

U.S. Department of Labor
Office of Federal Contract Compliance Programs
Agreement Approval Process for Use of Functional Affirmative Action Programs

OMB Number 1250-0006

This information collection request (ICR) seeks to revise the directive that establishes policies and procedures that contractors must follow to maintain a functional affirmative action program (FAAP). In general, the proposed revisions reorganize the contents of the directive and provide some minor, clarifying edits. Among other significant revisions, the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) proposes to change the current requirement that contractors certify every three years that there have been no changes made to the functional units, business structure, or other circumstances that affect their existing FAAP agreements. Under this ICR, this certification would be required every five years.

A. JUSTIFICATION

OFCCP is requesting Office of Management and Budget (OMB) approval of **862** hours in reporting burden for the process that allows federal contractors and subcontractors¹ to develop FAAPs. The requested hours constitute a decrease from the previous request of **1,297** hours. Supply and service contractors subject to affirmative action program (AAP) requirements may request a FAAP agreement, which permits the development and use of AAPs based on functional or business units. A functional or business unit refers to a component within an organization that operates autonomously in the ordinary course of the organization’s business. Under OFCCP’s regulations, contractors must have an agreement approved by the OFCCP Director in order to develop and operate under a FAAP.

1. Legal and Administrative Requirements

OFCCP administers and enforces the three equal employment opportunity laws² listed below, which prohibit employment discrimination and set affirmative action requirements by contractors.

- Executive Order 11246, as amended (EO 11246),
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), and

¹ Hereinafter all references to “contractors” will include federal contractors and subcontractors unless otherwise stated.

² 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.

41 CFR 60, <https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=b686ff45080d69713c00bf18b651cc37&mc=true&tpl=/ecfrbrowse/Title41/41chapter60.tpl> (last accessed April 1, 2019).

- Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, (VEVRAA).

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 requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. Additionally, it prohibits contractors from taking adverse employment actions against applicants and employees for inquiring about, discussing, or disclosing information about their pay or the pay of their co-workers, subject to certain limitations. 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 contractors from discriminating against applicants and employees on the basis of disability and requires contractors to take affirmative action to employ, and advance in employment, qualified individuals with disabilities. Its requirements apply to contractors with a government contract in excess of \$15,000.³

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.⁴

This ICR outlines the legal authority, procedures, burden, and cost associated with requesting a new FAAP agreement as well as modifying, certifying, and terminating an existing agreement. Supply and service contractors that are subject to the AAP requirements of EO 11246⁵ may request an agreement with OFCCP that allows them to develop, implement, and maintain an AAP based on functional or business units.⁶ To develop a FAAP, contractors must have an agreement approved by the Director of OFCCP. All FAAPs must include the required AAP elements outlined in 41 CFR 60-2, and if applicable, 41 CFR 60-300 and 41 CFR 60-741, Subparts C.

³ 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 FR 53129 (Aug. 30, 2010).

⁴ 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).

⁵ 41 CFR Part 60-2, Affirmative Action Programs

⁶ FAAP agreements are only available to supply and service contractors.

This ICR seeks to revise the directive that establishes policies and procedures that contractors must follow to maintain a FAAP. In general, the proposed revisions reorganize the contents of the directive and provide some minor, clarifying edits. More specifically, OFCCP proposes in this ICR to change the current requirement that contractors certify every three years that there have been no changes made to the functional units, business structure, or other circumstances that affect their existing FAAP agreements. Under this ICR, this certification would be required every five years. Lengthening the amount of time contractors are able to maintain the same FAAP agreement reduces their burden. Other proposed significant changes in the ICR include:

- Eliminating the requirement that FAAP contractors undergo at least one compliance evaluation during the term of their agreements;
- Expanding the exemption period for FAAP units that have undergone a compliance evaluation from 24 months to 36 months from the date OFCCP closed the previous evaluation;
- Eliminating consideration of a contractor’s equal employment opportunity (EEO) compliance history when deciding whether to approve a FAAP request;
- Removing the three-year waiting period for reapplying for a FAAP following termination of an agreement;
- Eliminating the annual requirement for contractors to modify their FAAP agreements; and
- Implementing a 60-day window to approve a FAAP agreement upon receipt of a complete package.

