

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

OMB Number 1250-0006

The U.S. Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP) is requesting Office of Management and Budget (OMB) reauthorization of its information collection related to the Functional Affirmative Action Program (FAAP). This information collection request (ICR) updates the directive that establishes policies and procedures that federal contractors and subcontractors¹ must follow to develop and maintain a FAAP.

A. JUSTIFICATION

Supply and service contractors subject to affirmative action program (AAP) requirements may request a FAAP agreement, which permits the development and use of AAPs based on functional or business units. Under OFCCP’s regulations, contractors must have an agreement approved by the OFCCP Director to develop and operate under a FAAP.

1. Legal and Administrative Requirements

OFCCP administers three equal employment opportunity authorities:

- Executive Order 11246, as amended (Executive Order 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).

OFCCP promulgated regulations implementing these programs consistent with the Administrative Procedure Act. These regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60.²

Executive Order 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. Executive Order 11246 also requires affirmative action to provide equal employment opportunities. Executive Order 11246 applies to contractors, and to federally assisted construction contractors holding a government contract in excess of \$10,000, or government

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

² 41 CFR 60, <https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60> (last accessed May 4, 2022).

contracts that have, or can reasonably expect to have, an aggregate total value exceeding \$10,000 in a 12-month period. Executive Order 11246 also applies to federal bills of lading, depositories of federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. savings bonds and notes in any amount.

Section 503 prohibits contractors from discriminating against applicants and employees on the basis of disability and requires contractors to take affirmative action to employ, and advance in employment, qualified individuals with disabilities. Its requirements apply to contractors with a government contract in excess of \$15,000.³

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

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

This ICR includes an updated directive that establishes policies and procedures that contractors must follow to request and maintain a FAAP. Proposed changes to the directive include:

- Updating the “References” and “Affected Policies” noted in the directive.
- Changing the definition of “certification” to “FAAP Renewal Certification” and adding clarifying language to this definition. These changes clarify that this certification is related to the FAAP renewal process.
- Updating the definition of “compliance review.”
- Revising the definition of “modification” for clarity.
- Updating the “Roles and Responsibilities” section to clarify that FAAP contractors are required to notify OFCCP that they have implemented the FAAP Agreement.

³ Effective October 1, 2010, the coverage threshold under Section 503 increased from \$10,000 to \$15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 FR 53129 (Aug. 30, 2010).

⁴ Effective October 1, 2015, the coverage threshold under VEVRAA increased from \$100,000 to \$150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

⁵ 41 CFR part 60-2, Affirmative Action Programs.

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

- Providing that FAAP agreement requests, modification notices, official changes, renewal requests, and termination notices should be submitted electronically. If a contractor is unable to submit the request electronically, it may contact OFCCP_FAAP-UNIT@dol.gov or (202) 693-1125 to discuss an alternative submission method.
- Providing that FAAP contractors notify OFCCP on annual basis of any changes in the primary corporate contact listed in the FAAP agreement and changes in a functional or business units' management official(s). The notification must identify whether there were any changes, and if so, identify which functional or business unit was impacted by the change. The notice must also include the name, address, and email address of the new primary corporate contact and management official(s). If there are no such changes, contractors must notify OFCCP of that as well on an annual basis. The first notice must be submitted to OFCCP within 365 days of the FAAP approval date, and subsequent notices must be submitted on an annual basis thereafter.
- Providing that any changes to the primary corporate contact or management officials do not extend the five-year term of a FAAP agreement.
- Clarifying that a contractor is responsible for notifying OFCCP that it has implemented the FAAP agreement.
- Clarifying that a contractor must continue to develop, implement, and maintain AAPs for each establishment until the FAAP agreement is implemented.
- Providing that OFCCP's reasons for terminating a FAAP agreement include but are not limited to: (1) if the contractor fails to account for all its employees in a functional or establishment AAP; or (2) if the contractor repeatedly fails to notify OFCCP of a FAAP modification or changes in the primary corporate contact and management officials. Two or more such instances during the term of the agreement could constitute a repeated failure to meet these requirements.
- Updating the procedures for renewing a FAAP agreement and Attachment A to provide the following: If the contractor has at least one federal contract or subcontract of \$150,000 or more, the contractor must provide updated information concerning at least one federal contract or subcontract of \$150,000 or more, identifying the name of the federal contracting agency, the contract number, the contract period, and the name of the prime contractor if the contractor is a subcontractor. If the contractor does not have at least one federal contract or subcontract of \$150,000 or more, the contractor must provide updated information concerning at least one federal contract or subcontract of \$50,000 or more, identifying the name of the federal contracting agency, the contract number, the contract period, and the name of the prime contractor if the contractor is a subcontractor.
- Updating Attachment A to the directive to require contractors to identify and provide the name and address of the contractor's corporate headquarters that oversees contractor operations in the United States and its Territories. For each proposed functional or business unit, contractors must provide the name, address, and email address of the managing official. Additionally, they must provide the company or subsidiary name, street address, and total number of employees covered at each location within the functional unit.
- Providing that contractors must provide a statement identifying the location, including the city and state, where each proposed FAAP unit will maintain its employee personnel

records and applicant processing activities. If records are maintained electronically, they must identify and provide a description of the data-maintenance/cloud-based system that is utilized.

