

U.S. Department of Labor
Office of Federal Contract Compliance Programs
Supply and Service Program

OMB Control No. 1250-0003

A. JUSTIFICATION

The U.S. Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP)¹ is requesting Office of Management and Budget (OMB) reauthorization of its supply and service (non-construction) program. This information collection request (ICR) covers reporting and recordkeeping requirements for supply and service federal contractors and subcontractors.²

This ICR outlines the legal authority, procedures, burden, and cost associated with the recordkeeping and reporting requirements of supply and service contractors and contains four information collection instruments that notify contractors that they have been selected to undergo a compliance evaluation. OFCCP is seeking reauthorization of the three existing instruments approved under this collection: the compliance review scheduling letter and itemized listing (collectively referred to as the compliance review scheduling letter), the compliance check scheduling letter, and the Section 503 focused review scheduling letter.³ OFCCP is adding to this ICR a second focused review scheduling letter, as explained below, and has made a revision to the compliance review scheduling letter and Section 503 focused review scheduling letter in an effort to make both compliance evaluations more effective. The compliance check scheduling letter has also had some clarifying revisions. All the letters are included in this ICR and were published during the 60-day public comment period.

In order to consolidate and harmonize its information collections, OFCCP incorporated the recordkeeping and reporting requirements previously covered under OMB Control No. 1250-0008 (Government Contractors, Prohibitions against Pay Secrecy Policies and Actions) and OMB Control No. 1250-0009 (Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors) into its supply and service and construction programs. On September 27, 2018, OMB approved a non-material change to include under this collection (OMB Control No. 1250-0003) these two ICRs, which OFCCP subsequently discontinued. The most recent approval for OMB Control No. 1250-0001, Construction Recordkeeping and Reporting Requirements, incorporated 1250-0008 and 1250-0009 into OFCCP’s construction program.⁴ This ICR contains one requirement, as explained below, that was previously covered under the discontinued collections that apply to supply and service

¹“OFCCP” and “agency” are used interchangeably throughout this document.

² Hereinafter all references to “contractors” includes federal contractors and subcontractors unless otherwise stated.

³ The focused review scheduling letter was added to this ICR as a non-material change on November 26, 2018.

⁴ On April 9, 2018, OMB reauthorized OFCCP’s construction program (OMB Control No. 1250-0001), which included any requirements applicable to construction contractors that were covered under OMB Control Nos. 1250-0008 and 1250-0009.

contractors. No other requirements apply as these ICRs carried a one-time burden that has been fully manifested since their implementation.

1. Legal and Administrative Requirements

OFCCP administers and enforces the three equal employment opportunity laws⁵ listed below, which prohibit employment discrimination and set affirmative action requirements for contractors that meet certain jurisdictional thresholds.⁶

- 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 (VEVRAA).

This ICR covers the reporting requirements for supply and service contractors under all three laws as well as the recordkeeping requirements under EO 11246.⁷ The recordkeeping requirements for VEVRAA and Section 503 are covered under OMB Control Nos. 1250-0004 and 1250-0005, respectively.

Executive Order 11246

EO 11246 prohibits contractors from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, and national origin and 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 (including 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.

41 CFR Part 60-1 – Obligations of Contractors and Subcontractors

⁵ OFCCP promulgated regulations implementing these programs consistent with the Administrative Procedure Act. OFCCP's regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60.

⁶ OFCCP's jurisdictional thresholds are available at <https://www.dol.gov/ofccp/taguides/jurisdiction.htm> (last accessed March 31, 2020).

⁷ This ICR also covers recordkeeping and EO 11246 reporting requirements for any supply and service contractors that choose to participate in OFCCP's Voluntary Enterprise-wide Review Program. Contractors who participate in that program will undergo a modified form of compliance evaluation, as will be defined in a separate ICR for that program.

This part prescribes the nondiscrimination and general affirmative action requirements under EO 11246 and contains recordkeeping, reporting, and third party disclosure requirements. OFCCP discusses the specific sections of this part below that carry a recordkeeping or reporting requirement and are relevant to this ICR.

Section 60-1.4 describes the equal opportunity clause that must be included in government contracts. This section includes the requirement that contractors state in all solicitations or advertisements for employment that applicants will receive consideration without regard to one or more of the protected bases⁸ and that contractors notify labor organizations of their obligations under EO 11246.⁹

Section 60-1.7 requires specific contractors to file an Employer Information Report (EEO-1 Report) annually.¹⁰ The U.S. Equal Employment Opportunity Commission (EEOC) and OFCCP use EEO-1 Report data to analyze employment patterns. 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.¹¹

Section 60-1.10 requires the contractor to notify OFCCP when an employee or potential employee is denied a visa of entry to a country in which or with which it is doing business and it believes the denial was due to one, or more, of the protected bases covered by EO 11246.¹²

Section 60-1.12 outlines the record retention requirements. Contractors are required 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, the record retention period is one year. This section also 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.¹³

Section 60-1.20 outlines the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. A compliance evaluation may consist of one or any combination of the investigative procedures listed in the regulations, i.e., a compliance review,

⁸ 41 CFR § 60-1.4(a)(2).

⁹ 41 CFR § 60-1.4(a)(4).

¹⁰ Supply and service contractors who must file the EEO-1 are prime contractors or first tier subcontractors; have 50 or more employees; have a contract, subcontract, or purchase order amounting to \$50,000 or more, or serve as depositories of government funds in any amount, or are financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes; are not otherwise exempt from OFCCP's regulations, in accordance with 41 CFR § 60-1.5.

¹¹ The Employer Information Report (EEO-1 Report) is promulgated jointly by OFCCP and the Equal Employment Opportunity Commission (EEOC). The EEO-1 Report is sponsored by the EEOC and approved by OMB under OMB Control No. 3046-0007. This information collection is available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201610-3046-001# (last accessed March 31, 2020).

¹² This requirement was previously covered under OMB Control No. 1250-0009.

¹³ "Internet Applicant" is defined at 41 CFR § 60-1.3.

an off-site review of records, a compliance check, and/or a focused review. With the exception of focused reviews, evaluation of compliance with EO 11246 is usually performed concurrently with evaluation of the contractor's compliance with Section 503 and VEVRAA.

Section 60-1.40 requires the development and maintenance of an affirmative action program (AAP) under EO 11246. This section requires each contractor with 50 or more employees that meets the following criteria to develop an AAP for each of its establishments that:

- has a contract of \$50,000 or more; or
- has Government bills of lading which in any 12-month period total or can reasonably be expected to total \$50,000 or more; or
- serves as a depository of Government funds in any amount; or
- is a financial institution that is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

41 CFR Part 60-2 – Affirmative Action Programs

This part prescribes the scope, application, purpose, and contents of AAPs under EO 11246.

Section 60-2.1 describes which contractors must develop AAPs (the general requirements are listed above under section 60-1.40), when contractors must develop AAPs, and which employees to include.

Section 60-2.10 describes the general purpose and contents of AAPs. This section designates the general purpose of an AAP to be a management tool designed to ensure equal employment opportunity and lists the contents, outlined in the sections that follow.

Section 60-2.11 requires that contractors use either an organizational display or workforce analysis as their organizational profile. An organizational profile depicts an establishment's staffing pattern and contractors use it to determine whether barriers to equal employment opportunity exist in their organizations. The organizational profile also provides an overview of the demographic composition of the workforce at the establishment level. An organizational display is a detailed graphical, tabular chart, text, spreadsheet or similar presentation of a contractor's organizational structure. A workforce analysis is a listing of each job title as it appears in applicable collective bargaining agreements or payroll records ranked from the lowest to highest paid within each department or other similar organizational unit, including departmental or unit supervision.

Section 60-2.12 describes what is required for a job group analysis. A job group analysis is a method of combining job titles within a contractor's establishment. Contractors with 150 or more employees must group jobs by similarity of content, wage rates, and opportunities. However, contractors with fewer than 150 employees have the option of using the nine occupational groups used in the EEO-1 Report as job groups. The job group analysis must include a list of job titles that comprise each job group. Generally, job group analysis includes

all jobs located at an establishment and those located at another establishment are annotated to identify their actual location.

Section 60-2.13 addresses incumbency in job groups and requires the contractor to record separately the percentage of minorities and women it employs within each job group.

Section 60-2.14 applies to determining availability, and requires the contractor to estimate the number of qualified minorities and women available for employment in a given job group. Availability is expressed as a percentage of all qualified persons available for employment in that job group.

