SUPPORTING STATEMENT FOR NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS

OMB CONTROL NUMBER 1235-0033

This is a new collection associated with a final rule and Executive Order 14055. This Information Collection Request (ICR) was submitted to the Office of Management and Budget (OMB) to accompany the Notice of Proposed Rulemaking (NPRM) on July 15, 2022 (under 1235-0NEW). On August 16, 2022, OMB issued a Notice of Action (NOA) assigning OMB control number 1235-0033 to this collection and directed that the Department should resubmit the ICR with the final rule and address any comments received. This ICR is now being submitted to accompany the final rule.

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 and subcontracts that succeed a contract for performance of the same or similar work, and solicitations for such contracts and subcontracts, to include a clause requiring the successor contractor, and its subcontractors to offer service employees employed under the predecessor contract and its subcontracts whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment in positions for which those employees are qualified. *Id*. Section 5 of the E.O. contains exclusions, directing that the order will not apply to contracts under the simplified acquisition threshold or 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 E.O. Section 6 of the order permits agencies to except contracts from the requirements of the Executive order in certain circumstances. Section 8 of the order grants the Secretary of Labor authority to investigate potential violations of, and obtain compliance with, the E.O.

The final rule contains various requirements for contractors to make offers of employment, make disclosures to contracting agencies, and send notices to employees. Section 9.12(f) of the final rule contains recordkeeping requirements. Section 9.12(f)(2) specifies the records contractors must maintain to be able to demonstrate compliance with the nondisplacement requirements. WHD will use records that are retained pursuant to § 9.12(f)(2) in determining a contractor's compliance with the nondisplacement requirements and in determining whether debarment is warranted. All contractors must retain the records listed in § 9.12(f)(2) for at least three 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.

This is a new ICR.

A. Employment Offers

Consistent with section 3 of the E.O., 29 CFR 9.12, with certain exceptions, requires the successor contractor and its subcontractors to make good faith offers of employment in positions for which the employees are qualified to those service employees employed under the predecessor contract whose employment will be terminated as a result of award of the new contract or the expiration of the contract under which the employees were hired.

29 CFR 9.12(a)-(b) generally provides that the successor contractor or subcontractor must not fill any employment openings for positions subject to the McNamara-O'Hara Service Contract Act (SCA) under the contract prior to making a bona-fide, express written offer of employment on the contract to a position for which the employee is qualified to each service employee who has performed work during the last 30 days on the predecessor's contract.

Pursuant to 29 CFR 9.13(b), when the prime contractor that is subject to the nondisplacement requirements of this rule discontinues the services of a subcontractor at any time during the contract and performs those services themselves, the prime contractor must offer employment on the contract to the subcontractor employees who would otherwise be displaced and would otherwise be qualified.

Section 9.12(c) of the final rule provides certain exceptions to the requirements that a contractor must make offers of employment, including exceptions where the employee will be retained by the predecessor contractor, where the employee is not a covered "service employee," based on the employee's past performance, and where the employee was also employed on nonfederal work as part of a single job.

Sections 9.12(f)(2)-(3) 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; and 2) any record that forms the basis for any exclusion or exemption claimed from the nondisplacement requirements.

B. Certified List of Service Employees

Section 3 of the E.O. requires covered contractors and subcontractors, not less than 10 days before completion of the contract or of its work on the contract, to furnish to 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. Section 3 of the E.O. also 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) of the rule provides that the predecessor contractor must first submit the list no less than 30 days before contract completion. Section 9.12(f)(2)(iii) and 9.12(f)(3) then require contractors to maintain copies of the employee lists provided to and received from the contracting agency for three years. The Department already requires a list not

less than 10 days before the end of a covered contract from covered contractors to determine when vacation benefits accrue under the SCA, 41 U.S.C. 6701 *et seq*. and regulations 29 CFR 4.6(l)(2) (*see* OMB Control Number 1235-0007), so while the contractor may have to submit a bit earlier, the information is already required. The final rule requires contractors provide additional data in the form of employee mailing addresses and, if known, phone numbers and email addresses. The Department adds burden for the additional requirements below in item 12 but notes that 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, but only 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. Similarly, in the final rule §9.11(d), where a contract is awarded less than 30 days before the beginning of performance, then the predecessor contractor must transmit a list of employees as soon as practicable. Records of any certified lists that are provided under § 9.12(e)(2) or § 9.11(d) must also be retained for three years, as required by § 9.12(f)(2)(iii) and 9.12(f)(3).

C. Notices

The E.O. and the final rule contain several requirements for predecessor contractors to provide notices to their workers and/or any collective bargaining representative for their workers. These 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(f) (and Appendix A) of the regulations and section 6(b) of the order; and notices of the opportunity to provide information relevant to location continuity determinations required under § 9.11(c)(4) of the regulations. Finally, under § 9.12(a)(4), if the contracting officer did not incorporate the required contract clause into the contract, the contractor or subcontractor must notify the contracting officer as soon as possible. In addition to carrying out the notice requirements, contractors are required by § 9.12(f) to maintain evidence of any of these notices that they have provided.

D. Other disclosures and records

The final rule provides for two other disclosures. First, as noted above, under § 9.11(c)(4), contracting agencies are required to conduct a location continuity analysis under paragraph (c)(1) of the same section prior to the date of issuance of a solicitation. Where an incumbent contractor's employees are covered by a collective bargaining agreement and a contract location change is possible and under consideration, contracting agencies must, to the extent consistent with mission security, provide workers on the predecessor contract with an opportunity prior to

the solicitation to provide information relevant to the analysis. For example, employees may provide information suggesting that employment of a new workforce at a new location would increase the potential for disruption to delivery of services during the period of transition between contracts, specifically, where a large workforce would have to be replaced or where the predecessor workforce has a significant level of experience or training for work specific to that contract. At the earliest reasonable time in the acquisition planning process, the agency must direct the incumbent contractor to notify the collective bargaining representatives, for the affected workers of the appropriate method to communicate such information. When this happens, collective bargaining representatives may (but are not required to) communicate information relevant to the location-continuity analysis to the contracting agency.

Second, under § 9.13(a), where there are subcontracts under a covered prime contract, the prime contractor and any upper-tier subcontractor must insert in any subcontracts the relevant contract clause (contained in Appendix A or the Federal Acquisition Regulation (FAR) as appropriate).

E. Complaints

Section 8 of the E.O. assigns responsibility for investigating and obtaining compliance with the order to the Secretary of Labor. 86 FR at 66399. 29 CFR 9.21 provides a predecessor employee who believes that the successor contractor has violated the requirements of the Order, or their representative, the right to file a complaint with the Wage and Hour Division (WHD) of the Department of Labor within 120 days of contract performance. 29 CFR 9.12(f) requires every contractor who makes retroactive payment of wages or compensation after a complaint investigation pursuant to § 9.23(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 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 final rule 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.

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 notices of agency exceptions and notices regarding location continuity are for the purpose of allowing employees or their representatives to provide information to contracting agencies where such information may be relevant to the development of the solicitation for a successor contract. 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.

Employment offers that are required under § 9.12(a) may be delivered by any means ensuring delivery, including by email. *See* § 9.12(b)(3). Section 9.12(f)(1) of the rule specifies that there is no particular order or form required for the records that must be maintained. 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. An 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), is applicable to contracts subject to the SCA and 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. This submission may be used to the extent it satisfies the requirement. The nondisplacement requirements apply to a subset of all SCA contractors, and covered contractors are already required under the SCA's regulations to submit a list of employee names and anniversary dates and to otherwise maintain records of employee addresses. 29 CFR 4.6(l)(2); 4.6(g)(1)(i). 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). 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. The Department would be unable to determine compliance with the E.O. if it did not require the records specified in the rule. Complainants would have no means of seeking redress of alleged violations if the Department's regulations did not allow for a method of filing complaints and reviewing evidence.