- Providing that OFCCP must provide 90 days' notice if it denies renewal of a FAAP.
- Providing that either party may terminate the FAAP agreement with at least 90 calendar days' written notice.
- Other minor language and formatting changes for clarity.

Guidance and Regulatory Requirements

Specifics on the FAAP process are found in Directive 2013-01 Revision 3, which sets forth the criteria OFCCP considers when determining whether a contractor qualifies for a FAAP agreement. At minimum, to be considered for a FAAP agreement, the contractor's functional or business unit must:

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

41 CFR part 60-2 prescribes the scope of the Executive Order 11246 AAP requirements, including the purpose and contents of an AAP and coverage requirements.⁷ The recordkeeping burden for developing, maintaining, and updating an AAP is covered by a separate information collection.⁸

Section 60-2.1(d)(4) allows for the development of AAPs based on functional or business units. Contractor recordkeeping requirements (60-1.12), the requirement to develop and maintain an AAP (60-1.40), and the AAP scope, requirements, purpose, and contents (60-2.1 and 60-2.10 through 2.17) are approved under the information collection that contains the recordkeeping and reporting requirements for supply and service contractors.⁹

Requesting a FAAP Agreement

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

⁷ While the VEVRAA and 503 regulations do not specifically mention FAAPs, as an exercise of enforcement discretion, OFCCP permits contractors that utilize a FAAP for its 11246 program to use the same FAAP structure for its 503/VEVRAA programs.

⁸ OMB Control Number 1250-0003, Supply and Service Recordkeeping and Reporting Requirements, expires April 30, 2023.

⁹ *Ibid.*

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

- The contractor must show proof that it is a covered contractor by providing specific contract information, as described in the Directive;
- A copy of the contractor's most recent consolidated Employer Information Report (EEO-1 Report);
- An organizational chart that identifies all the proposed functional or business units to be covered by the requested FAAP and how they are related to each other within the corporation's overall structure;
- A narrative description of the function or business of each proposed FAAP unit and how it meets the definition of a functional or business unit;¹¹
- The name and address of the contractor's corporate headquarters that oversees contractor operations in the United States and its Territories. For each proposed functional or business unit, the contractor must provide the name, address, and email address of the managing official. Additionally, it must provide the company or subsidiary name, street address, and total number of employees covered at each location within the functional unit;
- A statement explaining where each proposed FAAP unit will maintain its employee personnel records and applicant processing activities. If records are maintained electronically, the contractor must identify and provide a description of the data-maintenance/cloud-based system that is utilized;
- If the contractor proposes to maintain some establishment-based AAPs, it must provide a list of locations with establishment-based AAPs, including for each: the physical address, number of employees, phone number of the establishments' managing official, AAP contact, and the EEO-1 unit number for each establishment;
- A statement addressing how the contractor plans to transition from establishment-based AAPs to FAAPs, including a timeline for completion;
- The dates of the proposed FAAP year; and
- If different from corporate policies, copies of unit-specific personnel policies relevant to evaluating the proposed functions or business units, including policies related to recruitment, hiring, promotion, compensation, and termination.

In addition to the items outlined above, OFCCP and the contractor will discuss information related to reporting hierarchy, personnel procedures, how the contractor anticipates complying with the AAP requirements of Executive Order 11246, Section 503 and VEVRAA, and how each functional or business unit manages its human resources and equal employment opportunity responsibilities during the FAAP negotiation process.¹²

Modifying a FAAP Agreement

A change that creates or eliminates one or more functional or business units requires a modified

¹⁰ See Directive 2013-01 Revision 3, Attachment A

¹¹ The definitions are provided in the Directive.

