

OFCCP appreciates the comments and recommendations submitted by the Center for Workplace Compliance (CWC) on the Functional Affirmative Action Programs (FAAP) Agreement Approval Process, published in the Federal Register on May 2, 2019 for the 30-day comment period. Compared to the prior OMB authorization of this program that took place on April 28, 2016, OFCCP made several changes to improve it while decreasing recordkeeping and reporting requirements imposed on FAAP program participants.

In summary, CWC requested two changes to the FAAP program. Below are the requested changes, followed by OFCCP's response.

- **Eliminate the requirement that contractors and subcontractors provide information concerning their federal contract.**

OFCCP maintains its assertion that it is necessary that a contractor requesting a FAAP agreement provide information concerning at least one qualifying federal contract. As explained in the supporting statement, OFCCP emphasizes that its enforcement authority rests with federal contractors and subcontractors and the submission of information pertaining to a federal contract or subcontract substantiates the agency's regulatory authority to negotiate a FAAP agreement. It is the agency's position that a contractor or subcontractor requesting to enter into an agreement with OFCCP should submit information to confirm that they are a covered federal contractor or subcontractor. CWC states, "Indeed, contractors that regularly undergo OFCCP compliance evaluations but that are not FAAP contractors are not required to provide this information." OFCCP points out that entering into a FAAP agreement is not the same as a compliance evaluation. When requesting a FAAP, it is the contractor or subcontractor engaging the agency and the responsibility lies on the requestor to provide sufficient information to show that it meets the program criteria.

- **Eliminate the requirement that all functional or business units must contain at least 50 employees in order to qualify for a FAAP agreement.**

The requirement that a functional unit have 50 or more employees has been in the directive since it was initially approved by OMB in 2012. It is critical that this requirement remain as OFCCP does not conduct compliance evaluations of establishments or functional or business units with fewer than 50 employees. It is important to point out that since the directive came into place, no request for a FAAP agreement has ever been denied. OFCCP works with the contractor or subcontractor to identify a suitable way of combining employees into functional or business unit or identifying them as an establishment.

For the reasons outlined above, OFCCP respectfully declines to make the two requested changes. To increase participation of contractors in the FAAP program, OFCCP already revised it to make it less burdensome for contractors while the current criteria are necessary for maintaining its integrity and utility.