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 ae 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 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 NPRM (87 FR 42552, July 15, 2022) ("the NPRM"). Some comments were received with respect to obligations applicable to PRA. They are described below. The comments are uploaded to ROCIS.

Section 6(a) of the order provides a procedure for Federal agencies to except particular contracts from the application of the nondisplacement requirements. The Department proposed to implement this procedure through language in § 9.5 of the regulations. Section 6(b) of the order requires agencies, to the extent permitted by law and consistent with national security and executive branch confidentiality interests, to publish, on a centralized public website, descriptions of the exceptions it has granted under section 6(a), and to ensure that the contractor notifies affected workers and their collective bargaining representatives, if any, in writing of the agency's determination to grant an exception.

The Department received comments from the Coalition and the AFL-CIO regarding these notice and publication provisions. The commenters proposed revisions to the timeframe for notice of agency exception decisions so that agencies would have to notify workers and their representatives of a proposed exception no later than 120 days before a bid solicitation goes out to give workers time to comment on the proposed exception, the agency to respond, and the workers to request reconsideration (from the Department). The Coalition and Jobs to Move America also encouraged the Department to provide guidance to agencies about the form, content, and accessibility of the required publications on agency websites that are required by section 6(b) of the order, and to periodically monitor their compliance. They also stated that the Department could promote the purposes of the order and transparency into government decision-making by coordinating with OMB to ensure the quarterly reports that it receives from agencies are compiled and published on a centralized public website.

The Department acknowledges these comments, but notes section 7(a) of the Executive order does not provide the Department with the authority to issue implementing regulations regarding the notice and publication requirements in paragraphs 6(b) and (c) of the order. 86 FR at 66399. For that reason, the Department's proposed regulations at § 9.5(g), which are finalized in § 9.5(f)

of the final rule, are recitations of the text of the Executive order itself and do not include any additional detail. For contracts that are subject to the Federal Acquisition Regulation (FAR), the regulations that are implemented by the FAR Council may include additional instructions regarding the notice, publication, and reporting requirements.

Accordingly, the final rule adopts the language regarding notice, publication, and reporting provisions as proposed, except that the language now appears in § 9.5(f) of the final rule instead of § 9.5(g) to account for the removal of the reconsideration language previously proposed for § 9.5(f).

Section 9.11(c) implements the location continuity requirements in section 4 of the order. Section 4(a) of the order states that, in preparing covered solicitations, contracting agencies must consider whether performance of the work in the same locality or localities in which the contract is currently being performed is reasonably necessary to ensure economical and efficient provision of services. Section 4(b) states that, if a contracting agency determines that performance in the same locality is reasonably necessary, then the agency must, to the extent consistent with law, include a requirement or preference in the solicitation for the successor contract that it be performed in the same locality or localities. The final rule includes amended procedural safeguards, including notice requirements, for location continuity that are reorganized into a new paragraph at § 9.11(c)(4).

The Department received comments regarding these notice provisions. The Department agrees with the Coalition and the AFL-CIO that it is important to build into the program's procedures "a role for workers and their representatives to provide input"—and for this process to occur before bid solicitation. As the Coalition noted, interested parties "are likely to have information about the benefits of nondisplacement for any given service contract" and "are well positioned to identify any errors or omissions" in the contracting agency's analysis. In addition, seeking feedback from affected workers accords with the PSC's recognition that workers should have "a fair say in matters of their employment." The Department declines to adopt the specific timeframes for agency determinations and submissions that the Coalition and the AFL-CIO requested. However, the general requirement that agencies seek information from predecessor workers prior to the solicitation date, to the extent consistent with mission security, will better ensure that the policies of the order are built into solicitations and are not dependent on convincing an agency to reconsider a solicitation it has already issued. Accordingly, the final rule includes the revised language requiring pre-solicitation notices to the extent consistent with mission security instead of the proposed requirement for notice of a location continuity determination within 5 business days after the solicitation.

In addition to the revised pre-solicitation notice requirement, the Department considered whether to retain the requirement in the proposed rule that incumbent contractors must provide confirmation to contracting agencies that the notification has been made. The Department is not including this requirement, given that § 9.12(f)(2) already requires contractors to maintain evidence of any notices that they provide to workers, or workers' collective bargaining representatives, to satisfy the requirements of the order or these regulations—which includes the pre-solicitation notice regarding location continuity. The Department also considered whether to include specific required sanctions for contractors that fail to provide the notice. The final rule

does not include a specific sanction. However, where a contractor fails to provide the notice, even after receiving a timely request from a contracting agency, evidence of this fact could support (in addition to other evidence) a lower past performance rating on the contract or a debarment decision.

In response to the comments received, the Department is narrowing the requirements to focus on ensuring contracting agencies benefit from information that workers may have that would be helpful and relevant to the analysis. The Department is amending the provision to require, where an incumbent contractor's employees are covered by a collective bargaining agreement and a contract location change is possible and under consideration, that agencies, to the extent consistent with mission security, ensure that workers on the predecessor contract have an opportunity prior to the issuance of the solicitation to provide information relevant to the location continuity analysis. Thus, the final rule states that, at the earliest reasonable time in the acquisition planning process, the agency must direct the incumbent contractor to notify the collective bargaining representatives for the affected employees of the appropriate method to communicate such information.

Proposed § 9.12(a) and 9.12(b) discussed the method of the job offer. Proposed § 9.12(a)(1) included the Executive order's central requirement that employees on a predecessor contract receive offers of employment on the successor contract before any employment openings for service employees on the successor contract are otherwise filled. Relatedly, proposed § 9.12(b)(2) discussed the time limit in which the employee has a right to accept the offer. Under the proposed language, the contractor would have the discretion to determine the time limit for an acceptance, provided that the time limit is not shorter than 10 business days. The obligation to offer employment to a particular employee would cease upon the employee's first refusal of a bona fide offer to employment on the contract.

ABC commented that this timeframe requirement was burdensome. Similarly, an anonymous commenter stated that in light of the requirement at § 9.12(a)(1) that employees on a predecessor contract receive offers of employment on the successor contract before any employment openings for service employees on the successor contract are otherwise filled, the 10-business-day time period for acceptances might prevent contractors from having a full staff when the contract commences. The commenter noted that in practice, employers may be caught off guard by how many employees do not accept offers and be left with insufficient time to fill vacancies. Conversely, the Coalition supported the inclusion of the requirement that employees be given 10 business days to accept or reject an offer. In response, the Department noted section 3 of the Executive order specifies that "in no case shall the period within which the employee must accept the offer of employment be less than 10 business days." Therefore, the Department does not have discretion to reduce the amount of time that employees must be given to consider offers of employment. Given the changes to proposed § 9.12(e)(1) set forth in this final rule, successor contractors will be provided with a list of employees' addresses, lessening any delays contractors might face prior to making and receiving responses to offers. For these reasons, the final rule adopts § 9.12(a)(1) and (b)(2) as proposed, except that a notation was added to the text of § 9.12(a)(1) that all offers must be made in accordance with the requirements described in this part.