¹² See 2013-01 Revision 3, Attachment B

agreement. A contractor is required to notify OFCCP, in writing, within 60 calendar days of the effective date of the change. The FAAP agreement will be modified to reflect the changes. The modification notice must include a description of and the reason for the change. If functional units were added, the contractor's notice must state when the new FAAPs will be in place. If functional units were removed, the contractor must identify where those employees will be covered in the new FAAP structure. If there was a merger, acquisition, and/or downsizing, the contractor must provide OFCCP the name of the newly merged or acquired company and the contractor's plan to incorporate the former company's employees into its AAP structure. Any resulting functional or business unit name change, managing official changes, employee counts, and addresses due to the creation or elimination of a business or functional unit should be included in the modification notice and provided in MS Excel or CSV format.

OFCCP may schedule a contractor for a compliance evaluation should the contractor fail to submit a modification notice. Alternatively, should there be repeated failures to inform OFCCP of a modification, the contractor's FAAP agreement could be terminated.

Notification of Primary Corporate Contact and Management Official Changes

At least once a year during the FAAP agreement, contractors must notify OFCCP about whether there are any changes to the primary corporate contact listed in the FAAP agreement and any changes in a functional or business unit's management official(s). The notification must identify whether a change occurred, and if so, identify which functional or business unit was impacted by the change. The notification must also include the name, address, and email address of the new primary corporate contact and management official(s). If there are no such changes, contractors must notify OFCCP of that as well on an annual basis. The first notice must be submitted to OFCCP within 365 days of the FAAP approval date, and subsequent notices must be submitted on an annual basis thereafter.

Renewing a FAAP Agreement

If a contractor wishes to renew the FAAP prior to its expiration, the contractor must submit a FAAP Renewal Certification in writing every five years, at least 120 calendar days prior to the expiration of the existing FAAP agreement. The FAAP Renewal Certification must describe whether there have been any changes to the primary corporate contact and management officials, functional or business units, structure or organization, or other circumstances affecting the existing FAAP agreement since the last notification provided to OFCCP. If circumstances have changed (*e.g.*, elimination of functional or business units) the contractor must provide written rationale for the changes. The contractor must also provide updated information on other elements during the renewal process as described in the Directive. Renewed FAAP agreements will be reissued for another five-year term.

Terminating a FAAP Agreement

OFCCP or the contractor may terminate a FAAP agreement. Either party terminating the agreement must provide at least 90 calendar days' written notice. The notice must explain the reason(s) for the termination and its effective date. Upon termination of a FAAP agreement, all employees are required to be covered by establishment-based AAPs. The establishment-based

AAPs shall be in place no later than 120 calendar days from either OFCCP’s or the contractor’s notification that the FAAP agreement has been terminated.

2. Use of Collected Material

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

3. Use of Information Technology

OFCCP prefers that FAAP agreement requests and documentation are submitted in an electronic format.¹³ Contractors should submit the requests and documentation to the FAAP email address at OFCCP_FAAP-UNIT@dol.gov.

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.¹⁴ OFCCP fulfills the GPEA requirements by permitting electronic transmission of contractors’ documentation.

4. Description of Efforts to Identify Duplication

The reporting requirements in this ICR result exclusively from Executive Order 11246, Section 503, and VEVRAA and their implementing regulations. No duplication of effort exists because no other federal agencies administer and enforce these regulations.¹⁵

5. Impact on Small Businesses

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

- Contractors with fewer than 50 employees are exempt from the AAP requirement.

¹³ If not maintained in an electronic format, all documents must be submitted in the form and format in which they are maintained. If a contractor is unable to submit the information electronically, it may contact OFCCP_FAAP-UNIT@dol.gov or (202) 693-1125 to discuss an alternative submission method.

¹⁴ Government Paperwork Elimination Act (Public Law 105-277, 1998), <https://www.gpo.gov/fdsys/pkg/PLAW-105publ277/pdf/PLAW-105publ277.pdf> (last accessed May 4, 2022).

¹⁵ The Employer Information Report (EEO-1) is promulgated jointly by OFCCP and the Equal Employment Opportunity Commission (EEOC), see 41 CFR 60-1.7(a). That report is certified under OMB Control No. 3046-0049 through a collection that is sponsored by the EEOC.

- When preparing an Executive Order 11246 AAP, contractors with fewer than 150 employees are permitted to use their EEO-1 categories as job groups, thus reducing burden related to job group formulation.
- The number of contractors who request a FAAP is a small portion (less than .5%) of OFCCP’s contractor universe.
- Since participation in the FAAP program is entirely voluntary, very small contractors would generally not request a FAAP agreement because the nature of the FAAP process entails grouping together employees from different groups, establishments, functional, and business units. On average, a FAAP covers 28,769 employees.
- Contractors that exercise the option to develop FAAPs benefit from the flexibility the program allows to tailor AAPs to specific organizational needs.