In addition, OFCCP is proposing several minor revisions to clarify the information in the FAAP Directive (titled “Functional Affirmative Action Programs (FAAPs)”) that sets forth the program’s requirements, such as procedures for requesting, modifying, certifying, and terminating a FAAP.⁷ The revised Directive, which is published with this statement for public comment, will be issued once the agency obtains approval from OMB for this ICR.

Guidance and Regulatory Requirements

Specifics on the FAAP process are found in the Directive that sets forth the criteria OFCCP considers when determining whether a contractor qualifies for a FAAP agreement. At minimum, in order to be considered for a FAAP agreement, the contractor’s functional or business unit must:

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

⁷ A version of this Directive is currently in effect under the existing approval of this information collection. Directive (DIR) 2013-01 Revision 1, Functional Affirmative Action Programs (FAAPs), https://www.dol.gov/ofccp/regs/compliance/directives/Dir2013_01_Revision1.pdf (last accessed April 1, 2019).

41 CFR Part 60-2 prescribes the scope of the EO 11246 AAP requirements, including the purpose and contents of an AAP and coverage requirements. The recordkeeping burden for developing, maintaining, and updating an AAP is covered by a separate information collection.⁸

Section 60-2.1(d)(4) allows for the development of AAPs based on functional or business units.

Contractor recordkeeping requirements (60-1.12), the requirement to develop and maintain an AAP (60-1.40), and the AAP scope, requirements, purpose, and contents (60-2.1 and 60-2.10 through 2.17) are approved under the information collection that contains the recordkeeping and reporting requirements for supply and service contractors.⁹

Requesting a FAAP Agreement

Contractors that want to enter into a FAAP agreement with OFCCP must submit a written request to the Director of OFCCP no later than 120 calendar days prior to the expiration of the current corporate headquarters AAP. A first-time contractor that meets the AAP threshold must submit a request within 120 days from the award of the federal contract. The request must include the name and contact information for the corporate representative responsible for overseeing the contractor's request for the FAAP agreement.

The list below contains the documentation that must be submitted with the written request for a FAAP agreement.¹⁰

- The contractor must show proof that they are a covered contractor by providing specific contract information, as described in the Directive;
- A copy of the contractor's most recent consolidated Employer Information Report (EEO-1 Report);
- An organizational chart that identifies all of the proposed functional or business units to be covered by the requested FAAP and how they are related to each other within the corporation's overall structure;
- A narrative description of the function or business of each proposed FAAP unit and how it meets the definition of a functional or business unit¹¹;
- The company or subsidiary name, street address, and total number of employees at each location covered in the functional unit, and the name and address of the managing official for each proposed functional or business unit;
- A statement explaining where each proposed FAAP unit will maintain its employee personnel records and applicant processing activities;
- If the contractor proposes to maintain some establishment-based AAPs, it must provide a list of locations with establishment-based AAPs, including for each: the physical address,

⁸ OMB Control Number 1250-0003, Supply and Service Recordkeeping and Reporting Requirements, expires June 30, 2019.

⁹ *Ibid.*

¹⁰ See Directive, Attachment A

¹¹ The definitions are provided in the Directive.

number of employees, phone number of the establishments' managing official, and AAP contact and the EEO-1 unit number for each establishment;

- A statement addressing how the contractor plans to transition from establishment-based AAPs to FAAPs, including a timeline for completion;
- The dates of the proposed FAAP year; and
- If different from corporate policies, copies of unit-specific personnel policies relevant to evaluating the proposed functions or business units, including policies related to recruitment, hiring, promotion, compensation, and termination.

In addition to the items outlined above, OFCCP and the contractor will discuss information related to reporting hierarchy, personnel procedures, how the contractor anticipates complying with the AAP requirements of Section 503 and VEVRAA, and how each functional or business unit manages its human resources and equal employment opportunity responsibilities during the FAAP negotiation process.¹²

Modifying a FAAP Agreement

If the contractor undergoes a merger, acquisition, and/or downsizing, they must notify OFCCP within 60 days of the effective date of the change(s) with the name of the newly merged or acquired company and the contractor's plan to incorporate the former company's employees into its AAP structure. Any resulting functional or business unit name change, and changes in managing officials, employee counts, and addresses should be included in the modification notice. OFCCP may schedule a contractor for a compliance evaluation should the contractor fail to submit a modification notice. Alternatively, should there be repeated failures to inform OFCCP of a modification, the contractor's FAAP agreement could be terminated.

