

**SUPPORTING STATEMENT**  
**NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS**  
**REGULATIONS, 29 CFR PART 9**

This is a new collection associated with a Notice of Proposed Rulemaking and Executive Order 14055.

**A. Justification**

**1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

On November 18, 2021, President Biden signed Executive Order (E.O.) 14055, “Nondisplacement of Qualified Workers Under Service Contracts.” 86 FR 66397. The E.O. generally requires Federal service contracts, subcontracts, and their solicitations to include a clause requiring the successor contractor, and its subcontractors, under a contract that succeeds a contract for performance of the same or similar services, to offer suitable employment (i.e., positions for which the employees are qualified) on the contract to those predecessor employees whose employment will be terminated as a result of the award of the successor contract. *Id.* Section 5 of the E.O. contains exclusions, including exempting contracts under the simplified acquisition threshold and employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner that was designed to avoid the purposes of the EO. According to section 8 of the order, the Secretary of Labor is responsible for investigating and obtaining compliance with the E.O.

This is a new Information Collection Request (ICR).

**A. Employment Offers**

The employee nondisplacement contract clause specified by section 3 of the E.O. and 29 CFR 9.12(a) and (b), with certain exceptions, requires the successor contractor and its subcontractors to make good faith employment offers to those employees who performed work on the predecessor contract and whose employment will be terminated as a result of award of the contract or the expiration of the contract under which the employees were hired.

29 CFR 9.12(b) generally requires the contractor, before offering employment on the successor contract to any other person, to make a bona-fide express written or oral offer of employment on the contract to each employee who has performed work during the last 30 days of the predecessor’s contract performance at the same location. Sections 9.12(f)(2)-(3) also require the successor service contractor to maintain for 3 years copies of certain records that are subject to Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act (PRA); including 1) any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended; a summary of each meeting; a copy of any written

notice that may have been distributed, and the names of the employees from the predecessor contract to whom an offer was made; and 2) any record that forms the basis for any exclusion or exemption claimed from the nondisplacement requirements. *See* 44 U.S.C. 3502(3), 3518(c)(1); 5 CFR 1320.3(c), -.4(a)(2), -.4(c).

#### B. Certified List of Service Employees

Section 5 of the E.O. requires covered contractors and subcontractors, not less than 10 days before completion of the contract, to furnish the Contracting Officer (CO) a certified list of the names of all service employees working under the contract and its subcontracts during the last month of contract performance. 29 CFR 9.11(c) requires the CO to provide the list to the successor contractor and, on request, to employees or their representatives. To implement this requirement, § 9.12(e)(1) the rule provides that the predecessor contractor must submit the list no less than 30 days before contract completion. Section 9.12(f)(2)(iii) and (3) then require the successor service contractor to maintain copies of the employee list provided to or received from the contracting agency for 3 years. The Department already clears this list for determining when vacation benefits accrue under the McNamara-O’Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.* and regulations 29 CFR 4.6(l)(2) (*see* OMB Control Number 1235-0007). Therefore, the Department mentions the requirement in this Supporting Statement only to ensure reviewers of the regulation understand the burden is addressed. By allowing the list to serve two purposes, the agency has not imposed a duplicative burden. *See* Item 4 of this Supporting Statement.

Section 9.12(e)(2) of the rule requires a predecessor contractor to provide a certified list of the names of all service employees working under that contract (and its subcontracts) during the last month of contract performance to the contracting agency no later than 10 days before completion of the contractor’s performance of services on a contract where changes to the workforce have been made after the submission of the certified list described in § 9.12(e)(1). This requirement imposes a minimal additional burden for PRA purposes. The Department anticipates that a large portion of contractors will not make changes to their workforce in the final month of contract performance and will therefore not be required to submit a second certified list; in those cases where the submission of a second list is necessary, the Department anticipates that differences between the two certified lists will usually be minimal.