6. Consequences of a Less Frequent Collection

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

7. Special Circumstances

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

8. Consultation Outside the Agency

On February 9, 2022, OFCCP published a 60-day notice in the Federal Register (87 FR 7501) seeking comments on the FAAP ICR proposal. OFCCP specifically requested comments which:

- Evaluate whether the proposed collection of information is necessary for the compliance assistance functions of the agency that support the agency's compliance mission, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. In particular, OFCCP sought comments on whether FAAP documents, such as agreement

requests, modification notices, FAAP renewal requests, termination notices, or other information requested during the FAAP approval and renewal process, should be submitted through OFCCP's Contractor Portal.

OFCCP reviewed each of the six comments it received during the 60-day period. The comments were submitted by employer associations and individuals. After carefully considering these comments, OFCCP has decided to proceed with the proposed information collection, with some modifications. Based on the public comments, OFCCP will modify the requirement to notify the agency of company official changes and will not require submission of FAAP documents via the Contractor Portal. OFCCP addresses these issues and each public comment below.

Contractor Portal

In the 60-day notice, OFCCP invited comments on whether FAAP documents, such as agreement requests, modification notices, FAAP renewals requests, termination notices, or other information requested during the FAAP approval and renewal process, should be submitted through OFCCP's Contractor Portal.¹⁶ Two individuals submitted public comments expressing concerns about the privacy and security of the portal and the potential of disclosure or surveillance of sensitive information. Both commenters were particularly concerned about the disclosure of FAAP data that may identify the gender identity and sexual orientation of individuals.

In response, OFCCP notes that the Contractor Portal is more secure than the current method of submitting this information via email. The agency has also implemented a number of security measures to address any privacy and security risks with the Contractor Portal. The Contractor Portal is built on a Drupal platform. The platform is a content management system for government agencies with built-in security modules, including the following:

- Security Kit that deals with any issue or attack concerning HTML injection;
- Login Security that denies full (or unauthorized) access to the web content or platform coding;
- Password Policy that requires passwords to be more complex;
- Secure Login feature that enables safe login procedures and prevents user data theft;
- and
- XSS Protection module that protects the website from XSS attacks.

Data is secured according to the National Institute of Standards and Technology's Federal Information Processing Standards, which are verified by the Department of Labor's Office of the

¹⁶ The Contract Portal is OFCCP's electronic platform where covered federal contractors and subcontractors ("contractors") must certify whether they are meeting their requirement to develop and maintain annual AAPs. More information on the Contractor Portal can be found at <https://www.dol.gov/agencies/ofccp/contractorportal> (last accessed May 4, 2022). OFCCP is also authorized to use the Contractor Portal to receive AAPs from federal contractors scheduled for compliance evaluations. See OMB Control Number 1250-0012.

Chief Information Officer. Additionally, OFCCP staff are required to use their Personal Identification Verification card to access the interface. These measures are designed to secure the transmission of data while allowing the parties to more efficiently exchange information through electronic submission.

An employer association also submitted a comment about the feasibility of uploading the FAAP documents to the Contractor Portal. It stated that contractors cannot yet provide meaningful feedback on using the Contractor Portal because contractors are still becoming familiar with the portal and stated that the portal was not set up to recognize FAAPs.¹⁷ With respect to the portal recognizing FAAPs, OFCCP has already issued specific guidance on how contractors are able to input FAAP information into the portal.¹⁸ OFCCP has also conducted webinars for contractors on using the portal, and will continue to provide compliance assistance, including a live help desk, to provide technical support to contractors. However, OFCCP recognizes that contractors may need additional time to become familiar with the portal before requiring FAAP document submissions via this method. To address this concern, OFCCP will allow contractors to continue to submit the requests and documentation to the FAAP email address at OFCCP_FAAP-UNIT@dol.gov. As contractors become more familiar with the Contractor Portal, OFCCP may revisit this issue in future information collection requests.

FAAP Program Requirements

OFCCP also received comments on the FAAP program requirements. An employer association stated that the proposed process creates substantial burdens for contractors. Specifically, it asserted that the five-year renewal requirement creates uncertainty regarding how future AAPs will be developed, which can impede internal planning and places an undue burden on the contractor community. It also stated that requirement to notify OFCCP in writing of changes to the functional or business units, structure or organization would be burdensome on human resource officials. It also stated that the proposed process subjects FAAP contractors to measures not imposed on other contractors such as the requirement to provide detailed information on existing contracts or potential scheduling for a compliance evaluation if the FAAP contractor fails to timely provide a modification notice. The employer association also disagreed with FAAPs having to seek prior written approval from OFCCP to structure their AAPs as FAAPs. The employer association was concerned that more contractors will want to move to FAAPs due to more remote workplaces, and that OFCCP will become overwhelmed with processing contractors' FAAP requests. It further asserts that all the FAAP program requirements will discourage contractors from using FAAPs.