Section 60-2.15 compares incumbency to availability by requiring the contractor to compare the representation of minorities and women in each job group with their representation among those available for employment in the group.

Section 60-2.16 contains the parameters and criteria for setting placement goals and requires the contractor to establish placement goals for any job group with fewer women or minorities than would reasonably be expected by their availability.

Section 60-2.17 sets forth additional required elements of an AAP. These elements are the designation of a responsible official for implementing equal employment opportunity and the AAP, the identification of problem areas in the employment process, the creation of action-oriented programs designed to correct identified problem areas, and the use of an internal auditing and reporting system to measure the effectiveness of the AAP.

Collectively, Sections 60-2.11 through 2.17 describe the required recordkeeping elements of developing, maintaining, and updating an AAP.

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

DOL, along with the EEOC, the U.S. Office of Personnel Management (OPM), and the Department of Justice (DOJ) adopted the Uniform Guidelines on Employee Selection Procedures (UGESP) in 1978.¹⁴ UGESP applies to tests and other selection procedures used to make employment decisions. When a test or other selection procedure is determined to have an adverse impact, UGESP requires the contractor to validate the test or procedure and to retain the validation documentation. Under UGESP, each contractor must maintain 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. Using this information, the contractor and OFCCP identify and evaluate the contractor's selection procedures for adverse impact.

¹⁴ The UGESP information collection requirements are sponsored by the EEOC and approved under OMB Control No. 3046-0017. To view this information collection, visit https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201804-3046-002 (last accessed March 31, 2020).

VEVRAA

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.¹⁵

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

This part establishes the nondiscrimination and affirmative action requirements under VEVRAA. OFCCP discusses specific sections of this part below.

Section 60-300.5 describes the equal opportunity clause that must be included in Federal contracts and subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract).

Section 60-300.40 requires contractors with 50 or more employees and a contract of \$150,000 or more to develop a VEVRAA AAP.¹⁶

Section 300.42 requires contractors obligated to develop and maintain an AAP to invite applicants to inform them whether the applicant believes he or she is a protected veteran covered by the VEVRAA.

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

- Develop and include an equal opportunity policy statement in the AAP.
- Review personnel processes to ensure that qualified protected veterans are provided equal opportunity and that the contractor is engaged in outreach to recruitment resources.
- Review 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.
- Provide reasonable accommodations for physical and mental limitations.
- Develop procedures to ensure that employees are not harassed because of their veteran status.
- Develop procedures and practices to disseminate affirmative action policies, both internally and externally.
- Establish an audit and reporting system to measure the effectiveness of the AAP.

¹⁵ 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).

¹⁶ OFCCP covers the AAP recordkeeping burden for VEVRAA under OMB Control No. 1250-0004.

- Designate a responsible official to implement and oversee the AAP.
- Provide training to all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes to ensure that the commitments in the contractor's AAP are implemented.
- Conduct data collection analysis on the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of protected veteran applicants hired; the total number of applicants hired; and the number of applicants who self-identified as protected veterans pursuant to §60-300.42(a), or who are otherwise known as protected veterans pertaining to applicants and hires on an annual basis and maintain them for a period of three years.

Section 60-300.45 requires contractors to either adopt the national hiring benchmark or establish a hiring benchmark for protected veterans using the five factors specified in the regulations.

Section 60-300.60 identifies the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. A compliance evaluation may consist of one or any combination of the investigative procedures listed in the regulations, i.e., a compliance review, an off-site review of records, a compliance check, and/or a focused review. With the exception of focused reviews, evaluation of compliance with VEVRAA is usually performed concurrently with evaluation of the contractor's compliance with EO 11246 and Section 503.

Section 503

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. Section 503 applies to contractors with a government contract in excess of \$15,000.¹⁷

41 CFR Part 60-741 – Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Individuals with Disabilities

This part establishes the affirmative action and nondiscrimination obligations under Section 503. OFCCP discusses specific sections of this part below.

Section 60-741.5 describes the equal opportunity clause that must be included in Federal contracts and subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract).

¹⁷ 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).

Section 60-741.40 requires the development and maintenance of a Section 503 AAP. This section requires each contractor with 50 or more employees, and a contract of \$50,000 or more, to develop an AAP for each establishment.¹⁸

Section 60-741.42 requires contractors obligated to develop and maintain an AAP to invite applicants and employees to inform them whether the applicant or employee believes he or she is an individual with a disability.

Section 60-741.44 identifies the required elements of an AAP, including those listed below.

- Develop and include an equal opportunity policy statement in the AAP.
- Review personnel processes to ensure that qualified individuals with disabilities are provided equal opportunity and that the contractor is engaged in outreach to recruitment resources.
- Review 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 are based on business necessity.
- Provide reasonable accommodations for physical and mental limitations.
- Develop procedures to ensure that employees are not harassed because of their disability.
- Develop procedures and practices to disseminate affirmative action policies, both internally and externally.
- Establish an audit and reporting system to measure the effectiveness of the AAP.
- Designate a responsible official to implement and oversee the AAP.
- Provide training to all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes to ensure that the commitments in the contractor's AAP are implemented.
- The contractor shall conduct data collection analysis pertaining to applicants and hires on an annual basis and maintain them for a period of three years, including the number of applicants who self-identified as individuals with disabilities pursuant to § 60-741.42(a), or who are otherwise known to be individuals with disabilities; the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of applicants with disabilities hired; and the total number of applicants hired.

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. This section also requires contractors to conduct a utilization analysis to evaluate the representation of individuals with disabilities.

Section 60-741.60 identifies the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. A compliance evaluation may consist of one or any combination of the investigative procedures listed in the regulations, i.e., a compliance review, an off-site review of records, a compliance check, and/or a focused review. With the exception

¹⁸ OFCCP covers the AAP recordkeeping requirements for Section 503 under OMB Control No. 1250-0005.

of focused reviews, evaluation of compliance with Section 503 is usually performed concurrently with evaluation of a contractor’s compliance with EO 11246 and VEVRAA.

Information Collection Instruments

This ICR seeks approval of four information collection instruments that notify contractors that they have been selected to undergo a compliance evaluation. In particular, OFCCP is seeking reauthorization of letters used to schedule and collect information for compliance reviews, compliance checks, and Section 503 focused reviews. OFCCP also seeks approval for a new letter to schedule and collect information for VEVRAA focused reviews. Over the past several years, OFCCP has primarily conducted compliance reviews, but now the agency plans to conduct other types of compliance evaluations, as prescribed in the agency’s regulations, to ensure that contractors meet their nondiscrimination and affirmative action obligations. For example, compliance checks will provide OFCCP with an efficient option to monitor contractor compliance by reaching a greater number of contractors with existing resources with a smaller contractor burden imposed during each check. OFCCP further anticipates that focused reviews will improve the compliance evaluation process by allowing the agency to use its limited resources to reach more contractors to allow for a closer look at specific elements under particular legal authorities to ensure compliance and to provide more compliance assistance where necessary.

Compliance Review Scheduling Letter

OFCCP seeks the reauthorization of the compliance review scheduling letter, which is the document contractors receive notifying them that they have been selected to undergo a compliance review. OFCCP has used this letter for decades and still plans to continue its use, in combination with the compliance check and focused review scheduling letters.

Compliance Check Scheduling Letter

OFCCP also seeks reauthorization of the compliance check scheduling letter, which is the document contractors receive notifying them that they have been selected to undergo a limited check on AAPs and other related documentation. A compliance check is a compliance evaluation that is more limited in scope than a compliance review as it is used to determine whether the contractor has maintained required records. In recent years, OFCCP did not utilize the compliance check option to conduct compliance evaluations. Moving forward OFCCP anticipates that it will conduct a portion of its scheduled compliance evaluations as compliance checks (the numbers are found in Section 12, below).

Focused Review Scheduling Letters

On November 26, 2018, OMB approved OFCCP’s request for a non-material change to this ICR to incorporate a focused review scheduling letter for Section 503. As set forth in OFCCP’s regulations, focused reviews are restricted to one or more components of the contractor’s

organization or one or more aspects of the contractor’s employment practices. The focused review scheduling letter for Section 503, accordingly, notifies contractors of a compliance review limited to its obligations under Section 503. OFCCP is adding a new instrument to this ICR requesting approval for a focused review scheduling letter under the requirements of VEVRAA. Also, the letter previously authorized for Section 503 focused reviews has been slightly modified with this information collection request. Although OFCCP is exploring options of a focused review scheduling letter for EO 11246 and a combined Section 503 and VEVRAA focused review scheduling letter, the contents of these letters have not been finalized and neither are included in this ICR package for approval. The inclusion of these letters would not change the public burden impact (see Section 12, below, for more details). OFCCP anticipates that a portion of its compliance evaluations will be conducted as focused reviews (the numbers are found in Section 12).