#### B. Complaints

Section 8 of the E.O gives enforcement responsibility for the requirements of the Order, including investigating and obtaining compliance, to the Secretary of Labor. 86 FR 66399. 29 CFR 9.21 provides a predecessor employee or a representative who believes that the successor contractor has violated the requirements of the Order the opportunity to file a complaint with the Wage and Hour Division (WHD) of the Department of Labor within 120 days of the alleged violation. The complainant may file the complaint with WHD. 29 CFR 9.12(f) requires every contractor who makes retroactive payment of wages or compensation after a complaint investigation pursuant to § 9.24(b) of this part to record and preserve the amount of such payment to each employee on a receipt form provided by or authorized by the WHD, deliver a copy to the employee, and file the original with the Administrator or an authorized representative within 10 days after payment is made. Note that the complaints for alleged violations of the laws administered by WHD are cleared under OMB control number 1235-0021. It is mentioned here

to alert the public that there is a corresponding OMB control number being submitted with this NPRM to add reference to the new E.O. and to slightly increase the number of complaints the Department may receive as a result of the E.O.

#### D. Notice disclosure and records

As noted above, proposed § 9.12(f)(2) specifies the records contractors must maintain, including copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the employees from the predecessor contract to whom an offer was made. Proposed § 9.12(f)(2) also requires contractors to maintain a copy of any record that forms the basis for any exclusion or exception claimed under this part, the employee list provided to the contracting agency, and the employee list received from the contracting agency. In addition, every contractor that makes retroactive payment of wages or compensation under the supervision of WHD pursuant to proposed § 9.23(b) would be required to record and preserve as an entry in the pay records the amount of such payment to each employee, the period covered by the payment, and the date of payment to each employee, and to report each such payment on a receipt form authorized by WHD. Finally, proposed § 9.12(f)(2) requires contractors to maintain evidence of any notices that they have provided to workers, or workers' collective bargaining representatives, to satisfy the requirements of the order or these regulations. These would include records of notices of the possibility of employment on the successor contract that are required under § 9.12(e)(3) of the regulations; notices of agency exceptions that a contracting agency requires a contractor to provide under § 9.5(g) of the regulations and section 6(b) of the order; and notices that a contracting agency has declined to include location continuity requirements or preferences in a solicitation, pursuant to § 9.11(c)(3) of the regulations. WHD will use these the records that are retained pursuant to § 9.12(f)(2) in determining a contractor's compliance and whether debarment is warranted. All contractors must retain the records listed in proposed § 9.12(f)(2) for at least 3 years from the date the records were created and must provide copies of such records upon request of any authorized representative of the contracting agency or the Department. Note that most of these records are covered above but the notice records burden is added here.

Further, the Department accounts for notices of agency exceptions that a contracting agency requires a contractor to provide under proposed § 9.5(g) of the regulations and section 6(b) of the order (and Appendix A).

Additionally, proposed § 9.11(c)(3), requires that when an agency decides not to include a location continuity requirement, the agency must ensure the contractor notifies affected workers in writing of the agency determination and the right to request reconsideration. The contractor must provide the notice within five business days and confirm that the notice was provided.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

Employees will use the job offers to decide whether to accept a position with the new contractor. WHD will use the records identified in these information collections to determine compliance with the E.O. and the regulations. Any information provided in support of a complaint will be used to determine whether WHD should initiate a compliance action. The list of employees on the contract will allow the government and the new contractor to know which employees may be entitled to a job offer under the E.O. The recordkeeping requirements will allow WHD to administer and enforce the provisions of the E.O. and the regulations.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

Section 9.12(f)(1) of the rule specifies that there is no particular order or form of records prescribed by the regulations. A contractor may meet the requirements of this rule using paper or electronic means, provided the required information is maintained and adequate facilities are available for inspection and copying and transcription of the records. *Id.* The contractor must provide copies of documentation upon request by the contracting agency or the Department of Labor.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.**