Certifying a FAAP Agreement

The contractor must certify in writing every five years (currently every three years), at least 120 calendar days prior to the expiration of the existing FAAP agreement, that there have been no functional or business units, or structure or organization, or other circumstances affecting the existing FAAP agreement. If circumstances have changed (e.g., elimination of functional or business units) the contractor must provide written rationale for the changes. The contractor must also provide updated information on other elements during the certification as described in the Directive. Certified FAAP agreements will be reissued for another five-year term.

Terminating a FAAP Agreement

OFCCP or the contractor may terminate a FAAP agreement. Either party terminating the agreement must provide 90 calendar days written notice in advance explaining the reason(s) for the termination and its effective date. Upon termination of a FAAP agreement, all employees are required to be covered by establishment-based AAPs. The establishment-based AAPs shall be in place no later than 120 days from either OFCCP's or the contractor's notification that the FAAP agreement has been terminated.

¹² See Directive, Attachment B

OFCCP is proposing in this ICR to no longer terminate FAAP agreements because contractors violated the laws and regulations enforced by OFCCP.

2. Use of Collected Material

OFCCP uses the information provided by contractors during the FAAP agreement process to assess whether they qualify for a FAAP and the information provided by contractors during the modification and certification stages to confirm that they are eligible to continue to maintain a FAAP. While the regulations generally require establishment-based AAPs for contractors who meet the jurisdictional thresholds, under the FAAP program contractors may voluntarily develop and maintain one or more AAPs based on functional units rather than physical locations which may better reflect the actual organization of the contractor.

3. Use of Information Technology

OFCCP prefers that FAAP agreement requests and documentation are submitted in an electronic format, via email. If not maintained in an electronic format, all documents must be submitted in the form and format in which they are maintained.

Pursuant to the Government Paperwork Elimination Act (GPEA), government agencies must provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable.¹³ OFCCP fulfills the GPEA requirements by permitting electronic transmission of contractors' documentation.

4. Description of Efforts to Identify Duplication

The reporting requirements in this ICR result exclusively from EO 11246, Section 503, and VEVRAA and their implementing regulations. No duplication of effort exists because no other federal agencies administer and enforce these regulations.¹⁴

5. Impact on Small Businesses

The impact of this information collection on small businesses is minimal for the following reasons:

- Contractors with fewer than 50 employees are exempt from the AAP requirement.
- When preparing an EO 11246 AAP, contractors with fewer than 150 employees are permitted to use their EEO-1 categories as job groups, thus reducing burden related to job group formulation.

¹³ Government Paperwork Elimination Act (Public Law 105-277, 1998), <https://www.gpo.gov/fdsys/pkg/PLAW-105publ277/pdf/PLAW-105publ277.pdf> (last accessed April 1, 2019).

¹⁴ The Employer Information Report (EEO-1) is promulgated jointly by OFCCP and the Equal Employment Opportunity Commission (EEOC), see 41 CFR 60-1.7(a). That report is certified under OMB Control No. 3046-0007 through a collection that is sponsored by the EEOC.

- The number of contractors who request a FAAP is a negligible portion of OFCCP’s contractor universe.
- By the nature of the FAAP program, very small contractors would generally not request a FAAP agreement because the process entails grouping together employees from different groups, establishments, functional, and business units.
- Contractors that exercise the option to develop FAAPs benefit from the flexibility the program allows to tailor AAPs to specific organizational needs.

6. Consequences of a Less Frequent Collection

The approval process for obtaining a FAAP agreement allows OFCCP to determine if contractors seeking permission to use functional or business unit AAPs can participate in the program. Modifications and five-year certifications are needed to ensure that OFCCP has current information regarding contract coverage and information on each functional or business unit’s structure, size, and managing official. To carry out its mission, OFCCP must verify that contractors maintain annual AAPs, personnel records, and other related data. Administering the FAAP program without this data would lead to less efficiency in determining contractor compliance and increased burdens both for contractors and the Federal Government.

