2)	0.49 cents	\$3,817
Total			\$42,920

The total estimated cost is \$42,920, or approximately \$3 per contractor ( $\$42,920 / 15,582$  construction contractors).

#### 14. Cost to the Federal Government

The cost to the Government is part of the normal cost of OFCCP’s enforcement work by compliance officers at the field level at GS-12 on the federal salary scale. The total cost is \$18,050 (\$34.58 per hour x 522 hours for compliance evaluations).

This ICR includes a one-time cost for creating the NCAP. The cost is associated with two GS-13 OFCCP staff members who took approximately 20 hours to develop and finalize the form. This cost is estimated at \$1,672 ( $\$41.81$  per hour x 20 hours x 2). The form was created with software that already existed internally at DOL. Therefore, there is no software or other creation costs associated with the new portal besides the OFCCP staff hours.<sup>31</sup>

#### 15. Program Changes or Burden Adjustments

##### a. Recordkeeping Burden Hours

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<sup>31</sup> Federal salary based on the Office of Personnel Management’s 2018 Salary Table for the locality pay area of rest of the U.S consisting of the portions of the lower 48 United States not located within another as defined by the Office of Personnel Management [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/RUS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/RUS_h.pdf) (last accessed January 31, 2018).

The previous submission in 2014 included 618,719 recordkeeping burden hours. The current ICR requests 171,366 hours. This decrease of 447,353 hours in the burden is due to the source that was used to measure OFCCP's construction contractor universe.

b. Reporting Burden Hours

The previous submission in 2014 included 132,577 hours for reporting. The current request is for 798,502 hours. This increase of 665,925 is due to the source that was used to measure OFCCP's construction contractor universe.

c. Third Party Disclosure to Employee Burden Hours

The previous submission in 2014 included 52,429 hours for third party disclosures to employees. The current request is for 15,582 hours. This decrease of 36,847 hours is due to the source that was used to measure OFCCP's construction contractor universe.

**16. Publication of Data for Statistical Use**

OFCCP does not publish the data collected for statistical use.

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

OFCCP is not seeking approval to not display the expiration date.

**18. Exceptions to the Certification Statement**

OFCCP is not seeking exemptions to the certification statement.

**B. STATISTICAL METHODS**

This information collection does not employ statistical methods.