2. Use of Collected Material

OFCCP will use the material to ensure contractor compliance with the agency’s regulations related to creation and maintenance of AAPs, and other recordkeeping requirements. During a compliance evaluation, OFCCP may review the contractor’s AAPs under EO 11246, Section 503, and VEVRAA, along with supporting documentation, personnel data, and other documents to determine whether the contractor is complying with its obligations to ensure nondiscrimination and take affirmative action.

3. Use of Information Technology

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.¹⁹ OFCCP fulfills the GPEA requirements by permitting electronic recordkeeping of contractors’ documentation. OFCCP’s regulations do not specify a method with which contractors must collect and maintain information. Therefore, contractors have the flexibility to develop and use methods that best suit their business needs as long as the information can be retrieved and provided to OFCCP when requested. For this information collection, OFCCP encourages contractors to submit the requested information in an electronic format. Specifics on how and where the information will be submitted to OFCCP will be found in the letter (i.e., compliance review scheduling letter, compliance check scheduling letter, focused review scheduling letter) the contractor will receive that will initiate a compliance evaluation.

Information technology systems used to comply with data requirements under OFCCP’s regulations should be capable of performing, including but not limited to, the functions listed below.

¹⁹ Government Paperwork Elimination Act (Public Law 105-277, 1998), <https://www.gpo.gov/fdsys/pkg/PLAW-105publ277/pdf/PLAW-105publ277.pdf> (last accessed March 31, 2020).

- Conducting workforce analysis
- Conducting job group analysis
- Facilitating calculation of availability
- Conducting EO 11246 utilization analysis
- Collecting employment activity data related to EO 11246, Section 503, and VEVRAA
- Conducting Section 503 utilization analysis
- Analyzing outreach and recruitment
- Tracking voluntary self-identification
- Disseminating EEO policies
- Providing notice to subcontractors and vendors
- Facilitating calculation of VEVRAA benchmarks

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. Where possible, OFCCP participates in information sharing and standardized requirements, such as the use of the EEO-1 Report data and the use of UGESP created by EEOC, OPM, DOJ and DOL.

5. Impact on Small Businesses

Generally, OFCCP minimizes the impact of information collections on small businesses by exempting contractors with fewer than 50 employees from the requirement to create and maintain AAPs.²⁰ OFCCP anticipates that conducting compliance checks and focused reviews will be especially beneficial to small contractors that would otherwise undergo a compliance review, which carries more burden. Additionally, the recordkeeping requirements found at 41 CFR §§ 60-1.12, 60-300.80, and 60-741.80 reduces the two year recordkeeping requirement to one year for contractors with fewer than 150 employees.

6. Consequences of a Less Frequent Collection

A less frequent collection could undermine the success of contractors' nondiscrimination and affirmative action efforts and impede OFCCP's ability to carry out its mission and provide the appropriate compliance assistance. OFCCP achieves its mission through both enforcement actions and compliance assistance. The agency must continuously verify that contractors

²⁰ Once OFCCP's AAP requirement covers one establishment of the contractor, all of its employees must be accounted for in an AAP whether or not each of the contractor's establishments meet the minimum 50 employee threshold. 41 CFR § 60-2.1.

maintain annual AAPs, employment records, and other supporting documentation. Although OFCCP does not evaluate every contractor establishment, the agency initiates compliance evaluations, using the instruments included in this ICR, on an ongoing basis. Without this ICR, these establishments' employment data would become outdated, discrimination could be undetected for longer periods, and victims might not be timely provided remedy for discrimination.

7. Special Circumstances

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

8. Consultation Outside the Agency

On April 12, 2019, OFCCP published a 60-day notice in the Federal Register (84 FR 14974) soliciting comments from the public on this information collection request. OFCCP sought comments on three currently authorized letters the agency uses to schedule compliance reviews, compliance checks, and Section 503 focused reviews. Additionally, the agency proposed a new collection instrument, a letter to schedule VEVRAA focused reviews that is identical in scope to the letter currently authorized for focused reviews under Section 503. The new letter would enable OFCCP to examine federal contractor compliance with requirements to take affirmative action to employ, advance in employment, and otherwise not discriminate against protected veterans. OFCCP specifically requested comments on the Section 503 and VEVRAA focused review scheduling letters. OFCCP reviewed each of the 18 comments it received during the 60-day period from federal contractor consultants, attorneys, employer associations, individuals, and several disability organizations.

OFCCP received a mix of comments, some in strong support of the proposed information collection and some opposed. In general, disability- and veteran-focused organizations support the new data collections and propose that OFCCP review more contractor information during compliance evaluations, particularly during the Section 503 focused review. Contractor consultants, employer associations, and attorneys generally oppose the majority of newly proposed information collections in the letters and raise concerns that OFCCP underestimates the burden associated with the proposed collection, fails to consider the utility of information requested, and, in some instances, exceeds its regulatory authority. Many of these contractor-focused organizations ask OFCCP to withdraw all proposed revisions. Overall, the commenters opposing the newly proposed collection believe that the burden imposed on federal contractors outweighs the benefit to OFCCP. In regard to focused reviews, disability- and veteran-focused organizations believe that the proposed information collections have practical utility and are necessary for the agency's compliance assistance and enforcement functions.

OFCCP carefully considered all of these comments and maintains that none of the newly proposed information collections exceeds OFCCP's regulatory authority and that all of the

collections proposed have practical utility. However, the agency wishes to balance burden with utility, and, in light of useful information provided by contractor-focused organizations about the practical impact on federal contractors, OFCCP withdraws some of the proposed information collections while retaining or modifying others. These changes will increase efficiency, and where clarifications have been made, the modifications promote transparency and certainty. OFCCP also updated its burden estimates in light of the changes. The agency separately addresses comments for each proposed information collection, below.

Compliance Review Scheduling Letter and Itemized Listing

OFCCP received many comments on the compliance review scheduling letter. After reviewing the comments received during the 60-day ICR comment period, OFCCP significantly reduced the number of proposed changes to the letter. Compared to the previous OMB approval of this collection, OFCCP proposed two primary modifications to the letter that would have enabled OFCCP to evaluate information on subcontractors and to obtain essential promotion information to reduce OFCCP follow-up requests during the desk audit phase of a compliance review. However, after weighing the comments, the agency decided not to keep the proposals. OFCCP remains committed to minimizing supplemental information requests during desk audits, in response to feedback the agency has received over the past several years from contractor-focused organizations. Other changes from the previous OMB approval represent minor, clarifying edits.

Electronic Submission of Information²¹

Several commenters expressed concerns over OFCCP's proposal that would require federal contractors to submit information electronically. While OFCCP requires contractors under Section 503 and VEVRAA to provide documents in any format in which the contractor maintains them, upon request, there is no similar requirement under EO 11246. Thus, taking into consideration the comments, OFCCP withdraws this proposal with respect to materials requested under contractors' EO 11246 obligations. In addition, commenters expressed concern about the security of sensitive and confidential information being transmitted via electronic mail (e.g., social security numbers, compensation information, and personal contact information). Some employer associations and federal contractor consultants recommended that OFCCP should establish a secure, web-based portal for contractors to submit requested information to OFCCP. OFCCP appreciates this suggestion and the agency is developing a secure portal to collect information from contractors, such as AAPs.

List of Subcontractors

²¹ The comments and agency response discussed in this section also applies to the Section 503 and VEVRAA focused reviews.

OFCCP received multiple comments objecting to and seeking clarification on the agency’s proposal to collect a list of the “three largest subcontractors based on contract value” from scheduled contractors. Commenters note that companies do not currently maintain lists or databases of subcontractors that are necessary to the performance of their federal contracts;²² that extracting “subcontractors” who perform federal work from subcontractors who perform non-federal work requires applying a legal test for each subcontractor to determine if they are “necessary” to the performance of the federal contract; that the information collection creates more burden than what OFCCP estimated; that the information is available to OFCCP from other government sources such as the EEO-1 Report; that companies would stop doing business with federal contractors if they provide subcontractor information to OFCCP; that OFCCP regulations do not require contractors to maintain this information; and that the request needs clarification otherwise contractors will not know what to submit.