¹⁷ The employer association also asserted that FAAPs should not be subject to OFCCP's requirement to certify AAPs in the contractor portal. This AAP certification requirement is unrelated to this ICR, and OFCCP already addressed the certification requirement through the approval process for OMB Control Number 1250-0012, available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202012-1250-001 (last accessed May 4, 2022).

¹⁸ See "Functional Affirmative Action Program (FAAP) Frequently Asked Questions at <https://www.dol.gov/agencies/ofccp/faqs/contractorportal> (last accessed May 4, 2022).

Another employer association disagreed with the requirement for contractors to notify OFCCP that they have implemented the FAAP agreement. It asserted that under the current FAAP Directive there is not an obligation for a contractor to provide this notice. It also disagreed with this requirement, stating that it would be an administrative burden, and would subject FAAP contractors to a requirement that other contractors do not have. It also stated that this notice requirement is redundant because FAAPs already have to certify their AAPs in OFCCP's Contractor Portal.

However, FAAP contractors are already subject to the renewal/certification requirement and must already provide prior approval of a FAAP. Under the current directive, they are also already required to send a modification notice within 60 days due to changes to the functional or business units. They must also provide detailed information on existing contracts and are already subject to potential scheduling for a compliance evaluation if they fail to timely provide a modification notice. All these requirements are not new under this proposal. Contractors have been consistently providing this information to OFCCP prior to this proposal, and thus are familiar with these existing obligations.¹⁹ Having this information is also necessary for OFCCP to determine the universe of FAAP contractors available for scheduling and helps ensure that contractors meet the FAAP criteria.

Further, OFCCP has the resources necessary to address any increases in FAAP approval requests. The agency already has a division that solely focuses on the FAAP program and is generally able to review FAAP approval requests within 60 calendar days.

The requirement for FAAP contractors to notify OFCCP that they have implemented a FAAP is also not a new requirement even though it is now part of the proposed directive. As provided in OFCCP's Frequently Asked Questions, "Contractors have up to 120 days following the effective date of its new FAAP agreement or [renewal] certification to implement its FAAPs. The contractor must notify OFCCP when its FAAPs are implemented."²⁰ The proposed directive is merely restating this existing obligation. This notification is an important part of the FAAP approval process. It enables the agency to verify that the contractor has made the necessary changes to restructure its AAP and provides notice of when the change took effect. The Contractor Portal AAP certification period does not currently align with the 120-day period, so does not provide OFCCP with adequate notice of when the FAAP was implemented. OFCCP will continue to examine how the Contractor Portal can be used to make the agency's operations more efficient and less burdensome.

For the reasons stated above, OFCCP will proceed with these FAAP program requirements.

Notification of Official Changes

¹⁹ All these requirements are already in effect in Directive (DIR) 2013-01 Revision 2, *Functional Affirmative Action Programs*, available at <https://www.dol.gov/agencies/ofccp/directives/2013-01> (last accessed May 4, 2022).

²⁰ See *Functional Affirmative Action Programs Frequently Asked Questions*, available at <https://www.dol.gov/agencies/ofccp/faqs/faap> (last accessed May 4, 2022).

In the 60-day notice, OFCCP proposed updating the procedures in the directive to require notice of a modification when there is a change in a functional or business unit's management official(s). The notification would identify which functional or business unit was impacted by the change, and would include the name, address, and email address of the new management official(s). Contractors would have to submit the notification within 60 calendar days of the management official change.

OFCCP received two comments disagreeing with this proposal. An employer association stated that contractors should not be required to report changes to managing officials at all. It stated that OFCCP has no identifiable need for the name, address, and email address of the new management official because the Agency has contact information for the contractor representatives managing the FAAP agreement and affirmative action compliance. In addition, it stated that managing officials frequently change, making this obligation very burdensome. Another employer association expressed similar concerns about the burden of having to provide this information within 60 days of a change.

In response, OFCCP is proposing modifying this provision to request annual notification of changes to the primary corporate contact listed in the FAAP Agreement and changes in a functional or business units' management official(s). OFCCP needs this information because under current procedures, the agency often has outdated information on these contacts which hinders OFCCP's ability to send scheduling letters or other correspondence to the correct contacts. To address commenters' concerns about burden, OFCCP is proposing that contractors submit this information on annual basis instead of 60 days following a change. The notification must identify whether there were any changes, and if so, identify which functional or business unit was impacted by the change. The notification must also include the name, address, and email address of the new primary corporate contact and management official(s). If there are no such changes, contractors must notify OFCCP of that as well on an annual basis. The first notice must be submitted to OFCCP within 365 calendar days of the FAAP approval date, and subsequent notices must be submitted on an annual basis thereafter.