7. Special Circumstances

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

8. Consultation Outside the Agency

Pursuant to the Paperwork Reduction Act of 1995, as amended (PRA), OFCCP invited the public to submit comments on this proposed information collection. The Federal Register notice was published on September 11, 2018 (83 FR 45977). OFCCP received four substantive comments on the ICR, collectively raising several issues. A summary of the issues raised in the comments is listed below, with OFCCP’s responses.

- 1) **Submission of information regarding federal contracts when applying for a FAAP agreement.** Three commenters asserted that it is burdensome and time-consuming for contractors to be required to submit information concerning a federal contract and OFCCP should accept their application as evidence that they are a covered federal contractor. The commenters further assert that the human resources and compliance personnel assigned to working with OFCCP do not have access to contract information.

In response to this concern, OFCCP reevaluated the request for this information but determined that it is necessary that a contractor requesting a FAAP agreement provide information concerning at least one qualifying federal contract. OFCCP stresses that its enforcement authority rests with contractors and the submission of information pertaining to a federal contract or subcontract substantiates the agency’s regulatory authority to

negotiate a FAAP agreement. In addition, developing a FAAP agreement is voluntary for contractors and it is the agency’s position that a contractor requesting to enter into an agreement with OFCCP should submit information to confirm that they are a covered federal contractor.

- 2) **Modify or remove the pre-approval requirement.** Three commenters suggested options to address FAAP initial approval wait times. One commenter recommended establishing an OFCCP review period of 90 days or granting conditional approval upon submission of a timely and complete FAAP package to OFCCP.

FAAP approval requests must be complete for OFCCP to begin the review process. Once a contractor submits a FAAP package, OFCCP notifies the contractor that it received the package and if any documentation is missing. OFCCP must conduct a detailed review of the FAAP submission before approval so OFCCP will not grant conditional approval for contractors. OFCCP typically processes a new application for a FAAP agreement in 60 days or less once all documents are submitted. However, commenters have suggested FAAP approval may take up to 12-18 months. OFCCP respects contractors’ time commitment to the process and to address concerns is instituting a 60-day window to approve FAAPs upon receipt of a complete package.

- 3) **Treat FAAPs equally with respect to awards.** A commenter requested that OFCCP consider FAAPs for the proposed contractor recognition awards such as the “Excellence in Disability Inclusion Award” and the “Leadership in Equal Access and Diversity Award.”

The goal of these two awards is to recognize contractor establishments that go above and beyond in their non-discrimination and affirmative action practices at the establishment level, and thus they do not easily conform to a FAAP structure which may include divisions and business units at various establishments. However, OFCCP is exploring future award programs for FAAP participants.

- 4) **Extend notification window for business or functional unit, organizational, or structural changes.** A commenter asserted that major changes in any of the above categories requires meticulous attention from human resources and that a 60-day window to notify OFCCP about such changes is burdensome.

The 60-day window does not begin once the change is announced. Rather, the window begins once the change is fully implemented. An example of such a notification requirement is if Contractor ABC acquires ACME Corporation on February 1, 2018. ABC has a current FAAP agreement. At the time of the acquisition, ABC was already one month into their current AAP year and they were having internal discussions to determine how they would incorporate ACME employees into their current structure. ABC determined that they would continue to maintain ACME’s establishment based

AAPs until June 2018. On June 1, 2018, ABC introduced its new organizational structure incorporating ACME employees into their FAAP structure. This restructuring resulted in the addition of five new functional units and changes in the names and addresses of managing officials. ABC is required to notify OFCCP of its new organizational structure by August 1, 2018 (60 days after the implementation of the new organizational structure).