In light of the comments regarding the increase in contractor burden, OFCCP determined to remove the list of subcontractors from the information collection request. However, OFCCP disagrees with the assertion that the agency lacks the regulatory authority to require maintenance of this information. Contractors are required to include the equal opportunity clauses in subcontracts and purchase orders and provide copies of the subcontracts and purchase orders to OFCCP during compliance evaluations upon request to demonstrate compliance with this requirement.²³ Contractors are further required to “take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing” the provisions of the equal opportunity clause requiring nondiscrimination and affirmative action for covered federal contractors and subcontractors.²⁴ Even so, in response to ICR comments, contractors will not be required to submit a list of subcontractors to OFCCP.

Interagency Coordination and Collaboration²⁵

Two comments address a notice included as part of the compliance review scheduling letter that informs federal contractors that OFCCP may share information they provide with other Department of Labor enforcement agencies, as well as other federal civil rights agencies with whom OFCCP has information sharing agreements. One comment objects to this information sharing, and both state that OFCCP should notify contractors if their information is shared. OFCCP notes that this is not a new proposal, but rather it added this notice language in the previous authorization of the scheduling letter in 2016 to be transparent with federal contractors. As explained then, sharing information with other DOL agencies, and with other federal agencies through MOUs, has long been a part of the agency’s investigative and enforcement processes.²⁶

²² See 41 CFR § 60-1.3, Definitions, for the definition of “subcontractor” as used throughout OFCCP’s regulations.

²³ See 41 CFR § 60-1.4(a)(8). This same requirement is included in the Section 503 and VEVRAA equal opportunity clauses at 41 CFR §§ 60-300.5(a) and 60-741.5(a).

²⁴ *Id.*

²⁵ These comments and the agency response also apply to the scheduling letters for Section 503 and VEVRAA focused reviews.

²⁶ See 41 CFR § 60-1.26(c).

However, OFCCP makes active MOUs available on its public website, (e.g., OFCCP’s MOU with the Equal Employment Opportunity Commission).

Notice of Public Disclosure Laws²⁷

The compliance review letter also contains a notice to contractors that the public may seek disclosure of information provided and that OFCCP must comply with the Freedom of Information Act (FOIA), the Trade Secrets Act, the Privacy Act, Executive Order 12600, and DOL’s FOIA regulations at 29 CFR § 70.26, all of which govern the disclosure of confidential commercial information.²⁸ Commenters express concern that the notice language did not sufficiently assure contractors that OFCCP will treat collected information as confidential to the fullest extent of the law and suggesting that OFCCP withhold from disclosure unique identifiers such as social security numbers.²⁹ OFCCP plans no change to the currently authorized language, but notes that guidance published by OFCCP about its process for complying with public disclosure laws should provide assurance that OFCCP will safeguard collected information consistent with those laws.³⁰

Disaggregation of Minority Groups for Utilization Analysis and Placement Goals

OFCCP has decided to withdraw its proposal that would have required contractors to submit information and analyses that a contractor would use to set placement goals for specific racial or ethnic groups, and for men or women of particular racial or ethnic groups. OFCCP strongly encourages contractors to set such disaggregated placement goals,³¹ and OFCCP maintains its position that the information collection does not exceed its regulatory authority.³² However, in light of several comments that strongly oppose the collection, describing uncertainty over what

²⁷ These comments and the agency response also apply to the scheduling letters for Section 503 and VEVRAA focused reviews.

²⁸ 41 CFR §§ 60-1.20(g), 60-300.81, and 60-741.81; Freedom of Information Act, as amended, 5 U.S.C. § 552 (2009).

²⁹ These comments and the agency response also apply to the scheduling letters for Section 503 and VEVRAA focused reviews.

³⁰ See Freedom of Information Act (FOIA) Frequently Asked Questions, available at <https://www.dol.gov/ofccp/regs/compliance/faqs/foiafaqs.htm> (last accessed March 31, 2020) (stating, “OFCCP is well aware that it possesses sensitive and confidential information from contractors, including confidential commercial and proprietary information that could be protected from disclosure by Exemption 4. OFCCP recognizes the importance of protecting such confidential commercial and proprietary information where permitted and is committed to doing so in accordance with applicable law.”)

³¹ See “Disaggregating Minority Groups for Placement Goals,” available at <https://www.dol.gov/ofccp/regs/compliance/faqs/PlacementGoalsfaqs.htm> (last accessed March 31, 2020).

³² See 41 CFR § 60-2.16(d) (“In the event of a substantial disparity in the utilization of a particular minority group or in the utilization of men or women of a particular minority group, a contractor may be required to establish separate goals for those groups.”). OFCCP is considering further guidance in the context of compliance evaluations on how contractors could go about setting disaggregated goals and under what circumstances they should do so.

constitutes a “substantial disparity” and the associated burden of conducting availability and utilization analyses for each racial and ethnic group in every job group, OFCCP withdraws the proposal.

In-Depth Analysis of Compensation Systems

OFCCP also decided to withdraw the proposal to collect a contractor’s in-depth analysis of its compensation system under 41 CFR § 60-2.17(b)(3). This regulation requires contractors to conduct the analysis annually as an element of its affirmative action program. Several comments note that contractors already provide employee-level compensation data to OFCCP for the compliance review, and OFCCP analyzes it for indicators of potential discrimination. The comments make clear that some contractors conduct statistical analysis to determine whether there are disparities based on gender, race, or ethnicity, whereas other contractors only conduct non-statistical “holistic” evaluations to make such a determination. Also, many comments describe the concern that contractors that conduct their in-depth compensation analysis under attorney-client privilege would be forced to relinquish the privilege by providing OFCCP with privileged information. OFCCP disagrees that the self-analysis, which is required by the regulations, can be entirely shielded from the agency as attorney-client privileged. However, in its attempt to tailor the information collection to those documents that will be most useful to the agency in effectively completing its desk audit, OFCCP withdraws the proposed collection from the scheduling letter. However, the agency has the authority to and may still seek this in-depth analysis during the course of a compliance evaluation, for example, during the desk audit, onsite or off-site analysis if indicators of noncompliance are demonstrated, or during enforcement proceedings.

Data for Every Completed Month of Current AAP Year³³

OFCCP proposed on several items of the Itemized Listing for contractors to provide information for “every completed month of the current AAP year” if the contractor is six months or more into the current AAP year. In previously authorized versions of the Itemized Listing, including the current letter in use, OFCCP requests this information for “the first six months of the current AAP year” when the contractor has passed the six-month mark. OFCCP proposed the change in an effort to have the most current data for the compliance review desk audit and to reduce follow-up requests after contractors provide the information. However, commenters express concern over the increased burden of this requirement because it would require them to update various databases every month for the last half of an AAP year in order to be “audit-ready.” Another comment notes that if a contractor does not update its data every month in the latter half of the AAP year, it will not be fully able to prepare for the audit until the date the contractor receives the scheduling letter. As such, the commenter asserts that the proposed modification runs counter to the purpose of the Corporate Scheduling Announcement List that provides

³³ The comments and agency response discussed in this section also applies to the Section 503 and VEVRAA focused reviews. OFCCP withdraws the proposal for all three letters.

contractors with at least a 45-day advance notice to prepare before OFCCP mails the scheduling letter. In consideration of these comments, OFCCP withdraws this proposal. However, as one commenter states, OFCCP may still seek updated information during the course of a compliance evaluation, for example, during the on-site or off-site analysis if indicators of noncompliance are demonstrated.

EEO-1 Reports

OFCCP received one comment on the requirement that contractors submit EEO-1 Reports for the last three years. The comment states that it appears unnecessary to request the last three years of EEO-1 Reports as OFCCP already possesses data for the last two years and questioned the general utility of the EEO-1 Reports to OFCCP. OFCCP believes that the EEO-1 Report is critical to its review process to conduct, for instance, the workforce trend analysis. Data currently available to OFCCP at the time of a compliance review can be up to two years old. Asking contractors to submit copies of their EEO-1 Reports assures OFCCP that it has the most current data. OFCCP finds no reason to reduce the number of EEO-1 Reports it requests during a compliance review or to remove this item. Given the individualized pay data that contractors already provide OFCCP under the scheduling letter, OFCCP will only require contractors to submit component 1 to satisfy the information collection requirement.