Proposed § 9.12(b)(3) set forth the process for making the job offer. Under the proposed provision, the successor contractor would have had the option of making a specific oral or written employment offer to each employee. Proposed § 9.12(b)(3) requires successor contractors to make reasonable efforts to make the offer in a language each worker understands, to ensure the offer was effectively communicated. Written offers must be sent by registered or certified mail to the employees' last known address or by any other means normally ensuring delivery. Proposed § 9.12(b)(3) provides examples of such other means, including, but not limited to, email to the last known email address, delivery to the last known address by commercial courier or express delivery service, or personal service to the last known address.

Regarding proposed § 9.12(b)(3), the Coalition suggested the Department require job offers be provided in writing, and not verbally, to lessen disputes between contractors and employees as to the existence and adequacy of offers. The comment noted that requiring offers in writing also would lessen the degree of employees' reliance on the accuracy of contractors' interpreters. AFL-CIO echoed the Coalition's views regarding the benefit of requiring that offers be made in writing.

The Department agrees that requiring offers to be made in writing will reduce the risk of factual disputes between contractors and employees (including disputes about the accuracy of translations), and for that reason, the final rule amends proposed § 9.12(b)(3), as well as the corresponding recordkeeping requirements of § 9.12(f)(2)(i), to require that offers be made in writing. As all offers must be in writing, the final rule removes the requirement that these offers be translated, as employees may obtain their own translations of the written offer documents in their possession. In regard to translation, the Department also notes that, pursuant to § 9.12(e) where the predecessor contractor's workforce is comprised of a significant portion of workers who are not fluent in English, notice of their possible right to an offer of employment on the successor contract must be provided in both English and a language in which the employees are fluent. The final rule also removes as moot the example related to a bilingual coworker providing interpretation of an oral offer. Under the final rule, if a contractor makes an oral offer of employment, it must accompany such an offer with a communication of the offer in writing (and both the oral and written offers in this example would be subject to the requirement that the employee receive at least 10 business days to consider the offer).

Proposed § 9.12(b)(8) provided requirements for successor contractors for proceeding when the contracting agency retroactively incorporates the nondisplacement clause into a contract after the successor contractor has already begun performance on the contract. Pursuant to proposed § 9.11(f), when the nondisplacement contract clause has been erroneously excluded from a contract, contracting agencies could be required to retroactively incorporate it. Upon retroactive incorporation, the successor contractor must offer a right of first refusal of employment to the predecessor's employees in accordance with the requirements of Executive Order 14055 and this part. Proposed § 9.12(b)(8) acknowledged that where the Administrator requires only prospective application of the contract clause, the successor contractor must provide employees on the predecessor contract a right of first refusal for any positions that remain open. In the event of a vacancy within 90 calendar days of the first date of contract performance, under proposed § 9.12(b)(8), the successor contractor must provide the employees of the predecessor contractor the right of first refusal as well, regardless of whether incorporation of the contract clause is

retroactive or prospective. The Department believes these requirements strike an appropriate balance between the interests of the predecessor's and successor's employees.

Proposed § 9.12(e) specified an incumbent contractor's obligations near the end of the contract. As proposed, § 9.12(e)(1) would require a contractor to, no fewer than 30 calendar days before completion of the contractor's performance of services on a contract, furnish to the contracting officer a list of the names of all service employees under the contract and its subcontracts at that time. Proposed § 9.12(e)(1) would require this list to also contain the anniversary dates of employment for each service employee on the contract with either the current or predecessor contractors or their subcontractors. A service employee would be considered employed under the contract even if they are in a leave status with the predecessor prime contractor or any of its subcontractors, whether paid or unpaid, and whether for medical or other reasons, during the last month of contract performance. To meet this provision, proposed § 9.12(e)(1) would allow a contractor to use the list it submits or that it plans to submit to satisfy the requirements of the SCA contract clause specified at 29 CFR 4.6(l)(2), assuming there are no changes to the workforce before the contract is completed.

Where changes to the workforce are made after the submission of this 30-day certified list, proposed § 9.12(e)(2) would require a contractor to furnish the contracting officer an amended certified list of the names of all service employees working under the contract and its subcontracts during the last month of contract performance not fewer than 10 business days before completion of the contract. Proposed § 9.12(e)(2) would require this list to include the anniversary dates of employment with either the current or predecessor contractors or their subcontractors. The contractor could use the list submitted to satisfy the requirements of the SCA contract clause specified at 29 CFR 4.6(l)(2) to meet this requirement.

The Department received an anonymous comment suggesting that the burden on the incoming contractor could be lessened if they did not have to search for employees employed under the predecessor contract but were instead provided contact information for the employees such as phone numbers, email addresses, or mailing addresses. The Department agrees with that recommendation, especially as the burden of this change on predecessor contractors will be minimal in light of the existing requirement that contractors maintain records of addresses pursuant to 29 CFR 4.6(g)(1)(i). Accordingly, the Department is modifying proposed § 9.12(e)(1) and (e)(2) to require predecessor contractors to list (in addition to names and anniversary dates) mailing addresses, and, if known, email addresses and phone numbers of the employees. The Department is also modifying § 9.12(e)(2) to remove the phrase "and, where applicable, dates of separation" from the information that must be included in the certified list of employees provided 10 days before contract completion, as this phrasing was unclear, and because where an employee is no longer employed by the predecessor 10 days before contract completion, that employee's name would simply not appear on that list.

The Department also received an anonymous comment suggesting that bidding on a contract without knowing the seniority level of workers is difficult. The Department notes that under the SCA, successor contractors are specifically provided the list of employees' dates of employment at the commencement of the successor contract pursuant to 29 CFR 4.6(l)(2). The commenter appeared to be suggesting a mandatory timeframe to communicate this information that would be

earlier than this established regulation. The final rule does not adopt the suggestion to require earlier provision of a seniority list because, for purposes of the Executive order, the provision of the list is meant to facilitate the communication of offers to employees and is not meant to otherwise influence the bidding process or the established rules and timeframes of the SCA. After considering the comments, the final rule adopts § 9.12(e)(1) and (e)(2) as proposed, other than the modifications discussed.

Proposed § 9.12(e)(3) would require the predecessor contractor to, before contract completion, provide written notice to service employees employed under the predecessor contract of their possible right to an offer of employment on the successor contract. Such notice must be posted in a conspicuous place at the worksite and/or delivered to employees individually. The text of the proposed notice was set forth in Appendix B to part 9. The Department intends to translate the notice into several common languages and make the English and translated versions available online in a poster format to allow easy access. Language clarifying that another form with the same information could be used was added to the regulatory text. Proposed § 9.12(e)(3) further explained that where the predecessor contractor's workforce is comprised of a significant portion of workers who are not fluent in English, the notice must be provided in both English and a language in which the employees are fluent. Multiple language notices must be provided where significant portions of the workforce speak different languages and there is no common language. If, for example, a significant portion of a workforce speaks Korean and another significant portion of the same workforce speaks Spanish, then the information would need to be provided in English, Korean, and Spanish. If there is a question of whether a portion of the workforce is significant and the Department has a poster in the language common to those workers, the notice should be posted in that language.

The Department solicited comments on whether it should establish a percentage threshold for determining what constitutes a "significant portion of the workforce." In response to this question, the Coalition suggested the Department impose a requirement consistent with their recommendation regarding § 9.12(b)(3) to provide notice in a language that each worker understands. As this worker-specific requirement would impose costs on the contractor regardless of whether a significant portion of the workforce required such translations, and as the Department is modifying § 9.12(b)(3) to require all offers be made in writing (making it possible for members of the workforce to themselves obtain a translation of the offer document), the Department declines this suggested change. Therefore, the final rule adopts § 9.12(e)(3) as proposed, other than, for clarity, changing the heading of § 9.12(e)(3) from "Notices" to the more specific "Notices to Employees of Possible Right to Offers of Employment on Successor Contract," and adding cross references to other employee notice provisions at § 9.5(f) (relating to agency exceptions) and § 9.11(c) (relating to location continuity).