- 5) **Collect data that would highlight the extent to which individuals with targeted and significant disabilities are being hired, retained, and promoted.** OFCCP’s definition of “disability” in its regulations does not explicitly name “targeted” or “significant” disabilities. On the contrary, the regulations state that the term must be construed in favor of broad coverage of individuals, to the maximum extent permitted by law” (41 CFR 60-741.2(g)). Given this definition, OFCCP will not add the suggested data collection.
- 6) **Requiring a functional unit to track and maintain its own personnel activity ignores economies-of-scale with enterprise-wide HRIS and applicant tracking systems.** OFCCP respectfully disagrees with the comment that enterprise-wide HRIS and applicant tracking systems are not able to track and maintain group-specific personnel activity. Contractors that maintain such systems are required to track the same information for each of their establishments in order to meet their AAP requirements, which, in the absence of a FAAP, are establishment-based. Since most HRIS systems can track the required information by establishment, this same data can be manipulated to isolate the information for a particular unit.
- 7) **Make FAAP implementation and maintenance process a part of regulations enforced by OFCCP through formal rulemaking processes.** OFCCP has created the FAAP program as a voluntary alternative to creating establishment-based AAPs if contractors determine that a FAAP better serves their business needs. This alternative is already recognized in OFCCP’s regulations at 41 CFR § 2.1(d)(4). Other than minor changes to clarify parts of the program and efforts to reduce burden, such as changing the requirement to certify existing FAAP agreements from every three years to every five years, the Directive has not undergone major revisions since its previous OMB approval. OFCCP will not at this time be issuing any new regulations related to the FAAP program.

9. Gift Giving

OFCCP does not provide gifts or payments to respondents.

10. Confidentiality of Information

The information obtained from a contractor will be evaluated 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. It is required that impacted contractors be notified in writing when a FOIA request has been made for contractor data. OFCCP makes no decision to disclose such data, until the contractor has had an opportunity to submit objections to the release of the information.

11. Questions of Sensitive Nature

This information collection does not contain any questions of a sensitive nature. The respondents of the information collection will provide information that correlates with the criteria of requesting a FAAP agreement and all required documentation. It is intended to verify contractor eligibility and determine whether the contractor has met the requirements of the FAAP criteria, as outlined in 41 CFR Part 60-2 and FAAP Directive.

12. Information Collection Hour Burden

The burden associated with this information collection is related to reporting. The recordkeeping burden related to developing, updating, and maintaining AAPs is included in OFCCP’s ICR for supply and service contractors, as mentioned above.

To obtain approval to create an AAP based on a functional or business unit, a contractor must send a written request to the OFCCP Director that includes the supporting documentation, for which the burden is assessed below. The reporting burden in this section accounts for the request for approval and the retrieval of the information needed by OFCCP to make its determination. The estimates of time necessary to complete each step of the process are based on OFCCP’s experience with the FAAP program.

OFCCP currently has FAAP agreements with 71 contractors that cover 1,932 functional units. OFCCP estimates that there will be approximately five requests for new FAAP agreements each year, an estimate that is based on the number of agreements requested in the previous three years.

Requesting a FAAP Agreement

Contractors that want to request a FAAP agreement are required to submit a written request to the OFCCP Director, as mentioned above. The request must include the name and contact information for the corporate representative responsible for overseeing the contractor’s request for the FAAP agreement. OFCCP estimates that it takes 0.75 hour per contractor to prepare a written request of one page.

Accompanying the request for approval, contractors must submit the following items, found in **Attachment A** of the Directive.

A Statement of Proof

The contractor must show proof that they are a covered federal contractor by providing a statement that includes specific contract information, as described in the Directive. OFCCP estimates that it takes 1 hour per contractor to prepare this statement.

Most Recent Consolidated EEO-1 Report

The contractor is required to provide a copy of its most recent consolidated EEO-1 Report. The burden for developing a consolidated EEO-1 Report is covered under OMB Control Number 3046-0007. Therefore, there is no burden associated with collecting the records or completing this report. However, OFCCP estimates that it takes 0.5 hour per contractor to produce the report.

Organizational Chart

The contractor is required to provide a copy of its organizational chart that clearly identifies all of the proposed functional or business units to be covered by the requested FAAP and how they are related to each other within the corporation's overall structure. OFCCP estimates that it takes 1 hour per contractor to develop and provide this item.