Data on Promotions

OFCCP received several comments on its proposal to have contractors provide “promotion pools,” or groupings of candidates from which employees were promoted during the AAP year under review. Several comments explain that promotion pool information is not regularly or easily collected or tracked by current versions of human resources information systems; question OFCCP’s authority to require contractors to maintain records of promotion pools; and note that promotion pools do not exist for non-competitive promotions, such as career-ladder advancement. The commenters assert that requiring contractors to begin compiling this information annually would incur more burden than estimated by OFCCP. OFCCP sought promotion pools to streamline the desk audit stage of the compliance evaluation. By identifying the promotion pools, OFCCP believed it would reduce follow-up requests to contractors regarding who was considered for promotions. With the currently authorized letter, OFCCP does not always receive enough information to conduct a complete analysis on the contractor’s promotion practices, to determine whether potential employment discrimination exists. OFCCP maintains its regulatory authority to request records pertaining to promotion pools.³⁴ However, the agency withdraws this proposal and will request the same information on promotions as is requested in the scheduling letter approved in 2016. The agency may still seek the promotion pools during compliance evaluations such as during the on-site or off-site if indicators of

³⁴ See 41 CFR § 60-1.12. Contractors are required to preserve any records of promotions made or kept for at least one or two years depending on size, and must furnish them, as requested for a compliance evaluation or complaint investigation.

noncompliance are demonstrated. Similar changes are incorporated into the revised proposals for Section 503 and VEVRAA focused review scheduling letters. In those letters, OFCCP asks for the job title and job group that each employee was promoted into and the job title and job group from which each employee came.

Data on Terminations

Two comments ask OFCCP to alter its proposal for contractors to divide its termination data into voluntary and involuntary terminations. One of the commenters notes that some terminations are neither voluntary nor involuntary. For instance, if a new employee begins work and later is rejected by E-verify, the termination may be considered “administrative” or “other.” Also, one commenter suggests removing the request for “voluntary” terminations. However, OFCCP notes that some terminations deemed “voluntary” may, in fact, fall into the category of constructive discharge, a situation wherein the employee is forced to quit due to intolerable working conditions, potentially including harassment, discrimination and/or retaliation. To reduce confusion, OFCCP withdraws this proposed change to the currently authorized letter. The agency requests data on all terminations without grouping by voluntary or involuntary.

Section 503 and VEVRAA Focused Review Scheduling Letters

In August 2018, OFCCP issued a directive to begin scheduling focused reviews.³⁵ The purpose of the focused reviews under Section 503 is two-fold: (1) to ensure that federal contractors fully comply with their equal employment opportunity obligations under Section 503; and (2) to encourage them to consider additional best practices to increase employment of qualified individuals with disabilities. In the time since OFCCP issued the directive, the agency has developed a Section 503 focused review program, with input from federal contractors and their representatives at town halls hosted across the country. The agency has also met with disability-focused groups and trained agency staff on this type of investigative procedure.

During development of the focused review program, OFCCP identified ways to improve the Section 503 focused review scheduling letter, to better achieve the underlying purpose of the program: equal employment opportunity, including pay equity for individuals with disability. Currently, the approved letter is an abbreviated version of OFCCP’s compliance review letter that was approved as a non-material change by OMB in November 2018. In the proposal, OFCCP seeks authorization to collect information that will better equip the agency to investigate whether individuals with a disability are being discriminated against in selection decisions or in compensation. Contractors are already required to maintain the information under OFCCP’s laws, though this is the first time, OFCCP has sought this information at the beginning of a compliance evaluation by using a scheduling letter.

³⁵ Directive 2018-04, Focused reviews of contractor compliance with Executive Order 11246 (E.O.), as amended; Section 503 of the Rehabilitation Act of 1973 (Section 503), as amended; and Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (VEVRAA), as amended. (Aug. 10, 2018).

OFCCP also seeks authorization of a letter in this ICR for the agency to begin scheduling focused reviews under VEVRAA. The Section 503 program will largely be replicated to conduct VEVRAA focused reviews after the agency obtains authorization for the VEVRAA focused review scheduling letter. The intent for the VEVRAA focused reviews is also to eliminate discrimination and promote best practices for an inclusive workplace for another group, protected veterans. Because the recordkeeping requirements for Section 503 and VEVRAA are nearly identical, the scheduling letter for VEVRAA requests the same types of information as the one for Section 503.

Executive Order 11246 AAP

A few comments question the agency's request for contractors to submit their Executive Order 11246 AAP as part of a Section 503 or VEVRAA focused review. OFCCP clearly states the purpose behind the information collection in footnote 1 of the focused review scheduling letters. The same footnote also clearly states the limits of OFCCP's use of the AAP. Comments suggest that only requesting a job group structure, as opposed to the full AAP, would be sufficient and less burdensome for OFCCP's stated purpose. OFCCP also received a comment intimating that OFCCP is needlessly requesting information that will be discarded with no corollary benefit to the agency or public. OFCCP disagrees with these characterizations. The letter requires the contractor to provide its current Executive Order 11246 AAP, which it would already be required to maintain, to OFCCP as opposed to requiring the contractor to extract a portion or portions of it, which may actually create more burden for the contractor than simply providing the full document. If anything, the difference is negligible, and as stated in the letter the AAP will be used only to understand the contractor's organizational structure, confirm Section 503 job groups, and understand how compliance strategies fit generally with the contractor's other affirmative action efforts. This information will enable OFCCP to conduct a more holistic, comprehensive focused review for both Section 503 and VEVRAA, a benefit to the public.

Information on Self-identification, Compensation, and Employment Activity

OFCCP specifically sought comments on the Section 503 and VEVRAA focused review scheduling letters during the 60-day public comment period for this ICR because OFCCP proposed new information collections requiring a contractor to submit its applicant and employee information on self-identification³⁶ separately from the data files for compensation information and employment activity data. In the proposed approach, each of the three files would contain a unique identifier for applicants and employees that are consistent across the files. OFCCP would then match applicant and employee identifiers in the self-identification file with the identifiers in the files for compensation information and employment activity. Specifically, OFCCP sought input from contractors on whether an alternate collection of this information would be more

³⁶ Under Section 503, contractors are required to invite applicants and employees to voluntarily self-identify whether they have a disability. 41 CFR § 60-741.42. Under VEVRAA, contractors are required to invite applicants to self-identify whether they are a protected veteran. 41 CFR § 60-300.42.

efficient for them while still enabling OFCCP or the contractor to merge information from its self-identification data analysis file with the files on compensation information and employment activity data. OFCCP carefully considered the many comments it received from both contractor- and disability-focused organizations, and has determined to remove the proposal in order to minimize the burden placed on contractors. OFCCP will still be able to ensure individuals with disability and protected veterans have an equal opportunity for employment and pay equity, for instance, by examining this information during an onsite review when the agency finds indicators of noncompliance at desk audit.

Several commenters from disability-focused groups strongly support the agency’s proposal to collect these types of information, characterizing the information being sought as “critical for assessing compliance.” These commenters suggest that federal contractors be required to provide even more information to OFCCP than what is currently being sought, including: information on the accessibility of hiring platforms; information maintained by the contractor representing the specific types of disabilities represented among the contractor’s employees; information on the contractor’s arrangements with disability service agencies; screening tools used by contractors in the hiring process; and policies for the promotion and retention of individuals with disabilities. OFCCP agrees that these types of information would be useful for assessing contractor compliance, but also recognizes the need to consider the burden imposed on contractors.

Contractor-focused organizations raise three primary concerns about providing information on compensation, employment activity, and self-identification data related to individuals with disabilities. First, some commenters assert that the preamble to Final Rules enhancing Section 503 and VEVRAA self-identification and other affirmative action requirements³⁷ prevents OFCCP from analyzing compensation and employment activity for signs of discrimination against individuals with a disability. OFCCP respectfully disagrees. The preamble cited by commenters indeed makes statements about the agency’s intention for the use of data maintained by contractors to comply with 41 CFR §§ 60-300.44(k) and 60-741.44(k). However, the preamble is not codified text that binds the agency from collecting self-identification information or information on applicants, hires, terminations, promotions, or compensation, nor does it preclude OFCCP from analyzing the information. Additionally, the text of the regulation has long included broad prohibitions against disability discrimination of all kinds, including discrimination in compensation, selection, placement, and terminations, and the requested data would have better allowed OFCCP to identify and remedy all forms of discrimination and thus is clearly within OFCCP’s authority to collect. However, given the increased burden it would place on contractors, OFCCP withdraws its proposal to collect that information to conduct desk audit analyses.

³⁷ See “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities,” 78 FR 58681, 58702 (Sept. 24, 2013) and “Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans, Veterans of the Vietnam Era, Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans,” 78 FR 58613, 58637 (Sept. 24, 2013).