Notification of FAAP Termination

In the 60-day notice, OFCCP proposed that either party may terminate the FAAP agreement with at least 30 calendar days' written notice, and that OFCCP would provide 30 calendar days' notice if it denies a request to renew a FAAP.²¹ The current notice period for these changes is 90 calendar days. An employer association disagreed with this change, stating that contractors need earlier notice of terminations. It also recommended that contractors be allowed to maintain their existing FAAPs until they expire.

In response, OFCCP will maintain the current 90-day notice period for terminating a FAAP.

²¹ The 30-day notice period would have applied to FAAP agreements that went into effect after the effective date of Directive 2013-01 Revision 3. Prior FAAP agreements would have been subject to the notice periods in their FAAP agreements.

While most contractors can transition to an establishment based FAAP with 30 days' notice, we recognize that some contractors may need additional time to make this change. Maintaining the 90-day notice period will provide sufficient time to transition to establishment-based AAPs.

In response to the comment that contractors should be able to maintain a FAAP until expiration, OFCCP notes that the termination provisions are an important part of the program and declines to adopt this recommendation. The termination provisions allow the agency to terminate a FAAP if a contractor is failing to meet the FAAP criteria and obligations described above. The 90-day notice period will allow the agency to terminate a FAAP agreement when necessary, while providing the contractor with adequate time to transition to establishment-based AAP.²²

Burden

An employer association stated OFCCP's burden estimates are underestimated and do not truly reflect the time necessary to provide the requested information. OFCCP carefully reviewed the comment and declines to make any changes. The agency acknowledges that the precise amount of time each contractor will take to request a FAAP agreement, modify a FAAP agreement, and renew a FAAP agreement is difficult to estimate. However, OFCCP emphasizes that it uses averages for all burden estimates. The averages account for contractors of all sizes and structures who will take varying amounts of time to complete the requirements. In addition, OFCCP has staff dedicated to the FAAP program who are available to provide one-on-one compliance assistance to contractors seeking guidance on the FAAP process.

General Comments

While not specific to the FAAP program, OFCCP received a comment from an individual who disagreed with OFCCP's affirmative action regulations. The individual asserted that affirmative action regulations provide an advantage to one group over others. However, OFCCP declines to make any changes in response to this comment. For clarification, the agency's regulations do not permit quotas, preferences, or set-asides. They are strictly forbidden. Placement goals (under Executive Order 11246), utilization goals (under Section 503), and hiring benchmarks (under VEVRAA) are not to be interpreted as a ceiling or floor for the employment of particular groups of persons but, rather, should serve as a diagnostic against which the contractor measures the representation of persons within its workforce. Failing to meet a goal or benchmark will not in itself result in violation. Rather, when a contractor fails to meet a utilization goal or hiring benchmark, the contractor must assess its employment practices and takes appropriate measures to address identified problem areas and remedy potential discrimination. Such remedies may include assessing and revising policies and practices that hinder employment opportunities, broadening recruitment and outreach to increase the diversity of applicant pools, and/or instituting training and/or apprenticeship programs to increase promotion opportunities and applications from underrepresented groups.

²² All employees must be covered by an establishment-based AAP no later than 120 days from the notification of termination.

OFCCP also received a comment about the agency’s Internet Applicant rule. This comment is unrelated to the FAAP ICR, and OFCCP declines to make any changes in response to the comment.

9. Gift Giving

OFCCP does not provide gifts or payments to respondents.

10. Confidentiality of Information

OFCCP will treat information collected herein as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552. In the case of a Freedom of Information Act (FOIA) request for contractor information included within this ICR, OFCCP will evaluate all information pursuant to the public inspection and disclosure provisions of FOIA, 5 U.S.C. 552, and DOL’s implementing regulations at 29 CFR Part 70. When information is requested that OFCCP has reason to believe is protected from disclosure under FOIA Exemption 4, OFCCP notifies the contractor of the request in writing and makes no decision to disclose the information until contractors have an opportunity to submit objections to its release.

11. Questions of Sensitive Nature

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

12. Information Collection Hour Burden

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

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

OFCCP currently has FAAP agreements with 86 contractors that cover 2,509 functional units. OFCCP estimates that there will be approximately five requests for new FAAP agreements each year, an estimate that is based on the number of agreements requested in the previous three years.