Section 9.12(e) of the rule requires incumbent contractors to furnish the contracting agency with a certified list of the names of all service employees working under the predecessor contract and its subcontracts during the last month of contract performance. The existing contract clause specified at 29 CFR 4.6(l) and 4.173 and repeated in the Federal Acquisition Regulation at 52.222-41(n), applicable to contracts subject to the SCA already provides for the transfer of a vacation benefit seniority list of anniversary dates of employment of all predecessor service employees to the successor contractor through the contracting agency. The corresponding SCA information collection is approved under OMB Control Number 1235-0007. Contract clause paragraph (c) in section 5 of the E.O. specifically requires the same list to meet the nondisplacement requirements. The nondisplacement requirements apply to a subset of all SCA contractors, and 29 CFR 9.12(e) allows contractors to use the same list to meet the requirements of both regulations. Therefore, the SCA vacation benefit seniority list will satisfy the certified list of service employee requirement under the E.O. In the event that a contractor experiences a change in workforce between 30 and 10 days prior to completion of the contract, it will have to submit a revised list, the associated burdens for which are included below.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

The job offer requirements in the nondisplacement regulations follow a common business practice. E.O. 14055; 29 CFR 9.1(a). In order to minimize burden, § 9.12(f)(1) specifies that the nondisplacement regulations prescribe no particular order or form of records and that contractors

may use records developed for any purpose to meet nondisplacement requirements, provided the records otherwise meet the regulatory requirements and are fully accessible. In addition, § 9.12(e) specifically allows contractors to use the SCA vacation benefit seniority list required by 29 CFR 4.6(l)(2) to satisfy the certified list of service employees requirement under the E.O. The Department has determined that the information collections will not have a significant economic impact on a substantial number of small entities.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

The E.O. requires the third-party disclosures and the seniority list. Moreover, determining compliance with the E.O. and the regulations would be extremely difficult, if not impossible, were the Department not to require the records specified in the rule. Complainants would have no means of seeking redress of alleged violations, were the Department not to sponsor a method of filing complaints.

**7. Explain any special circumstances that would cause an information collection to be conducted in a manner:**

- **Requiring respondents to report information to the agency more often than quarterly;**
- **Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **Requiring respondents to submit more than an original and two copies of any document;**
- **Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **Requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **Requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

There are no special circumstances associated with the conduct of these information collections.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency**

**in response to these comments. Specifically address comments received on cost and hour burden.**

**Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed or reported.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years – even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.**

A 60-day notice proposing to create the new information collection and revise other existing information collections that are impacted by the Executive Order was published in the Federal Register as part of the Notice of Proposed Rulemaking.

**9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

The Department offers no payments or gifts to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a system of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here**

The Department makes no assurances of confidentiality to respondents. As a practical matter, information gathered during the course of an investigation of a complaint is generally disclosed only in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; and attendant regulations, 29 CFR parts 70 and 71. The FOIA provides an exception from its disclosure requirements for records or information compiled for law enforcement purposes to the extent that release of the information could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution that furnished information on a confidential basis. 5 U.S.C. section 552(b)(7)(D). The FOIA also provides an exemption for business records and trade secrets.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

The Department does not request sensitive information in these information collections.

**12. Provide estimates of the hour burden of the collection of information. The statement should:**

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.**
- **Provide estimates of annualized cost to respondents for hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under ‘Annual Cost to Federal Government’.**

The Department estimated in the NPRM that in 2019, there were 86,000 unique prime contractors with active SCA contracts in USASpending. The Department uses this figure as the base for Federal government contract actions subject to the SCA annually. The Department assumes that about 21,500 contract actions per year (about 25 percent of all SCA covered contract actions) would be successor contracts subject to the nondisplacement provisions. The Department assumes that a typical SCA contract has one prime contractor and three subcontractors; therefore, the Department estimates the information collection requirements of part 9 would apply to approximately 86,000 contracts.

21,500 covered contract actions × 4 contractors = 86,000 contracts.