Second, several commenters explain that systems tracking applicant information are often different from systems that maintain employee information, and the two systems may assign different unique identifiers to the same person. Thus, it would be burdensome – more burdensome than what OFCCP estimated – for contractors to ensure that names or identifiers unique to each applicant and employee are consistent across all databases submitted to OFCCP. OFCCP appreciates the input provided by the commenters, and in its efforts to minimize burden has decided to not to request employee-level data as part of this information collection..

Third, contractors question the utility of OFCCP conducting employment activity and compensation analyses, pointing to low response rates on the invitation for applicants and employees to identify as individual with a disability. Because the response rates are low, commenters suggest that any analysis OFCCP conducts will be fruitless and not worth the burden it imposes on contractors to provide information necessary for the analysis. The agency has been actively working with contractors and their representatives, as well as the Office of Disability Employment Policy, to generate best practices modeled on the success of contractors who have achieved high response rates on the invitation to self-identify. With time and continuous efforts by federal contractors, the agency expects to see increased response rates. However, OFCCP withdraws its request for the information needed to conduct desk audit analyses for employment activity and compensation.

Assessment of Personnel Processes and Assessment of Physical and Mental Qualifications

OFCCP received one comment requesting a slight revision of the proposal to collect information on contractor's required assessment of personnel processes and the assessment of physical and mental qualifications. These affirmative action requirements exist under both VEVRAA and Section 503.³⁸ As proposed, the focused review scheduling letters would have required contractors to submit a date for each of the most recent assessments as well as a date for the next scheduled assessments. While contractors are required to perform both of these assessments, the pertinent regulations do not require a specific date. Rather, contractors are required to assess personnel processes on a periodic basis and they are required to establish a schedule for the review of mental and physical qualifications.³⁹ Because the requirements are different for the different types of assessments, OFCCP has modified these items in the letter to address the concern. OFCCP also modified the compliance review scheduling letter for consistency.

Other Concerns

Commenters raise other concerns about the focused review scheduling letter, recommending that OFCCP extend the time to respond to the letter from 30 to 60 days and that OFCCP use the letter that is currently authorized as part of a pilot program before making any changes to it. OFCCP

³⁸ 41 CFR §§ 60-300.44(b)-(c) and 60-741.44(b)-(c), respectively.

³⁹ *Id.*

declines to take these recommendations. OFCCP understands the desire for more time to prepare for a compliance evaluation, which is why it provides contractors with at least a 45-day notice that they may be scheduled for a focused review. If OFCCP neutrally selects the contractor on day 46, the agency will send the letter to the contractor requesting the information, and the contractor will have 30 days from the receipt of the letter to provide the information to OFCCP. This process thus provides a minimum of 75 days for a contractor to prepare information they are already required to maintain for a compliance evaluation. With regard to the suggestion to conduct a pilot program using the currently authorized letter, OFCCP has already improved the letter over the course of the past several months during the development of the focused review program, with input from stakeholders, as explained above. The agency sees no reason to delay use of the improved version of the letter which is designed to achieve better results.

One commenter also requests that OFCCP revisit guidance in the form of a Frequently Asked Question (FAQ) on its website regarding Section 503 focused reviews.⁴⁰ The FAQ caused a concern that individuals with a disability would be singled out for interviews during a Section 503 focused review, jeopardizing the confidentiality of their disclosure on the self-identification form. OFCCP has taken this comment into consideration and plans to review the FAQ and ensure that agency staff are trained to interview a sample of employees regardless of self-identification as an individual with a disability during the on-site review, so that individuals with disabilities are not singled out for interviews.

Compliance Check Scheduling Letter

OFCCP received several comments on the compliance check scheduling letter, all from contractor-focused organizations. The compliance check ensures that contractors maintain records consistent with 41 CFR §§ 60-1.12, 60-300.80, and 60-741.80. OFCCP has not utilized this form of compliance evaluation for several years, and received support and commendation from two commenters who view the check as an opportunity for contractors to receive compliance assistance and to become more familiarized with their equal employment opportunity obligations. Though OFCCP has not utilized this type of compliance evaluation recently, the agency maintained authorization from OMB over the years to keep it open as an option. OFCCP proposed minor adjustments to the letter, and received some comments on the changes. After reviewing the comments, OFCCP withdraws the proposed changes.

Affirmative Action Programs

In the currently approved letter, the agency requires federal contractors to provide “AAP results” for the preceding AAP year under Executive Order 11246, Section 503, and VEVRAA. For Executive Order 11246, contractors currently provide a report on goals for women and minorities, as well as the good faith efforts they undertook to remove barriers and expand employment opportunities for those groups. For Section 503 and VEVRAA, they submit results

⁴⁰ See Question 1 of the FAQs, available at <https://www.dol.gov/ofccp/regs/compliance/faqs/FocusedReviewFAQs.htm#Q1> (last accessed March 31, 2020).

of the assessments they conduct to determine the effectiveness of their external outreach and recruitment efforts. These results are part of the contractor’s AAPs. As proposed, OFCCP would instead check to see if the contractor maintained the entire AAP for each of the three laws. Some commenters assert that the compliance check is intended to be limited in scope. While this type of compliance evaluation is limited to a check to make sure contractors maintain their records, there is no limitation implied or expressly stated in the regulations as to which records OFCCP may request.⁴¹ After consideration, the agency withdraws its request for AAPs under each of the three laws. OFCCP instead reverts to the currently approved request for AAP results.

Examples of Reasonable Accommodation Requests

OFCCP received comments expressing concern over the agency’s proposal for contractors to submit “[r]equests made for accommodations by persons with disabilities,” as opposed to the currently authorized letter which requires contractors to submit “[e]xamples of accommodations made for persons with disabilities.” OFCCP withdraws this proposal, in light of the comments explaining that contractors do not typically maintain a centralized database of reasonable accommodation requests. Contrary to what some comments assert, contractors are required to maintain any records made or kept “relating to requests for reasonable accommodation.”⁴² However, OFCCP recognizes that how contractors maintain these records currently varies depending on the contractor. While some contractors may have a centralized database from which to pull lists of accommodation requests, others may simply place notes in employee files. Contractors without centralized accommodation records would likely incur more burden to report this information than contractors who have centralized records relating to accommodation requests. To keep the burden of compliance checks the same as the current authorization, OFCCP withdraws the proposal. This withdrawal makes moot the concern that the burden estimate for this item was too low.

Rescheduling for a Compliance Review and Possible Enforcement Proceedings

The letter states that contractors “should be aware that OFCCP may initiate enforcement proceedings or reschedule you for a full compliance review if you fail to provide the records requested in this letter.” One commenter asserts that OFCCP’s regulations do not permit the agency to convert a compliance check into a full compliance review. The commenter misinterprets the notice language. To clarify, this language puts contractors on notice that OFCCP has the authority to ensure compliance with its laws through enforcement, if needed,⁴³ or through the compliance review. The compliance check and compliance review are, as the comment notes, different types of investigatory procedures set forth in OFCCP’s regulations.⁴⁴

⁴¹ See 41 CFR §§ 60-1.20(a)(3), 60-300.60(a)(3), and 60-741.60(a)(3).

⁴² 41 CFR §§ 60-1.12(a), 60-300.80(a), and 60-741.80(a).

⁴³ OFCCP may seek enforcement, for instance, if the contractor denies access to its records as required by the relevant regulations. See 41 CFR § 60-1.26(a)(v)-(viii).

⁴⁴ 41 CFR §§ 60-1.20, 60-300.60, and 60-741.80.

OFCCP selects contractors for the compliance checks and compliance reviews using a neutral scheduling methodology with set criteria published on the agency website.⁴⁵ These criteria may change over time, and OFCCP makes continuous updates to the scheduling process to improve results. A contractor will not be scheduled for a compliance review unless it is selected using the neutral criteria. Such criteria may be “all contractors who refuse to provide requested documents as part of a compliance check.” As a matter of practice and policy, OFCCP typically provides compliance assistance to federal contractors who provide incomplete records. OFCCP may institute an enforcement action seeking appropriate sanctions against contractors who refuse to provide access to records.

Notice of Public Disclosure Laws

Finally, one comment recommends that OFCCP include notice language on public disclosure laws in the compliance check scheduling letter. OFCCP agrees with this suggestion and has inserted the same language currently authorized for the compliance review scheduling letter into the compliance check scheduling letter.

9. Gift or Payments

OFCCP provides neither payments nor 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 contractors, in writing, whose records are subject to a FOIA request. OFCCP makes no decision to disclose the information until contractors have an opportunity to submit objections to its release. Furthermore, it is OFCCP’s position that it does not release any data obtained during the course of a compliance evaluation until the matter is completed.