Proposed § 9.12(f) addressed recordkeeping requirements. Proposed § 9.12(f)(1) clarified that this part would prescribe no particular order or form of records for contractors, and that the recordkeeping requirements would apply to all records regardless of their format (e.g., paper or electronic). A contractor would be allowed to use records developed for any purpose to satisfy the requirements of part 9, provided the records otherwise meet the requirements and purposes of this part. No comments were received on § 9.12(f)(1), and the final rule adopts § 9.12(f)(1) as proposed.

As proposed, § 9.12(f)(2) specified the records contractors must maintain, including copies of any written offers of employment. Proposed § 9.12(f)(2) also would require 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) must 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 through a method of documentation authorized by WHD. Finally, proposed § 9.12(f)(2) would require contractors to maintain evidence of any notices that they provide 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 required under § 9.12(e)(3) of the regulations; notices of agency exceptions that a contracting agency requires a contractor to provide to affected workers and their collective bargaining representatives under § 9.5(f) of the regulations and section 6(b) of the order; and notices to collective bargaining representatives of the opportunity to provide information relevant to the contracting agency's location continuity determination in the solicitation for a successor contract, pursuant to § 9.11(c)(4) of the regulations. WHD will use the records that are retained pursuant to § 9.12(f)(2) in determining a contractor's compliance with the order and this part. 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 to provide copies of such records upon request of any authorized representative of the contracting agency or the Department.

As discussed above in relation to § 9.12(b)(3), in response to comments recommending all offers be made in writing, the Department is adding such a requirement to § 9.12(b)(3). Therefore, the Department is modifying § 9.12(f)(2)(ii) to remove reference to records related solely to oral offers, including removing the requirement for a contemporaneous written record of any oral offers of employment. The Department is also clarifying that copies of written offers must include the date of the offer. The Coalition was generally supportive of the proposed recordkeeping requirements, commenting that the requirements were similar to other requirements with which contractors are already required to comply. However, the Coalition also commented that the Department should require successor contractors to proactively report the number of employees they retained from the predecessor contract. The Department declines to add another procedural requirement to successor contractors in light of the other mechanisms provided by the rule for employees and the contracting agency to detect noncompliance. Finally, to conform to the final version of § 9.11(c), § 9.12(f)(2) was revised to require keeping records of notices to collective bargaining representatives regarding the provision of information related to the agency's location continuity determination. Accordingly, other than modifications related to the elimination of oral offers, the final rule adopts § 9.12(f)(2) generally as proposed, but twice edited the text to replace the phrase "the employee list" with "any employee list" to clarify that contractors must maintain copies of any applicable list required by § 9.12(e).

Under § 9.13(a), the prime the contractor or subcontractor must insert in any subcontracts the clause contained in Appendix A or the Federal Acquisition Regulation (FAR) as appropriate. Further, the prime contractor is responsible for compliance of any subcontractor or lower tier subcontractor with the contract clause. Under § 9.13(b), when the prime contractor discontinues

the services of a subcontractor and performs those services themselves, the prime contractor must offer employment on the contract to the subcontractor employees who would otherwise be displaced. The Department received comment on this section. The Coalition strongly supported the proposed section citing concerns about subcontractor oversight. The Coalition stated that holding the prime contractor responsible for the compliance of a subcontractor will increase compliance and promote clarity and consistency because contracting agencies have minimal direct interaction with subcontractors. Additionally, the Department is aware of a comment from ABC that indicated that "some of the requirements proposed are even more burdensome than under EO 13495". While the Department maintains the requirements in the final rule, the burden for contractors is added below in item 12 to account for potential additional burden associated with this requirement.

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 exemption 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).

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'.**

There are several reasons why the following estimates are overestimates. As an initial matter, almost all of the requirements of the nondisplacement rule only attach and create PRA-covered requirements during the initial 90 days after contract award, and in the final months before a contract ends. The typical service contract entered into by a federal agency consists of a base year and four option years (for a total of five years). This means that for any given 5-year contract, most of the rule's PRA-covered requirements take place in the first and last years of the contract.

Additionally, all of the final rule requirements do not apply immediately. The contract clause is only required to be included in new contracts awarded after the applicability date of the regulations that the Federal Acquisition Regulatory (FAR) Council will issue after this final rule becomes effective. No contracts that are awarded before that date will be affected by the requirements in the final rule. For successor contracts awarded after the applicability date, the contract clause will be included and the successor contractor will be required to make offers of employment as required by the clause. However, the predecessor contracts for those successor contracts will not have incorporated the contract clause and the predecessor contractor will therefore not be required to carry out the responsibilities identified in the final rule. As a result, the Department does not expect the full scope of the PRA-covered requirements to have effect until the *end* of contracts that are awarded after the applicability date—at which point both the predecessor and successor contracts will contain the contract clause. This means that the full potential PRA-related burdens will not take place until at least 5 years after the applicability date of the rule. As a practical matter, therefore, there will be a very limited burden (if any) during year one of the three-year PRA approval period, depending on the timing of FAR Council final rule. Thereafter there will be a more limited burden for the second and third years of the approval period. However, for this submission, the Department is submitting a calculation that represents an average per year once all predecessor contracts include the contract clause.

The Department estimated in the final rule that 119,695 unique firms are potentially impacted (see Table 1, final rule) on an annual basis. This figure includes both prime contractors (85,987) and subcontractors (33,708). The Department estimated that 1.4 million workers work on SCA covered contracts (See Table 2, Regulatory Impact Analysis (RIA final rule). The Department noted this is likely an overestimate because some workers will work in positions that are not covered by this rule (e.g., high-level management).

However, some firms may hold more than one covered service contract, while others may not hold any covered contract in a given year. Because the PRA-related requirements take place on a contract-by-contract basis, as opposed to a firm-by-firm basis, the Department sought data on the number of discrete covered contracts in a given year. Accordingly, to calculate the PRA-related burdens in this submission, the Department analyzed the USASpending database to identify the number of new or continuing SCA contracts in FY2022. The Department used that number (543,353 SCA contracts) as the baseline for its calculations.

As noted above, however, most of the PRA-covered requirements (such as notices, certified list disclosures, and offers of employment) take place within a fairly narrow window of time during the final few months of a predecessor contract and the first few months of a successor contract. Thus, during the scope of a repeating 5-year contract, the nondisplacement requirements will have PRA-covered effects in only one out of every five years.

The Department has considered that not all prime contractors will have a different successor contractor on a successor contract. In many cases, the prime contractor on a contract will bid on and win a successor contract, and there will be no turnover in the prime contractor for the successor contract. In other cases, a new prime contractor will win the successor contract and become the successor contractor. The final rule does not distinguish between these circumstances. If the same contractor is both the predecessor and the successor contractor, that contractor will be required to retain (or make new offers to) all of the employees under the predecessor contract, unless an exception applies. In practice, some of the requirements may not be necessary in that circumstance—for example, if the predecessor retains its employees in a manner that does not require making a new offer of employment, then no new offer will need to be made (and the corresponding PRA burden will be lessened). However, because there is no easy mechanism to determine how often such contractors will retain employees as opposed to make them new term-limited offers, the Department has assumed that all of the nondisplacement requirements will be carried out (with corresponding burdens)_regardless of whether the predecessor contractor retains the contract or whether it is awarded to a new successor contractor.