Description of the Function or Business

The contractor is required to provide a narrative description of the function or business of each proposed FAAP unit and how it meets the definition of a functional or business unit. OFCCP estimates that it takes 11 hours per contractor to develop and provide this item.

Unit Information and Total Number of Employees

The contractor is required to provide the company or subsidiary name, street address, and total number of employees at each location covered in the functional unit¹⁵, and the name and address of the managing official for each proposed functional or business unit.¹⁶ OFCCP estimates that it takes 4 hours per contractor to provide this information.

Statement Identifying the Location of Personnel Records

The contractor is required to provide a statement addressing the location, to include city and state, where each proposed FAAP unit will maintain its employee personnel records and applicant processing activities. OFCCP estimates that it takes 1 hour per contractor to provide this information.

List of Establishment Based AAPs

If the contractor proposes to maintain some establishment-based AAPs, it must provide a list of the locations with establishment-based AAPs, including for each: the physical address, number of employees, phone number of the establishment's managing official and AAP contact, and the EEO-1 unit number for each establishment. OFCCP estimates that it takes 1.5 hours per contractor to provide this item.

¹⁵ Employees who are based remotely should be included in the facility to which they report.

¹⁶ Information for each proposed FAAP including the description, addresses, and names of managing officials and contact persons should be provided as a flat file or database.

Transition Plan

A requesting contractor is required to provide a statement addressing how it plans to transition from establishment-based AAPs to FAAPs and include a timeline for completion. OFCCP estimates that it takes 2.5 hours per contractor to develop this plan.

Dates of the Proposed AAP Year

The contractor is required to provide the dates of the proposed FAAP year. OFCCP estimates that it takes 0.5 hour per contractor to provide this information.

Copies of Personnel Policies

To evaluate if the FAAP meets the criteria detailed in the directive, OFCCP requests copies of unit-specific personnel policies relevant to evaluating the proposed functions or business units, including policies related to recruitment, hiring, promotion, compensation, and termination, where different from corporate policies. OFCCP estimates that it takes 1 hour per contractor to produce this information.

In addition to the written request, contractors are also required to discuss the following items, found in **Attachment B**, when negotiating the agreement.

Reporting Hierarchy

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

Personnel Procedures

To assess whether the proposed FAAP meets the criteria of operating autonomously, OFCCP requests that contractors be prepared to discuss their personnel procedures for recruitment, hiring, promotion, compensation, termination, record retention, and data analysis as they apply to each functional or business unit. If functional or business units have different personnel or compensation practices, OFCCP requires the contractor to identify them. OFCCP estimates that it takes 2.5 hours per contractor to provide this information.

Compliance with Section 503 and VEVRAA Requirements

During the FAAP negotiation process, OFCCP discusses with the contractor its plan for complying with the AAP requirements of Section 503 and VEVRAA. OFCCP estimates that it takes 3 hours per contractor to prepare to discuss this item.

Human Resources and Equal Employment Opportunity

OFCCP requires the contractor to provide information during the negotiation process regarding how each functional unit manages its human resources and equal employment opportunity responsibilities. OFCCP estimates that it takes 1.5 hours per contractor to provide this information.

OFCCP estimates the total annual burden for requesting approval of a FAAP agreement, which includes submitting the written request, collecting and submitting the support documentation, and holding subsequent discussions with OFCCP at 164 hours (32.75 hours x 5 contractor requests).

Modifying, Certifying, and Terminating FAAP Agreements

Modifying a FAAP Agreement

Contractors with existing FAAP agreements are no longer required to annually update their agreements to provide current names of functional or business units, managing officials, employee counts, addresses, and updated contract information.

However, the current obligation to notify OFCCP of modifications to the functional or business units, or structure or organization of a contractor that affect an existing FAAP agreement is retained. If the contractor undergoes a merger, acquisition, and/or downsizing, they must notify OFCCP within 60 days of the effective date of the change(s) with the name of the newly merged or acquired company and the contractor's plan to incorporate the former company's employees into its AAP structure. Any resulting functional or business unit name change, and changes in managing officials, employee counts, and addresses should be included in the modification notice. The FAAP agreement will be modified to reflect the changes. OFCCP estimates that it takes 10 hours per contractor to provide the required information.