11. Questions of Sensitive Nature

Generally, OFCCP does not collect information of a personal nature or matters commonly considered private during the course of a compliance evaluation. However, the requested information may reveal information related to the race, color, religion, sex, sexual orientation,

⁴⁵ OFCCP’s current methodology for developing the Supply & Service scheduling list, available at <https://www.dol.gov/ofccp/scheduling/SL19R1-Methodology-Final-FEDQA508C.pdf> (last accessed March 31, 2020).

gender identity, national origin, disability, veteran status, and the compensation of employees and job applicants of contractors. Moreover, during the course of the evaluation, OFCCP may seek evidence concerning the actions of selecting officials, supervisors, managers, and others. OFCCP does not have standardized questions for the gathering of this information as it is unique to each investigation. OFCCP will not request information of sensitive nature from contractors or any other parties during the course of a compliance review, compliance check, or focused review.

12. Information Collection Hour Burden

The public impact of this information collection is broken down into recordkeeping and reporting burdens. The sections that follow outline the calculations of the burden based on the legal and administrative requirements covered in paragraph 1 of this supporting statement. OFCCP bases its calculations on the 112,007 contractor establishments subject to its regulatory requirements.⁴⁶

Recordkeeping Burden

OFCCP's regulations impose the following recordkeeping burden for maintaining documentation and records and developing, updating, and maintaining AAPs:⁴⁷

- Preservation of personnel or employment records
- Initial development of an AAP
- Annual update of an AAP
- Maintenance of an AAP
- Uniform Guidelines on Employee Selection Procedures

The paragraphs that follow break down the calculations for each requirement.⁴⁸

(1) Preservation of Personnel or Employment Records

OFCCP estimates the burden hours for the preservation of personnel or employment records to be zero hours. This burden for contractors with fewer than 50 employees is covered by UGESP, and contractors with 50 or more employees are covered by the AAP recordkeeping requirements (except for contractors with 1 to 14 employees, the burden for which is covered under this ICR, as described below).

⁴⁶ OFCCP obtained the total number of contractor establishments from the most recent EEO-1 Report data available, which is from FY 2017.

⁴⁷ This ICR excludes the AAP recordkeeping burden for VEVRAA and Section 503 AAPs as it is covered under OMB Control Nos. 1250-0004 and 1250-0005 respectively.

⁴⁸ The calculations on burden hours are based on contractor estimates and information provided by OFCCP field staff.

(2) Initial Development of an AAP

OFCCP estimates that 1,120, or 1 percent, of the 112,007 contractor establishments are first-time contractors developing AAPs. OFCCP assesses this burden using the following calculation:

Contractor establishments with 50 to 100 employees will take 73 hours to develop an AAP; establishments with 101 to 150 employees will take 91 hours; establishments with 151 to 500 employees will take 144 hours; establishments with 501 or more employees will take 186 hours. Using a weighted average of 106 hours per establishment multiplied by 1,120, OFCCP calculates the burden for the initial development of an AAP to be 118,720 hours.

(3) Annual Update of an AAP

OFCCP estimates that 110,887, or 99 percent, of existing contractor establishments will conduct an annual update of AAPs. OFCCP assesses this burden using the following calculation:

Contractor establishments with 50 to 100 employees will take 18 hours to conduct an annual update of an AAP; establishments with 101 to 150 employees will take 35 hours; establishments with 151 to 500 employees will take 78 hours; establishments with 501 or more employees will take 105 hours. Using a weighted average of 46 hours per establishment multiplied by 110,887, OFCCP calculates the burden for the annual update of an AAP to be 5,100,802 hours.

(4) Maintenance of an AAP

As all contractor establishments meeting the jurisdictional thresholds are required to maintain an AAP, OFCCP assesses this burden using the following calculation:

Contractor establishments with 50 to 100 employees will take 18 hours to maintain an AAP; establishments with 101 to 150 employees will take 35 hours; establishments with 151 to 500 will take 78 hours; establishments with 501 or more employees will take 105 hours. Using a weighted average of 46 hours per establishment multiplied by 112,007, OFCCP calculates the burden for maintaining an AAP to be 5,152,322 hours.

(5) UGESP

As stated previously, the EEOC sponsors the UGESP information collection.⁴⁹ However, that collection only accounts for the burden associated with all employers with 15 or more employees. Since contractors with 1 to 14 employees are subject to OFCCP's recordkeeping requirements, OFCCP claims the burden for all contractors with 1 to 14 employees, estimated to be 1,106 contractor establishments.⁵⁰ OFCCP assumes that contractors spend approximately 2

⁴⁹ OMB Control No. 3046-0017.

⁵⁰ The number of establishments with 1 to 14 employees derived from the most recent EEO-1 report data available, which is from FY 2016.

hours meeting the UGESP obligations. Therefore, the burden for this requirement is estimated at 2,032 hours (1,016 contractors x 2 hours).

Total Recordkeeping Burden

Activity	Hours
Preservation of Personnel or Employment Records	0
Initial development of an AAP	118,720
Annual update of an AAP	5,100,802
Maintenance of an AAP	5,152,322
UGESP	2,032
Total	10,373,876

Reporting Burden

This section breaks down the burden incurred by contractors in response to the compliance review scheduling letter, the compliance check scheduling letter, and the focused review scheduling letters. Responding to requests of information following the receipt of these letters is considered a reporting burden for contractors. Item 4 contains a reporting requirement outside of compliance evaluations.

1) Compliance Review Scheduling Letter

OFCCP sends the compliance review scheduling letter to contractors when they are selected for a compliance review and requests submission of AAPs and supporting data. OFCCP estimates the burden hours for assembling and submitting the requested documents to be approximately 28 hours per contractor and anticipates conducting approximately 2,500 reviews annually. The burden for assembling and submitting the requested material is estimated at 70,000 hours (2,500 x 28 hours).

2) Compliance Check Scheduling Letter

The compliance check is a limited scope evaluation of the contractor's establishment to determine whether the contractor has maintained records consistent with OFCCP's recordkeeping requirements.⁵¹ The previous authorization of this ICR did not account for any burden related to compliance checks, as they were not conducted by the agency. Moving forward, OFCCP anticipates that a portion of its compliance evaluations will be conducted in the

⁵¹ 41 CFR § 60-1.12.

form of a compliance check. OFCCP estimates that it will take contractors approximately 2 hours to retrieve and supply the requested information and anticipates conducting approximately 1,000 compliance checks annually. Therefore, the burden for assembling and submitting the requested material is estimated at 2,000 hours.

3) Focused Review Scheduling Letters

The focused review is a limited scope evaluation restricted to one or more components of the contractor’s organization or one or more aspects of the contractor’s employment practices. As described above, OFCCP anticipates engaging in focused reviews of contractor establishments targeted to obligations under one of the three laws OFCCP enforces. As with compliance checks, the previous authorization of this ICR did not account for any burden related to focused reviews as they were not conducted by the agency.⁵² However, OFCCP anticipates that it will conduct approximately 1,500⁵³ focused reviews and estimates the reporting burden of a focused review to be approximately 6.5 hours. Therefore, the burden for assembling and submitting the requested material is estimated at 9,750 hours.

(4) Reporting Denied Visas

OFCCP estimates that it would take 2 hours for a contractor to prepare and send the notification of a visa denial, as required by 41 CFR § 60-1.10. However, OFCCP has never received a visa denial notification and has no reason to believe that there will be an upcoming increase of notifications. Therefore, the reporting burden is 0 hours.

Total Reporting Burden

Type of Compliance Evaluation	Burden Hours
Scheduling Letter	70,000
Compliance Check	2,000
Focused Reviews	9,750
Reporting denied visas	0

⁵² On November 26, 2018, OMB approved OFCCP’s request for a non-material change to this ICR to include a focused review scheduling letter under the authority of Section 503. The addition of this letter did not add a burden as in FY 2018, OFCCP conducted only a fraction of the compliance reviews for which it had received OMB approval on June 29, 2016 under the latest reauthorization of this ICR. Therefore, any burden that may have been imposed by the implementation of the focused review scheduling letter did not create an additional burden beyond the parameters of what was contained in the OMB approval.

⁵³ This number constitutes the maximum number of focused reviews in any given year. OFCCP anticipates conducting 500 focused reviews in 2019, 1,000 in 2020, and 1,500 in 2021. If OFCCP adds a focused review scheduling letter for EO 11246 to this ICR at a later date as a non-material change, the total number of focused reviews will not exceed the estimates provided in this supporting statement and the estimated burden would not be impacted.