Requesting a FAAP Agreement

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

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

A Statement of Proof

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

Most Recent Consolidated EEO-1 Report

The contractor is required to provide a copy of its most recent consolidated EEO-1 Report. The burden for developing a consolidated EEO-1 Report is covered under OMB Control Number 3046-0049. Therefore, there is no burden associated with collecting the records or completing this report. However, OFCCP estimates that it takes 0.5 hours per contractor to produce the report.

Organizational Chart

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

Description of the Function or Business

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

Unit Information and Total Number of Employees

The contractor is required to provide the company or subsidiary name, street address, and total number of employees at each location covered in the functional unit,²³ and the name and address of the managing official for each proposed functional or business unit.²⁴ OFCCP estimates that it takes 4 hours per contractor to provide this information.

²³ Employees who are based remotely should be included in the facility to which they report.

Statement Identifying the Location of Personnel Records

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

List of Establishment Based AAPs

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

Transition Plan

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

Dates of the Proposed AAP Year

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

Copies of Personnel Policies

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

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

Reporting Hierarchy

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

Personnel Procedures

To assess whether the proposed FAAP meets the criteria, OFCCP requests that contractors be prepared to discuss their personnel procedures for recruitment, hiring, promotion, compensation,

²⁴ Information for each proposed FAAP including the description, addresses, and names of managing officials and contact persons should be provided as a flat file or database.

termination, record retention, and data analysis as they apply to each functional or business unit. If functional or business units have different personnel or compensation practices, OFCCP requires the contractor to identify them. OFCCP estimates that it takes 2.5 hours per contractor to provide this information.

Compliance with Section 503 and VEVRAA Requirements

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

Human Resources and Equal Employment Opportunity

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

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

Modifying, Renewing, and Terminating FAAP Agreements

Modifying a FAAP Agreement

If the contractor undergoes a merger, acquisition, and/or downsizing, it must notify OFCCP within 60 calendar days of the effective date of the change(s) with the name of the newly merged or acquired company and the contractor's plan to incorporate the former company's employees into its AAP structure. Any resulting functional or business unit name change, and changes in managing officials, employee counts, and addresses should be included in the modification notice. The FAAP agreement will be modified to reflect the changes.

OFCCP estimates that it takes 10 hours per contractor to provide the required information and that 90% of contractors with FAAP agreements will modify the agreement during the course of a year. The annual burden to contractors is estimated as 770 hours (10 hours x 77 contractors).

Notifying OFCCP of Changes in the Primary Corporate Contact and Changes in a Functional or Business Units' Management Official(s)

A contractor must also notify OFCCP of any changes in the primary corporate contact listed in the FAAP Agreement or changes in a functional or business units' management official(s) on an annual basis. The notification must identify whether there were any changes, and if so, which functional or business unit was impacted by the change, and include the name, address, and email address of the new corporate representatives and management official(s).

OFCCP estimates that it takes 0.5 hours to notify OFCCP of the change. The burden is estimated as 43 hours (0.5 hours x 86 contractors).

Renewing a FAAP Agreement

Once approved, FAAP agreements are valid for five-year terms. Prior to the end of the five-year term, contractors can request renewal of the FAAP by submitting a FAAP Renewal Certification in writing (at least 120 calendar days prior to the expiration of the existing agreement) that there have been no changed circumstances to the business structure affecting the existing agreement. As a part of this renewal process, a contractor is required to include updated information on a federal contract of \$150,000 or more, identifying the name of the federal contracting agency, the contract number, the contract period, and the name of the prime contractor if the contractor is a subcontractor. If the contractor does not have at least one federal contract or subcontract of \$150,000 or more, the contractor must provide this information for at least one federal contract or subcontract of \$50,000 or more. In addition, the contractor must provide updated information regarding employee counts, facility names, and facility addresses included in each functional or business unit. If the contractor has undergone changes resulting in the addition or elimination of functional or business units or establishment-based AAPs, it will be required to submit a written rationale explaining the changes.

OFCCP estimates that it takes 4 hours per contractor to prepare this request.

OFCCP estimates that approximately 17 contractors will request renewal of their FAAP agreement each year. Therefore, the annual burden is estimated as 68 hours (86 FAAP agreements / 5 years = 17 contractors per year average; 4 hours x 17 contractors = 68 hours).