**A. Express Offers of Employment**

Based on agency enforcement experience under the SCA, the Department estimates that each service contract involves an average of approximately 15 employees. Typically, employers would make oral offers of employment at all-employee meetings where the employer need only make notations on a copy of the employee roster of the offer of employment. Otherwise, the employer would likely make offers of employment individually by mail or electronic means. Beyond making the offer of employment, the employer would also be responsible for maintaining copies of any written offers of employment, or contemporaneous written records of any oral offers of employment, and copies of any records that formed the basis for any exclusion or exemption claimed under the final rule. As job offers will typically be made in a bulk fashion, the Department estimates it would take an employer an average of approximately 5 minutes per employee to make an offer, whether oral or written, and another 1/2 minute to file the associated paperwork for each employee, including any paperwork forming the basis for any exclusion or exemption from the obligation to offer employment to a particular employee. Therefore, the Department estimates an annual disclosure and recordkeeping burden of 82.5 minutes per

contract for a total annual burden of 118,250 hours.

$86,000 \text{ contracts} \times 15 \text{ third-party disclosures} \times 5.5 \text{ minutes} \div 60 \text{ minutes per hour} = 118,250 \text{ hours.}$

#### B. Certified List

The information collection requirement for contractors specified in proposed § 9.12(e)(1)—the certified list of employees provided 30 days before contract completion—is cleared under the SCA regulation, 29 CFR 4.6(1)(2), OMB control number 1235-0007, which requires a certified list be provided no later than 10 days before contract completion, and that burden is not duplicated in these estimates. However, contractors experiencing a change in their workforce between the 30 and 10 day periods will have to submit an additional list. Since a certified list would have already been compiled 30 days before completion of the contract, the list produced 10 days before contract completion would only require updating the initial list, if necessary. Therefore, the Department estimates the additional burden to be minimal.

For the purpose of estimating burden associated with this requirement, the Department estimates that approximately 50% of contracts will experience a change in workforce between 30 and 10 days of completion of the contract, requiring an updated list. The Department recognizes that the actual number of contractors having to produce two lists is likely to be less, but uses 50% as an upper bound estimate. The Department estimates it would take a predecessor contractor an average of approximately one minute to update the employment status of each employee on a certified list. Therefore, the Department estimates the total burden for creating an updated certified list to be 10,750 hours.

$86,000 \text{ contracts} \times 0.5 \text{ percent of contracts} \times 15 \text{ employees} \times 1 \text{ minute} \div 60 \text{ minutes per hour} = 10,750 \text{ hours.}$

#### C. Complaints

Based on enforcement data of actual complaints received annually as part of E.O. 13495(the former similar E.O.), the Department estimates that it will receive 10 complaints per year.

The Department estimates that each complaint filing will take about 20 minutes. Therefore, the Department estimates the total burden for filing complaints to be about 3 hours.

$10 \text{ responses} \times 20 \text{ minutes} \div 60 \text{ minutes per hour} = 3 \text{ hours (rounded).}$

This burden is being added to the complaint ICR previously cleared under OMB control number 1235-0021 and which will accompany this new ICR as a revision when submitting to OMB for approval. The Department is merely mentioning here so the public is aware of the second ICR being submitted to OMB.

#### D. Notices

Disclosures: As noted, proposed § 9.12(f)(2) requires contractors to maintain evidence of any

notices that they have provided to workers, or workers' collective bargaining representatives, to satisfy the requirements of the order or these regulations. The burden is captured above in (12) (A). Under proposed § 9.12(e)(3), before contract completion, the contractor must provide written notice to service employees employed under the contract of their possible right to an offer of employment on the successor contract. Such notice will be either posted in a conspicuous place at the worksite or delivered to the employees individually. Where the workforce on the predecessor contract is comprised of a significant portion of workers who are not fluent in English, the notice will be provided in both English and a language in which the employees are fluent. Multiple language notices are required where significant portions of the workforce speak different languages and there is no common language. Contractors may provide the notice set forth in Appendix B to this part in either a physical posting at the job site, or in another manner that effectively provides individual notice such as individual paper notices or effective email notification to the affected employees.

The Department estimates 86,000 respondents and 1,290,000 responses for this burden.