Many of the final rule’s provisions apply also to any subcontractors under a covered prime contract. While, as noted above, the Department estimates that the number of unique subcontractors is less than half of the number of unique prime contractors, to ensure no undercount of the burden, the Department estimates that there is an average of one subcontractor for each covered prime contract.

The following burden numbers are also an overestimate because, for the purpose of this analysis, the Department has assumed that all new SCA-covered contracts will be "successor contracts." In practice, that will be true for many but not all new contracts.

To attempt to identify how many contracts are truly "new" contracts that have no predecessor, the Department carried out the following analysis:

- The Department used the GovWin database, "opportunities" search for contracts.
- The Department selected all services except construction services, all "Tracked Opportunities", place of performance is the U.S., and awarded within the past year (3/2021-3/2022).
- The Department notes that we are unclear how representative the set of usable contracts obtained from GovWin are.
- The Department matched the company name listed as the incumbent to the company listed as being awarded the current contract.

The Department assumed those contracts that do not have an incumbent contractor listed are new contracts (about 2.5%) that would not qualify as a "successor contract" under the Executive order. Based on this small prevalence rate, and our understanding of GovWin methodology, the Department thinks this is likely an underestimate of the share of contracts that are new. However, because the number is so small, the Department has assumed that the number of non-successor "new" contracts is de minimis for the purpose of this analysis, which is an additional reason why the final burden estimate is an overestimate.

Accordingly, the Department calculated the number of non-unique predecessor and successor prime contractors in an average year as the product of:

- 543,353 SCA contracts in FY2022 in USASpending
- 20% to assume contracts last five years on average.

Total annual affected prime contracts: SCA contracts × 0.20

543,353 × 0.20 = 108,671

Because the Department is making an estimate of an average year of applicability (as opposed to a year-1 of rule implementation or early-year estimate), the Department assumes that for each affected contract, there will be an affected predecessor prime contractor (plus an affected predecessor subcontractor) as well as an affected successor prime contractor (plus an affected successor subcontractor). As noted above, these figures will be for non-unique contractors, because any given prime contractor may enter into more than one prime contract, and because

predecessor prime contractors may be awarded the successor contract for the same contract. The Department believes this methodology is appropriate, as explained above, because the PRA-burdens are associated with contract actions that are unique to an individual covered contract.

Total annual affected unique contracts (prime or subcontract), assuming one subcontract per prime contract = 108,671 (prime) + 108,671 (subcontract) = 217,342

Total affected non-unique predecessor contractors (prime or subcontract), assuming one subcontract per prime contract = 108,671 (prime) + 108,671 (subcontract) = 217,342

Total affected non-unique successor contractors (prime or subcontract), assuming one subcontract per prime contract = 108,671 (prime) + 108,671 (subcontract) = 217,342

Many of the burdens below are proportional to the number of workers on a predecessor contract who must, for example, receive offers of employment or various notices. To calculate the per-worker, per-contract burdens, the Department has estimated the average number of workers working on a covered prime contract and the average number of workers per firm (including the prime contractor and any subcontractor) working on the contract.

In the Regulatory Impact Analysis in the final rule, the Department estimated that 1.4 million workers work on SCA covered contracts. According to SAM.gov, there were 543,353 SCA-covered prime contracts in effect in fiscal year 2022, resulting in an average of 2.58 workers per prime contract. The 1.4 million figure represents employees working exclusively and year-round on covered contracts. However, in practice, many service employees working for a federal service contractor may work on multiple covered federal contracts in a given year. For example, where a federal contractor provides landscaping services for multiple federal agencies under separate contracts, an employee of that contractor may work on multiple covered contracts in the same year. Because unique individual workers may work on more than one prime contract in a given year, the average number of workers working on each prime contract may be higher than the 2.58 worker figure above. To account for this possibility, and to ensure that costs are not underestimated, the Department increases its estimate from 2.58 to 4 workers per prime contract. Because the Department estimates that there are two contractors on a prime contract (one prime contractor and one subcontractor) and four workers on a prime contract, the Department estimates that there are two workers per contractor (prime or subcontractor) on a covered prime contract.

Number of workers per prime contract:
1.4 million workers ÷ 543,353 SCA-covered prime contracts = 2.58 (adjusted to 4 as explained above)

Number of workers per contractor (prime or subcontractor) per covered prime contract:
4 ÷ 2 = 2 workers

Employment Offers

1. Employment Offers by Successor Contractors—29 CFR 9.12(a) and (b):

Under § 9.12(a) and (b) of the final rule, a successor contractor or subcontractor must not fill any employment openings for positions subject to the SCA under the contract prior to making a good faith offer of employment in positions for which the employee is qualified, to those employees employed under the predecessor contract whose employment will be terminated as a result of the award of the successor contract or expiration of the contract under which the employees were hired. The offer must state the time within which the employee must accept the offer but in no case may the time allotted be less than 10 business days.

The job offer must be made in writing and where not delivered in-person, should be sent by registered or certified mail to the employee's last known address or by any other means ensuring delivery. On average, each contractor is estimated to have 2 employees to whom an offer must be made.

The respondent universe is 217,342 total successor contractors and the Department estimates 10 minutes per response.

Respondents: 217,342 total successor contractors

Responses: 217,342 respondents × 2 workers = 434,684 responses

Burden hours: 434,684 responses × 10 minutes ÷ 60 minutes per hour = 72,447 hours

2. Offers required upon discontinuation of subcontractor services—29 CFR 9.13(b)

Under § 9.13(b) of the final rule, when a prime contractor subject to the nondisplacement requirements discontinues the services of a subcontractor and performs those services itself, the prime contractor must offer employment on the contract to the subcontractor's employees who would otherwise be displaced.

Unlike other nondisplacement requirements, this requirement is not limited to the end of or award of the prime contract and continues throughout the contract. Accordingly, it is a possible requirement for all of the 543,353 covered contracts in any given year. The Department estimates that 10% of the prime contractors on these contracts may be subject to this requirement and required to make offers to the average of two covered workers on a subcontract. The Department estimates 10 minutes per response.

Respondents: 543,353 SCA contracts × 0.10 = 54,335 prime contractors

Responses: 54,335 respondents × 2 workers = 108,670 responses.

Burden hours: 108,670 responses × 10 minutes ÷ 60 minutes per hour = 18,112 hours.

Certified Lists

3. 30-day Certified Lists of Employees—29 CFR 9.12(e)(1)

Under § 9.12(e)(1) of the final rule, the contractor will, not less than 30 calendar days before completion of contractor performance of services on a contract, furnish the contracting officer with a list of names, mailing addresses, and if known, phone numbers, and email addresses of all service employees working under the contract and its subcontracts at the time the list is submitted. Under § 9.12(e)(2) of the final rule, where changes to the workforce are made after the submission of the certified list described in paragraph (e)(1), the contractor will, not less than 10 days before completion of contractor performance of services on a contract, furnish the contracting officer with a certified list of names, mailing addresses, and if known, telephone numbers and email addresses of all service employees employed within the last month of contract performance. The list must also contain anniversary dates of employment of each service employee under the contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. The Service Contract Act regulations at 29 CFR 4.6(l)(2) already require the preparation of such a list that must be submitted not less than ten days prior to the termination of the contract. The final rule also requires the submission of employee addresses and, if known, email addresses and telephone numbers. As a result, the Department adds burden to account for the requirement that this information be added to the certified list for each worker. The Department estimates 30 seconds per worker to add the new information to the submission.

The respondent universe is 217,342 total predecessor contractors.