Total Reporting Burden	81,750
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Third Party Disclosure Burden

OFCCP’s third party disclosure requirements are found at 41 CFR §§ 60-1.4(a)(4), 60-300.5(a)10, and 60-741.5(a)5, which require contractors to notify their labor organizations that they must comply with EO 11246, VEVRAA, and Section 503. OFCCP estimates an average of 1 hour per contractor establishment to notify labor organizations, which is largely an overestimation because it assumes that all contractor establishments have a labor union to notify. OFCCP has no accurate way of determining the exact number of contractors with labor unions. The third party disclosure burden is estimated at 112,007 hours (112,007 contractor establishments x 1 hour).

Total Recordkeeping, Reporting, and Third Party Disclosure Burden Hours

The table below contains the summary of the total burden hours associated with this ICR, combining recordkeeping, reporting, and third party disclosure hours.

Recordkeeping burden hours	10,373,876
Reporting burden hours	81,750
Third party disclosure burden hours	112,007
Total hours	10,567,633

Monetized Burden Cost

OFCCP estimates that the total burden hours translate to approximately \$747,977,064 in burden costs to contractors using data from the Bureau of Labor Statistics for employee compensation (10,567,633hours x \$70.78).⁵⁴

13. Information Collection Cost Burden

OFCCP estimates that contractors will have some operating and maintenance costs associated with this collection. The agency prefers that contractors submit required documentation

⁵⁴ Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, May 2018, https://www.bls.gov/oes/current/oes_nat.htm (last accessed March 31, 2020). \$45.38 per hour for Management Analysts and \$60.91 per hour for Human Resource Managers. The calculation uses an 80/20 split between Management Analysts and Human Resource Managers, which equals \$48.48. BLS, Employer Costs for Employee Compensation, <https://www.bls.gov/news.release/ecec.toc.htm> (last accessed March 31, 2020), fringe benefit and overhead costs are 46 percent of wages. \$48.48 x 1.46 = \$70.78.

electronically but approximately 50 percent of contractors will send paper copies through the mail.

OFCCP assesses a cost for the 50 percent of contractors that send paper copies of the required documents through the mail. OFCCP estimates the average size of an AAP and supporting documentation to be approximately 60 pages and using a cost of \$.09 per page,⁵⁵ the agency calculates that the copying cost is \$13,500 (60 pages x 2,500 contractors x \$.09 per page).

In addition, OFCCP estimates an average mailing cost of \$7.35 per contractor,⁵⁶ using a USPS Priority Mail, flat rate envelope. Therefore OFCCP estimates that the cost of mailing the required documentation to OFCCP is \$18,375 (2,500 contractors x \$7.35).

The total estimated operating and maintenance cost for all contractors is an estimated \$31,875 (\$13,500 copying costs + \$18,375 mailing costs).

Moreover, OFCCP estimates an average mailing cost of \$.55 per contractor⁵⁷ for notifying labor organizations. The total mailing cost to labor organizations is estimated at \$.55 x 56,004 contractor establishments = \$30,802.

The operation and maintenance cost to respondents is calculated as follows: \$13,500 + \$18,375 + \$30,802 = \$62,677 or \$.56 per contractor establishment (\$62,677/112,007 contractor establishments).

14. Cost to the Federal Government

OFCCP estimates the annual cost to the federal government as follows:

- **Scheduling Letter.** OFCCP staff will spend approximately 32 hours reviewing documentation received in response to a compliance review. The burden is calculated at 80,000 hours (32 hours x 2,500 compliance reviews). The cost is \$3,970,032 (80,000 x (\$33.99⁵⁸ x 1.46⁵⁹)).
- **Compliance Check.** OFCCP staff will spend approximately 3 hours reviewing documentation received in response to each compliance check. The burden is

⁵⁵ Based on the average copying cost for 60 pages at major paper supply stores as of March 31, 2020.

⁵⁶ <https://www.usps.com/ship/mail-shipping-services.htm> (last accessed March 31, 2020).

⁵⁷ <https://www.usps.com/business/prices.htm> (last accessed March 31, 2020).

⁵⁸ Hourly rate based on grade 12, step 4 on the General Schedule, which represents an average salary for an OFCCP compliance officer. See “Salary Table 2019-GS Incorporating the 1.4% General Schedule Increase,” available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/GS_h.pdf (last accessed March 31, 2020).

⁵⁹ Hourly rate includes an additional 46 percent cost for fringe benefits and overhead.

calculated at 3,000 hours (3 hours x 1,000 compliance checks). The cost is \$148,876 (3,000 x (\$33.99⁶⁰ x 1.46⁶¹)).

- Focused Review. OFCCP staff will spend approximately 13 hours reviewing documentation in response to a focused review. The burden is calculated at 19,500 hours (13 hours x 1,500 focused reviews). The cost is \$967,695(19,500 x (\$33.99⁶² x 1.46⁶³)).

The total cost to the federal government is 102,500 hours / \$5,086,604.

15. Program Changes or Burden Adjustments

OFCCP is requesting OMB approval of 10,567,633burden hours. The previous clearance contained approval of 9,559,739 hours. The increase in hours of the current request is attributable to a larger number of contractor establishments (112,007 in this request compared to 104,545 in the previous clearance). A summary of the changes is outlined below.

a. Recordkeeping Burden Hours

1) Preservation of personnel or employment records

The previous submission included zero hours. The current request is also for zero hours. The burden associated with records maintained by contractors with fewer than 50 employees is covered by UGESP and by contractors with 50 or more employees is covered by the AAP recordkeeping requirements (except for contractors with 1 to 14 employees, the burden for which is covered under this ICR).

2) Initial Development of an AAP

The previous submission included 109,459 hours. The current request is 118,720 hours for an adjustment increase of 9,261 hours. The increase is attributable to the higher number of contractor establishments used in the current ICR compared to the previous ICR.

3) Annual Update of an AAP

⁶⁰ *Ibid* at 29.

⁶¹ *Ibid* at 30.

⁶² *Ibid* at 29.

⁶³ *Ibid* at 30.

The previous submission included 4,597,669 hours. The current request is 5,100,802 hours for an adjustment increase of 503,133 hours. The increase is attributable to the higher number of contractor establishments used in the current ICR compared to the previous ICR.

4) Maintenance of an AAP

The previous submission included 4,644,131 hours. The current request is 5,152,322 hours for an adjustment increase of 508,191 hours. The increase is attributable to the higher number of contractor establishments used in the current ICR compared to the previous ICR.

5) Uniform Guidelines on Employee Selection Procedures

The previous submission included 7,094 hours. The current request is 2,032 hours for an adjustment decrease of 5,062 hours. The decrease is attributable to the decrease in the number of contractor establishments that employ 1 to 14 employees, based on EEO-1 report data.

b. Reporting Burden Hours

OFCCP anticipates conducting 5,000 compliance evaluations (compliance reviews, compliance checks, and focused reviews) as described below.

1) Compliance Review Scheduling Letter

The previous submission included a total of 96,841 burden hours associated with the compliance review scheduling letter. The current request is for 70,000 hours for an adjustment decrease of 26,841 hours. The overall burden for the compliance review scheduling letter declined because OFCCP anticipates conducting fewer compliance reviews than were anticipated in the previous submission (3,500 in 2016 vs. 2,500 in this submission).

2) Compliance Check Scheduling Letter

The previous submission included zero hours for compliance checks as they were not conducted by OFCCP. This submission requests 2,000 hours for compliance checks.

3) Focused Review Scheduling Letters

The previous submission included zero hours for focused reviews as they were not conducted by OFCCP. This submission requests 9,750 hours for compliance checks.

a. Third Party Disclosure Burden Hours

The previous submission included 104,545 hours. The current request is 112,007 hours for an adjustment increase of 7,462 hours. The increase in third party disclosure hours is due to the larger number of contractor establishments compared to the previous reauthorization of this ICR.

d. Cost Burden

The previous submission included \$140,263 in cost burden. The current request is \$62,677 for an adjustment decrease of \$77,586. This decrease is due to lower postage cost estimates for mailed submissions to OFCCP. This decrease occurs despite the increase to the number of respondents in this collection.

16. Publication of Data for Statistical Use

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

17. Approval Not to Display the Expiration Date

OFCCP is not seeking such approval. OFCCP will display the expiration date and OMB number on the scheduling letter, the compliance check scheduling letter, and focused review scheduling letters.

18. Exceptions to the Certification Statement

OFCCP is able to certify compliance with all provisions.

B. STATISTICAL METHODS

This information collection does not employ statistical methods.