OFCCP currently has 71 FAAP agreements, which has been a consistent number over the last three years. Even though the requirement to modify on an annual basis is proposed for removal, OFCCP estimates that 90% of contractors with FAAP agreements will modify the agreement during the course of a year. The annual burden to contractors is estimated as 640 hours (10 hours x 64 contractors).

Certifying a FAAP Agreement

Once approved, FAAP agreements are valid for five-year terms. Prior to the end of the five-year term, contractors must certify in writing (at least 120 calendar days prior to the expiration of the existing agreement) that there have been no changed circumstances to the business structure affecting the existing agreement. As a part of this certification, a contractor is required to include updated information on a federal contract of \$50,000 or more, identifying the name of the federal contracting agency, the contract number, the contract period, and the name of the prime contractor if the contractor is a subcontractor. In addition, the contractor must provide updated information regarding employee counts, facility names, and facility addresses included in each functional or business unit. If the contractor has undergone changes resulting in the addition or elimination of functional or business units or establishment-based AAPs, they will be required to submit a written rationale explaining the changes. OFCCP estimates that it takes 4 hours per contractor to prepare this request.

OFCCP estimates that approximately 14 contractors will certify their FAAP agreement each year. Therefore, the annual burden is estimated as 56 hours (71 FAAP agreements / 5 years = 14.2 contractors per year average; 4 hours x 14 contractors = 56 hours).

Terminating a FAAP Agreement

Contractors may choose to terminate a FAAP agreement because of losing a federal contract, restructuring, merging, or other reasons. The contractor must submit 90 calendar days written notice that they are terminating the agreement along with a brief explanation of the reason(s) for the termination and the effective date of the termination.¹⁷ OFCCP estimates that it takes 0.75 hours per contractor to prepare the notice.

OFCCP estimates that there are approximately two FAAP agreements terminations each year, an estimate that is based on the number agreements that were terminated in the previous three years. OFCCP estimates that it takes 0.75 hour per contractor to terminate an agreement. The annual burden is estimated at approximately 2 hours (0.75 hour x 2 contractors).

Total Reporting Burden by Contractor Activity

	Total Number of Respondents	Recordkeeping Hours	Reporting Hours	Third Party Disclosure	Total Hours
Requesting a FAAP Agreement	5	0	32.75	0	164
Modifying a FAAP Agreement	64	0	10	0	640
Certifying a FAAP Agreement	14	0	4	0	56
Terminating a FAAP Agreement	2	0	0.75	0	2
Total	85				862

Annualized Cost of the Burden of Hours to Respondents¹⁸

¹⁷ Upon termination of a FAAP agreement, all employees are required to be covered by establishment-based AAPs. The burden for establishing a traditional AAP is covered under OMB Control No. 1250-0003, Supply and Service Recordkeeping and Reporting Requirements.

¹⁸ Burden calculation was modified to reflect an 80/20 wage split between analysts and managers. Calculation also included a 46% increase for overhead and fringe benefits that were not included in the 60-day publication of this ICR.

The estimated annualized cost to contractors is calculated using employee compensation data from the Bureau of Labor Statistics.¹⁹ OFCCP calculates the total estimated annualized cost as follows:

	Hours	Monetization
Requesting a FAAP Agreement	164	\$11,450
Modifying a FAAP Agreement	640	\$44,685
Certifying a FAAP Agreement	56	\$3,910
Terminating a FAAP Agreement	2	\$140
Total	862	\$60,185

13. Information Collection Cost Burden

The information contractors provide to OFCCP related to the FAAP process is maintained in the normal course of business or covered by a different ICR, as explained above.

OFCCP estimates that contractors will have some operating and maintenance costs associated with this collection. The agency prefers that contractors submit required documentation electronically but approximately 50 percent of contractors that request initial FAAP approval still send paper copies through the mail and the other 50 percent send it electronically. Contractors generally send the documents electronically when they modify or certify an existing agreement.

OFCCP assesses a cost for the 50 percent of contractors that send paper copies of the documents. OFCCP estimates the supporting documentation for the initial request to be approximately 20 pages, and using a cost of \$0.09 per page,²⁰ the agency calculates that the copying cost for the initial FAAP agreement request is \$4.50 (20 pages x 2.5 contractors x \$0.09 per page).