Respondents: 217,342 total predecessor contractors

Responses: 217,342 respondents × 2 workers = 434,684 responses

Burden hours: 434,684 responses × 0.5 minutes ÷ 60 minutes per hour = 3,622 hours

4. 10-day Certified List—29 CFR 9.12(e)(2)

As noted, under § 9.12(e)(2) of the final rule, where changes to the workforce are made after the submission of the certified list described in paragraph (e)(1), the contractor will, not less than 10 days before completion of contractor performance of services on a contract, furnish the contracting officer with a certified list of names, mailing addresses, and if known, telephone numbers and email addresses of services employees employed within the last month of contract performance. The Department estimates that this will happen in few instances. Also, as noted above, the requirement to submit a certified list is already approved under OMB control number 1235-0007. But, if a 10-day list needs to be submitted, that will require the second submission of the list, which is not already required. The Department adds slight burden for this requirement.

The Department estimates 10 percent of the 217,342 total predecessor contractors will have to submit the second list and estimates that preparing and sending the revised list will take 15 minutes.

Respondents: 217,342 total predecessor contractors × 0.10 = 21,734 contractors

Responses: 21,734 respondents × 1 amended list = 21,734 responses

Burden hours: 21,734 responses × 15 minutes ÷ 60 minutes per hour = 5,434 hours

5. Disclosure of Certified List to Employees—29 CFR 9.11(d)

Under § 9.11(d) of the final rule, on request, a predecessor contractor also must provide the employee list to employees or their representatives, consistent with the Privacy Act and other applicable law.

As noted above, the Department has estimated 217,342 predecessor contractors will have to provide a certified list to the contracting agency in a given year (see above). The Department estimates that such lists will be requested by employees, and therefore provided to them, on 15% of these contracts. The respondents are the predecessor contractors. The Department estimates 2 workers per respondent and 1 minute per worker to provide the list response.

Respondents: 217,342 total predecessor contractors × 0.15 = 32,601 contractors

Responses: 32,601 respondents × 2 workers per contract = 65,202 responses

Burden hours: 65,202 responses × 1 minute ÷ 60 minutes = 1,087 hours.

Notices:

6. Notification regarding agency exceptions—29 CFR 9.5(f)

Under § 9.5(f) of the final rule, contracting agencies must ensure that contractors notify affected workers and their collective bargaining representatives, if any, in writing of a contracting agency's determination to grant an exception under § 9.5.

The Department estimated in the final rule that there will be 217,342 predecessor contractors affected by the rule in an average year, and that 10% of these contractors will be predecessors for contracts for which the contracting agency determines that an exception applies for the successor contract, and thus the predecessor will be required to issue the notice. Each respondent is estimated to have 2 workers and the Department estimates 5 minutes per response.

Respondents: 217,342 predecessor contractors × 0.10 = 21,734 contractors

Responses: 21,734 respondents × 2 workers = 43,468 responses

Burden hours: 43,468 × 5 minutes ÷ 60 minutes per hour = 3,622 hours

7. Notice regarding location-continuity analysis—29 CFR 9.11(c)(4)

Under § 9.11(c)(4), contracting agencies are required to conduct a location continuity analysis under paragraph (c)(1) of the same section prior to the date of issuance of a solicitation. Where an incumbent contractor's employees are covered by a collective bargaining agreement and a contract location change is possible and under consideration, contracting agencies must, to the extent consistent with mission security, provide workers on the predecessor contract with an opportunity prior to the solicitation to provide information relevant to the analysis. At the earliest reasonable time in the acquisition planning process, the agency must direct the incumbent contractor to notify the collective bargaining representatives, for the affected workers of the appropriate method to communicate such information.

To estimate the percentage of contracts whose workers have a collective bargaining agreement, the Department uses the 2022 BLS figure of 10.9 percent of workers in service occupations who are represented by unions.[1]

The respondent universe is the number of predecessor contractors where employees have union representation, which is 10.9 percent of the 217,342 total predecessor contractors. The Department estimates two minutes per response.

Respondents: 217,342 total predecessor contractors × 0.109 = 23,690 predecessor contractors

Responses: 23,690 respondents × 1 CBA representative = 23,690 responses

Burden hours: 23,690 responses × 2 minutes ÷ 60 minutes per hour = 790 hours

8. Notice of possible right to employment—29 CFR 9.12(e)(3)

Under § 9.12(e)(3) of the final rule, before contract completion, a 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. The notice will be either posted in a conspicuous place at the worksite or delivered to employees individually. Contractors may provide the notice provided in Appendix B by either a physical posting at the job site or in another manner that effectively provides individual notice. Another form with the same information contained in Appendix B may be used.

The respondent universe is 217,342 total predecessor contractors. The contractor may use the notice provided in Appendix B and post it in a conspicuous location or provide individual notice. The Department assumes 2 workers per respondent. The Department estimates 2 minutes per employee to provide the notice. For some contractors this will be less, as it likely will not take 24 minutes for a contractor to post the notice in a conspicuous location.

The respondent universe is 217,342 total predecessor contractors. The Department estimates 2 minutes per response.

[1] See https://www.bls.gov/news.release/pdf/union2.pdf.

Respondents: 217,342 total predecessor contractors

Responses: 217,342 respondents × 2 workers = 434,684 responses

Burden hours: 434,684 responses × 2 minutes ÷ 60 minutes per hour = 14,489 hours

9. Notice of absence of contract clause to agency—29 CFR 9.12(a)(4)

Under § 9.12 of the final rule, a contractor or subcontractor has an affirmative obligation to ensure its covered contract contains the contract clause. If the contracting officer did not incorporate the required contract clause into the contract, the contractor or subcontractor must notify the contracting officer as soon as possible. The estimated number of respondents here is 50 as the Department does not think this will occur frequently.

Respondents: 50 successor contractors

Responses: 50 respondents × 1 response = 50 responses

Burden hours: 50 responses × 20 minutes per response ÷ 60 minutes per hour = 17 hours

Other provisions

10. Input from worker's representative regarding location-continuity analysis—29 CFR 9.11(c)(4)

The Department has calculated above the PRA burden from this requirement on contractors who must provide the required location-continuity notice. Here, the Department calculates the PRA burden on collective bargaining representatives who given the opportunity to respond to this notice.

Where an incumbent contractor's employees are covered by a collective bargaining agreement and a contract location change is possible and under consideration, contracting agencies must, to the extent consistent with mission security, provide workers on the predecessor contract with an opportunity prior to the solicitation to provide information relevant to the agency's location analysis.

To estimate the percentage of contracts whose workers have a collective bargaining agreement, the Department uses the 2022 BLS figure of 10.9 percent of workers in service occupations who are represented by unions.[2] The Department further estimates that 75 percent of CBA representatives who receive the location continuity analysis will provide input to the contracting agency and will take an average of 30 minutes to prepare and send the communication.

[2] See https://www.bls.gov/news.release/pdf/union2.pdf.

Respondents: 217,342 total predecessor contractors × 0.109 × 0.75 = 17,768 representatives who prepare and send response.

Responses: 17,768 respondents × 1 response = 17,768 responses.

Burden hours: 17,768 responses × 30 minutes ÷ 60 minutes per hour = 8,884 hours.

11. Contract Clause Flow-Down—29 CFR 9.13(a)

Under § 9.13(a) of the final rule, the contractor or subcontractor must insert in any subcontracts the clause contained in Appendix A. The contractor or subcontractor must also insert a clause in any subcontracts to require the contractor to include the clause in Appendix A in any lower tier subcontracts.