Terminating a FAAP Agreement

Contractors may choose to terminate a FAAP agreement because of losing a federal contract, restructuring, merging, or other reasons. The contractor must submit 90 calendar days’ written notice that they are terminating the agreement along with a brief explanation of the reason(s) for the termination and the effective date of the termination.²⁵ OFCCP estimates that it takes 0.75 hours per contractor to prepare the notice. However, OFCCP estimates the annual burden at 0 hours since the agency has not terminated any FAAP agreements in the previous three years.

Estimated Annualized Respondent Hour Burden

Activity	No. of Respondents	No. of Responses per Respondent	Total Responses	Average Burden (Hours)	Total Burden (Hours)
Requesting a FAAP Agreement	5	1	5	32.75	164

²⁵ Upon termination of a FAAP agreement, all employees are required to be covered by establishment-based AAPs. The burden for establishing a traditional AAP is covered under OMB Control No. 1250-0003, Supply and Service Recordkeeping and Reporting Requirements.

Modifying a FAAP Agreement	77	1	77	10	770
Notification of Primary Corporate Contact and Management Official Changes	86	1	86	0.5	43
Renewing a FAAP Agreement	17	1	17	4	68
Unduplicated Totals	86		185		1,045

Monetized Burden Cost

OFCCP estimates that the total burden hours translate to approximately \$79,012 in burden costs to contractors using data from the Bureau of Labor Statistics for employee compensation (1,045 hours x \$75.61).²⁶

13. Information Collection Cost Burden

OFCCP prefers that FAAP agreement requests and documentation are submitted in an electronic format. If not maintained in an electronic format, all documents must be submitted in the form and format in which they are maintained. For this reason, OFCCP estimates the information collection cost burden as \$0.

14. Cost to the Federal Government

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

- OFCCP staff will spend approximately 40 hours processing each FAAP agreement request. 40 hours x 5 new agreement requests = 200 hours.
- OFCCP staff will spend approximately 8 hours processing each FAAP modification. 8 hours x 77 agreements = 616 hours.
- OFCCP staff will spend approximately 0.25 hours recording the changes in primary corporate contacts and management officials. 0.25 hours x 86 contractors = 22 hours

²⁶ Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, May 2021, https://www.bls.gov/oes/current/oes_nat.htm (last accessed May 4, 2022). \$48.33 per hour for Management Analysts and \$65.67 per hour for Human Resource Managers. The calculation uses an 80/20 split between Management Analysts and Human Resource Managers, which equals \$51.79. Fringe benefits and overhead costs are 46 percent of wages. \$51.79 x 1.46 = \$75.61.

- OFCCP staff will spend 8 hours processing each FAAP renewal request. 8 hours x 17 agreements = 136 hours.

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

OFCCP estimates the total annual burden to the Federal Government related to the FAAP process at 974 hours. Using the General Schedule (GS) scale, OFCCP estimates a fully loaded average hourly rate of \$82.20 for the federal staff involved in the FAAP process.²⁷ The cost is calculated as follows: \$82.20 x 974 hours = \$80,063.

15. Program Changes or Burden Adjustments

OFCCP is requesting OMB approval of 1,045 burden hours and zero costs. This is an increase in burden hours and decrease in costs from the previous approval of this information collection of 862 hours and \$21.25. The table below outlines the specific changes to this ICR compared to its previous approval in June 2019. OFCCP currently has agreements with 86 contractors.

Activity	Change	Explanation
Requesting a FAAP Agreement	No change	
Modifying a FAAP Agreement	Increased by 130 hours	The number of FAAP agreements increased.
Notification of Primary Corporate Contact and Management Official Changes	Increased by 43 hours	This burden is for a new requirement of notifying OFCCP when there is a change in a primary corporate contact or a functional or business unit’s management official(s).
Renewing a FAAP Agreement	Increased by 12 hours	The number of FAAP agreements increased.
Terminating a FAAP Agreement	Decreased by 2 hours	There have been no terminations in the last 3 years.
Annual Operations and Maintenance Costs	Decreased by \$21.25	OFCCP prefers that all FAAP agreement requests are submitted electronically and this does not incur a cost.

16. Publication of Data for Statistical Use

²⁷ See “Salary Table 2022-DCB Incorporating The 2.2% General Schedule Increase and a Locality Payment of 31.53% for the Locality Pay Area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA,” available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB_h.pdf (last accessed May 4, 2022), estimate based on GS-13 grade, step four, \$56.30 (\$56.30*1.46=\$82.20).

DOL OFCCP – Functional Affirmative Action Programs

OMB Number 1250-0006

Expiration Date: June 30, 2022

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

17. Approval Not to Display the Expiration Date

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

18. Exception to the Certification Statement

OFCCP is not seeking exemptions to the certification statement.

B. STATISTICAL METHODS

This information collection does not use statistical methods.