In addition, OFCCP estimates an average mailing cost of \$6.70 per contractor, using USPS Priority Mail, flat rate envelope.²¹ Therefore OFCCP estimates that the cost of mailing the FAAP agreement to OFCCP is \$16.75 (2.5 contractors x \$6.70).

The total estimated operating and maintenance cost for all contractors related to FAAP is an estimated \$21.25 (\$4.50 copying costs + \$16.75 mailing costs).

14. Cost to the Federal Government

¹⁹ Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, May 2017, available at https://www.bls.gov/oes/current/oes_nat.htm (last accessed April 1, 2019). Management Analyst \$44.92/hr, Human Resource Managers \$59.38/hr. This calculation uses an 80/20 split between Management Analyst and Human Resource Manager (\$47.82) wages. BLS, Employer Costs for Employee Compensation, available at <https://www.bls.gov/news.release/ecec.toc.htm> (last accessed April 1, 2019). Fringe benefit and overhead costs are 46% of wages, (\$47.82*1.46 = \$69.82).

²⁰ Based on the average copying cost for 20 pages at major paper supply stores as of August 7, 2018.

²¹ <https://www.usps.com/ship/mail-shipping-services.htm> (last accessed April 1, 2019)

OFCCP estimates the annual cost to the Federal Government as follows:

- OFCCP staff will spend approximately 40 hours processing each FAAP agreement request. 40 hours x 5 new agreement requests = 200 hours.
- OFCCP staff will spend approximately 8 hours processing each FAAP modification. 8 hours x 64 agreements = 512 hours.
- OFCCP staff will spend 8 hours processing each FAAP certification. 8 hours x 14 agreements = 112 hours.

As there have been no FAAP agreement terminations by OFCCP in the past three years, this ICR does not claim a federal burden for terminations.

OFCCP estimates the total annual burden to the Federal Government related to the FAAP process at 824 hours.

Using the General Schedule (GS) scale, OFCCP estimates a fully loaded average hourly rate of \$74.62²² for the federal staff involved in the FAAP process.²³ The cost is calculated as follows: \$74.62 x 824 hours = \$61,487.

15. Program Changes or Burden Adjustments

OFCCP is requesting OMB approval of 862 burden hours and \$21.25 in costs. This is a decrease in burden hours and costs from the previous approval of this information collection of 1,297 hours and \$89. The table below outlines the specific changes to this ICR compared to its previous approval in April 2016.

Activity	Change	Explanation
Requesting a FAAP Agreement	Decreased by 216 hours	The burden per contractor decreased from 38 hours to 32.75 hours and the number of contractors requesting FAAP agreements decreased from 10 to 5.
Modifying a FAAP Agreement	Increased by 23 hours	The burden per contractor increased from 617 to 640 hours because modifying and updating a FAAP agreement were combined into one activity.
Certifying a FAAP	Decreased by	The burden per contractor increased from 3.7

²² The calculations include 46% of hourly wages to account for overhead and fringe benefits that were not included in the 60-day publication of this ICR.

²³ See, “Salary Table 2018-DCB Incorporating The 1.4% General Schedule Increase And A Locality Payment Of 28.22% For The Locality Pay Area Of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA,” available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/DCB_h.pdf (last accessed August 7, 2018), estimate based on GS-13 grade, step four, \$51.11 (\$51.11*1.46=\$74.62).

Agreement	244 hours	to 4 hours and the number of contractors certifying FAAP agreements each year decreased from 81 to 14.
Terminating a FAAP Agreement	Increased by 2 hours	Terminating a FAAP agreement was not accounted for in the previous ICR.
Annual Operations and Maintenance Costs	Decreased by \$67.75	More contractors are submitting requests and information via email, thus reducing costs.

16. Publication of Data for Statistical Use

OFCCP does not publish the data it collects under this information request clearance.

17. Approval Not to Display the Expiration Date

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

18. Exception to the Certification Statement

OFCCP is not seeking exemptions to the certification statement.

B. STATISTICAL METHODS

This information collection does not use statistical methods.