$86,000 \times 15$  responses per = 1,290,000 responses. The Department believes this is an overestimate as most contractors will likely use the publicly posting option.

Burden is estimated at two minutes to prepare the notice and 30 seconds to keep the record.

**1,290,000 responses.  $\times$  2.5 minutes per response = 53,750 burden hours.**

Additionally, the Department has added a burden estimate for the notice and confirmation requirements of contractors under proposed section 9.11(c)(3). The Department estimates that 30% of contracting agencies will decide not to include the location continuity requirement requiring the disclosure/notice by the contractors.

$86,000 \times 30\% = 25,800$

The Department estimates five minutes to prepare and issue the notice as well as confirm to the contracting agency that the notice was provided.

**$25,800 \times 5$  minutes  $\times$  15 responses = 1,935,000 minutes/60 min per hour = 32,250 burden hours.**

Respondents – 25,800 Responses- 387,000 Burden hours- 32,250

(i) Records:

Recordkeeping of the notices for proposed section 9.11(c)(3) is

**$387,000 \times .5$  minutes = 193,500 minutes (3,225 burden hours)**

Additionally, the Department recognizes a small burden for notices of agency exceptions that a contracting agency requires a contractor to provide under proposed § 9.5(g) of the regulations and section 6(b) of the order (and Appendix A).

The Department estimates that 10% of contractors will be impacted by a contracting agency electing to allow an exception requiring the disclosure/notice.

$86,000 \times .10 = 8,600$  respondents

$8,600$  respondents  $\times$  15 responses per = 129,000 responses

**129,000 responses  $\times$  5 min per response = 10,750 hours.**

Records:

Total responses notice = 129,000

**129,000  $\times$  .5 minutes = 1,075 burden hours**

Burden Summary Notices:

	Respondents	Responses	Burden hours
9.12	86,000	1,290,000	53,750
9.11	25,800	387,000	32,250
9.11	Same as above	387,000	3,225
9.5	8,600	129,000	10,750
9.5	Same as above	129,000	1,075
	Total		
	120,400	2,322,000	101,050

**Total Burden Summary**

Activity	Respondents	Annual Responses per Respondent	Total Annual Responses	Time per Response (min)	Total Annual Burden Hours
Employment Offer	86,000	15	1,290,000	5.5	118,250
Certified List	43,000	15*	645,000	1	10,750
Notices	120,400	15	2,322,000	2	101,050

Totals	249,400	NA	4,257,000		230,050
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\*Note that while the successor contractor need only provide one list, they must review the fifteen employees on the original list.

Absent specific wage data regarding the respondents, the Department has used the March 4, 2022 annual average hourly earnings of \$37.97 for professional and business services industry employees and increased it by 46 percent to account for fringe benefits (\$17.47) and 17% for overhead costs (\$6.45), resulting in a total of \$61.89 per hour to estimate respondent costs. See *The Employment Situation: February 2022 (issued March 4, 2022)*, Table B-3, Bureau of Labor Statistics, (<https://www.bls.gov/news.release/pdf/empsit.pdf>), loaded into ROCIS. Estimated total annual costs for the value of respondents' time are \$14,237,795.

$\$61.89 \times 230,050 \text{ hours} = \$14,237,795$ . (rounded)

**13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).**

The Department associates no respondent costs with the subject information collections, other than the value of time.

**14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 into a single table.**

The Department estimates no federal costs associated with this information collection.

**15. Explain the reasons for any program changes or adjustments reported on the burden worksheet.**

This is a new information collection associated with rulemaking.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

The Department will not publish the results of these information collections.

**17. If seeking approval to not display the expiration date for OMB Approval of the information collection, explain the reasons that display would be inappropriate.**

The Department does not seek an exception to the requirement to display the expiration date for OMB approval of these information collections.

**18. Explain each exception to the topics of the certification statement identified in  
“Certification for Paperwork Reduction Act Submissions.”**

The Department is not requesting an exception to any of the certification requirements for these information collections. This request complies with 5 CFR 1320.9.

**B. Employing Statistical Methods:**

Not applicable.