The Department has estimated that there will be 108,671 successor prime contractors in an average year and an average of one subcontractor per prime contractor. Subcontractors will not have to flow-down the contract clause unless there is a lower-tier subcontract below them. The Department considers the use of lower-tier subcontractors relatively unusual in service contracts, and therefore assumes that the circumstances in which upper-tier subcontractors will have this duty will be offset by the portion of prime contracts with no subcontractor at all and therefore no flow-down responsibility. The Department has estimated that this will take 30 minutes per response. However, this is likely a significant overestimate because flowdown will generally occur as a part of the larger preparation of a subcontract, and the marginal increase in the overall preparation time from the flow-down will likely be lower than 30 minutes.

Respondents: 108,671 successor prime contractors.

Responses: 108,671 successor contractors × 1 response = 108,671 responses

Burden hours: 108,671 responses × 30 minutes per response ÷ 60 minutes per hour = 54,336 hours

Recordkeeping:

Under § 9.12(f) of the final rule, no particular order or format of records is prescribed. However, the contractor must maintain copies of written offers of employment, including the date of the offer; a copy of any record that forms the basis for any exclusion or exception claimed; a copy of the employee list received from the contacting agency and the employee list provided to the contracting agency; evidence of any notices that were provided to workers or worker collective bargaining representatives to satisfy the requirements of the Executive order or these regulations, including notices of the possibility of employment on the successor contract as required under § 9.12(e)(3) and notices of agency exceptions a contracting agency requires a contractor to provide under § 9.5(f) of these regulations.

Records must be preserved for three years.

12. Records of Job Offers—29 CFR 9.12

Under § 9.12(a) and (b) of the final rule, a successor contractor or subcontractor must not fill any employment openings for positions subject to the SCA under the contract prior to making a good faith offer of employment in positions for which the employee is qualified, to those employees employed under the predecessor contract whose employment will be terminated as a result of the award of the successor contract or expiration of the contract under which the employees were hired. The offer must state the time within which the employee must accept the offer but in no case may the time allotted be less than 10 business days.

The job offer must be made in writing and where not delivered in-person, should be sent by registered or certified mail to the employee's last known address or by any other means ensuring delivery.

The respondent universe is 217,342 total successor contractors. Each respondent is estimated to have 2 workers and the Department estimates 1 minute per response to file in the records management system.

Respondents: 217,342 total successor contractors

Responses: 217,342 respondents × 2 workers = 434,684 responses

Burden hours: 434,684 responses × 1 minute ÷ 60 minutes per hour = 7,245 hours

13. Records of Job Offers after discontinuing subcontract—29 CFR 9.13

Under § 9.13(b) of the final rule, when a prime contractor subject to the nondisplacement requirements discontinues the services of a subcontractor and performs those services itself, the prime contractor must offer employment on the contract to the subcontractor's employees who would otherwise be displaced.

The Department estimates that 10% of the 543,353 prime contractors may be subject to this requirement. On average, each subcontractor is estimated to have 2 workers to whom the prime must make an offer, and the Department estimates 1 minute per response to file in records management system.

Respondents: 543,353 contractors × 0.10 = 54,335 contractors

Responses: 54,335 respondents × 2 workers = 108,670 responses.

Burden hours: 108,670 responses × 1 minute ÷ 60 minutes per hour = 1,811 hours.

14. Records of exceptions related to offers—29 CFR 9.12(c)

Section 9.12(c)(3) provides several exceptions from the requirement that a particular employee receive an offer of employment. For example, under § 9.12(c)(3)(ii), a successor contractor may demonstrate its belief that there would be just cause for discharge of an employee through reliable written evidence that the predecessor contractor initiated a process to terminate the employee for conduct clearly warranting termination prior to the expiration of the contract. Similarly, a successor contractor must presume that all employees working under a predecessor's federal service contract are service employees unless it can demonstrate a reasonable belief to the contrary (see § 9.12(c)(2)(ii)) and must presume there would be no just cause for discharge of a predecessor contractor employee absent an ability to demonstrate a reasonable belief to the contrary (see § 9.12(c)(4)) and must make a reasonable determination that employees who also performed work on non-federal contracts as part of a single job were not deployed in such a manner designed to avoid this part (id.). Under § 9.12(c), a successor contractor is responsible for demonstrating exceptions applicability. It may be that a contractor would be able to demonstrate such actions without documents, however for the few instances in which they are relying on records for making such determinations, the Department adds those records here. The record requirement is contained in § 9.12(f)(2)(ii). The Department estimates that an exception requiring additional records may be appropriate for an average of one employee per contract. The Department estimates 1 minute to file the record.

Respondents: 217,342 total successor contractors

Responses: 217,342 respondents × 1 worker = 217,342 responses

Burden hours: 217,342 responses × 1 minute ÷ 60 minutes per hour = 3,622 hours

15. Records of Certified List requirements—29 CFR 9.12(e)

Under § 9.12(e)(1)-(2), contractors are required to provide certified lists of employees. A requirement for this list exists under the Service Contract Act at least 10 days before the end of a contract and is already cleared under OMB control number 1235-0007. This final rule adds to that requirement submission of employee addresses and, if known, email addresses and telephone numbers. The Department has also added the requirement that the list must be updated not less than 10 days before completion of contractor performance of services.

The Department has accounted for a slight increase in overall burden of preparing the list because of the addition of the email and telephone number records. However, there will be no additional recordkeeping costs for the 30-day list because the list already must be retained under SCA regulations at 29 CFR 4.6(g)(1)(vi), and the addition of the email and telephone numbers will not change the cost of retaining the list. However, because the 10-day list is a new requirement, and a separate action would need to be taken to file this second list for recordkeeping, the Department accounts for that burden here.

The respondent universe for the 10-day list is 217,342 total predecessor contractors. The Department estimates 10 percent of the 217,342 total predecessor contractors will have to submit

the second list and the Department estimates 1 minute per response to file in the records management system.

Respondents = 217,342 predecessor contractors × 0.10 = 21,734 contractors

Responses: 21,734 respondents × 1 amended list = 21,734 responses

Burden hours: = 21,734 responses × 1 minute ÷ 60 minutes per hour = 362 hours

16. Record of Disclosure of Certified List to Employees—29 CFR 9.11(d)

Under § 9.11(d) of the final rule, on request, a predecessor contractor also must provide the employee list to employees or their representatives, consistent with the Privacy Act and other applicable law.

As noted above, the Department has estimated 217,342 predecessor contractors will have to provide a certified list for the contracting agency per year. The Department estimates that such lists will be requested by employees and therefore provided on 15% of these contracts. The respondents are the predecessor contractors. The Department estimates 2 workers per respondent and 1 minute per worker to file in a records management system.

Respondents: 217,342 total predecessor contractors × 0.15 = 32,601 contractors

Responses: 32,601 respondents × 2 workers = 65,202 responses

Burden hours: 65,202 responses × 1 minute ÷ 60 minutes per hour = 1,087 hours.

17. Records of Agency Exception Notice—29 CFR 9.5(f)

In § 9.5(f) of the final rule, a contractor is required to provide notice of exception to workers and their collective bargaining representatives, if any. The contractor is also required to maintain a record.

The Department estimated in the final rule that there will be 217,342 predecessor contractors affected by the rule in an average year, and that 10% of these contractors will have contracts for which the contracting agency determines that an exception applies for the successor contract, and thus the predecessor will be required to issue the notice. Each respondent is estimated to have 2 workers and the Department estimates 1 minute per response to file a copy of the notice in a records management system.

Respondents: 217,342 predecessor contractors × 0.10 = 21,734 contractors

Responses: 21,734 respondents × 2 workers = 43,468 responses

Burden hours: 43,468 × 1 minute ÷ 60 minutes per hour = 724 hours

18. Record of location-continuity notice—29 CFR 9.11(c); 9.12(f)(v)

Under § 9.11(c)(4), where an incumbent contractor's employees are covered by a collective bargaining agreement and a contract location change is possible and under consideration, contracting agencies must, to the extent consistent with mission security, provide workers on the predecessor contract with an opportunity prior to the solicitation to provide information relevant to the analysis. At the earliest reasonable time in the acquisition planning process, the agency must direct the incumbent contractor to notify the collective bargaining representatives, for the affected workers of the appropriate method to communicate such information. The contractor is also required to retain evidence that this notice was provided.

To estimate the percentage of contracts whose workers have a collective bargaining agreement, the Department uses the 2022 BLS figure of 10.9 percent of workers in service occupations who are represented by unions.[3]

The respondent universe is the total predecessor with union representation, which is 10.9 percent of the 217,342 predecessor contractors in an average year. The Department estimates 1 minute per response to file a copy in a records management system.

Respondents: 217,342 total predecessor contractors × 0.109 = 23,690 predecessor contractors.

Responses: 23,690 respondents × 1 CBA representative = 23,690 responses

Burden hours: 23,690 responses × 1 minute ÷ 60 minutes per hour = 395 hours

19. Record of Notice of possible right to employment—29 CFR 9.12(e)

Under § 9.12(e)(3) of the final rule, before contract completion, a 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. The notice will be either posted in a conspicuous place at the worksite or delivered to employees individually. Contractors may provide the notice provided in Appendix B by either a physical posting at the job site or in another manner that effectively provides individual notice. Another form with the same information contained in Appendix B may be used. The contractor also must retain evidence that it provided this notice.

The respondent universe is 217,342 total predecessor contractors. The contractor may use the notice provided in Appendix B and post it in a conspicuous location or provide individual notice. The Department assumes 2 workers per respondent. The Department estimates 1 minutes per employee to record, in a records management system, evidence that notice was provided.

Respondents: 217,342 total predecessor contractors

Responses: 217,342 respondents × 2 workers = 434,684 responses

[3] See https://www.bls.gov/news.release/pdf/union2.pdf.

Burden hours: 434,684 responses × 1 minute ÷ 60 minutes per hour = 7,245 hours

20. Record of notice of absence of contract clause to agency—29 CFR 9.12(a)(4)

Under § 9.12 of the final rule, a contractor or subcontractor has an affirmative obligation to ensure its covered contract contains the contract clause. If the contracting officer did not incorporate the required contract clause into the contract, the contractor or subcontractor must notify the contracting officer as soon as possible. The contractor also must retain a record of the notice that it provided to the agency. The Department estimates 1 minute to file a copy in a records management system.

Respondents: 50 successor contractors

Responses: 50 respondents × 1 response = 50 responses

Burden hours: 50 responses × 1 minute per notice ÷ 60 minutes per hour = 50 minutes (1 hour rounded).

Complaints:

Burden associated with complaints is accounted for in the ICR previously approved under OMB control number 1235-0021. The package that contains the complaint burden has been submitted to OMB with this final rule to add slightly to the overall burden accounting for a potential increase in complaints due to the requirements of this final rule. It is not accounted for in this package. (See ICR under OMB control number 1235-0021).

Table 1: Summary of Burden

Activity / Section	No. of (non-unique) Respondents	No. of Responses per Respondent	Total Responses	Average Burden per Response (Hours)	Total Annual Burden Hours	Hourly Wage Rate (Loaded)	Monetized Value of Time (Rounded)
Employment Offers (and exceptions)							
§ 9.12(a)-(b) offers by successor	217,342	2	434,684	0.167	72,447	$ 64.81	$ 4,695,290
§ 9.12 records of offers	217,342	2	434,684	0.017	7,245	$ 64.81	$ 469,548
§ 9.13(e) offers by prime when discontinuing subcontract	54,335	2	108,670	0.167	18,112	$ 64.81	$ 1,173,839
§ 9.12(f) records of offers when discontinuing subcontract	54,335	2	108,670	0.017	1,811	$ 64.81	$ 117,371
§ 9.12(f) records of	217,342	1	217,342	0.017	3,622	$ 64.81	$ 234,766

exceptions related to offers pursuant to § 9.12(c)							
Certified Lists							
§ 9.12(e)(1) 30-day certified list to agency from predecessor	217,342	2	434,684	0.008	3,622	$ 64.81	$ 234,742
§ 9.12(f)(2)-(3) records of compliance with 30-day certified list requirements	Already accounted for under separate OMB control number						
§ 9.12(e)(2) 10-day certified list to agency from predecessor	21,734	1	21,734	0.25	5,434	$ 64.81	$ 352,178
§ 9.12(f)(2)-(3) records of compliance with 10-day certified list requirements	21,734	1	21,734	0.017	362	$ 64.81	$ 23,461
§ 9.11(d) certified list to workers from predecessor. if requested	32,601	2	65,202	0.017	1,087	$ 64.81	$ 70,448
§ 9.12(f)(2)-(3); 9.11(d) records of compliance with disclosure of certified list to workers	32,601	2	65,202	0.017	1,087	$ 64.81	$ 70,448
Complaints and Investigations							
Addressed separately by OMB 1235-0021							
Notices							
§ 9.5(f) notice re: agency exceptions by predecessor	21,734	2	43,468	0.083	3,622	$ 64.81	$ 234,742
§ 9.12(c) records of 9.5(f) exception notice by predecessor	21,734	2	43,468	0.017	724	$ 64.81	$ 46,922
§ 9.11(c)(4) notice re: location continuity by predecessor	23,690	1	23,690	0.033	790	$ 64.81	$ 51,200
§ 9.12(f)(2)(v)) record of 9.11(c)(4) notice by predecessor	23,690	1	23,690	0.017	395	$ 64.81	$ 25,600
§ 9.12(e)(3) notice of possible ROFR by predecessor	217,342	2	434,684	0.033	14,489	$ 64.81	$ 939,032
§ 9.12(f) record of 9.12(e)(3) notice of ROFR by predecessor	217,342	2	434,684	0.017	7,245	$ 64.81	$ 469,548

§ 9.12(a)(4) notice re missing clause to agency	50	1	50	0.33	17	$64.81	$1,102
§ 9.12(f) record of § 9.12(a)(4) notice re missing clause to agency	50	1	50	0.017	1	$64.81	$64.81
Other							
§ 9.11(c)(4) disclosure by CBA reps to agencies re: location continuity	17,768*	1	17,768	0.5	8,884	$ 64.81	$ 575,772
Contract Clause Flow-down by successor(s) per §9.13(a)	108,671	1	108,671	0.5	54,336	$ 64.81	$ 3,521,5156
TOTALS	1,738,779**		3,042,829		205,332	N/A	$13,307,567

*This respondent entry is for workers' representatives submitting to contracting agencies.

**Total unique respondents is 119,695 contractors + 17,768 CBA representatives (number of unique contractors × 0.109) = 137,463

Absent specific wage data regarding the respondents, the Department has used the February 2023 annual average hourly earnings of $39.76 for professional and business services industry employees and increased it by 46 percent to account for fringe benefits ($18.29) and 17% for overhead costs ($6.76), resulting in a total of $64.81 hour to estimate respondent costs. *See* The Employment Situation: February 2023 (issued March 10, 2023), Table B-3, Bureau of Labor Statistics, (https://www.bls.gov/news.release/pdf/empsit.pdf), loaded into ROCIS.

$64.81 × 205,332 hours = $13,307,567. (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.

B. Employing Statistical Methods:

This collection does not employ statistical methods.