

**Supporting Statement for the
Construction Recordkeeping and Reporting Requirements Information Collection
OMB Control No. 1250-0001**

A. JUSTIFICATION

The U.S. Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP)¹ is seeking Office of Management and Budget (OMB) approval for a revision to the information collection implementing OFCCP’s construction program. This information collection request (ICR) outlines the legal authority, procedures, burden, and costs associated with the recordkeeping and reporting requirements for Federal construction contractors and subcontractors as well as federally assisted construction contractors and subcontractors.²

This ICR includes the information collection instrument that notifies construction contractors that they have been selected to undergo a construction compliance evaluation: the construction compliance review scheduling letter and itemized listing (collectively referred to as the “construction scheduling letter”).³ This ICR also includes the Construction Contract Award Notification Requirement Form (CC-314). The CC-314 is a form that construction contractors submit to OFCCP notifying the agency of new contract awards that exceed \$10,000.⁴ Proposed changes to the construction scheduling letter and CC-314 are described below.

1. Legal and Administrative Requirements

OFCCP administers and enforces Executive Order 11246, as amended (E.O. 11246), the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended (VEVRAA), Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), and their implementing regulations at 41 CFR Chapter 60.

E.O. 11246

E.O. 11246 prohibits contractors from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, or national origin and requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. Additionally, it prohibits contractors from taking adverse employment actions against applicants and employees for inquiring about, discussing, or disclosing information about their pay or the pay of their co-workers, subject to certain limitations. Unlike supply and service contractors, OFCCP does not require construction contractors that meet certain contract amounts and employee count thresholds to develop an affirmative action

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

2 Unless otherwise stated, the terms “contractors” and “construction contractors” will be used hereinafter to refer to both Federal construction contractors and subcontractors as well as federally assisted construction contractors and subcontractors.

3 OFCCP is not seeking OMB re-approval of the construction compliance check scheduling letters.

4 Construction contractors, contracting officers, applicants for construction contracts, and covered nonconstruction contractors must notify OFCCP with written notification within 10 working days of award of a covered contract in excess of \$10,000. See 41 CFR 60-4.2.

program (AAP). Rather, construction contractors must take certain affirmative steps required by OFCCP's regulations at 41 CFR part 60-4. The E.O. 11246 requirements apply to contractors (including federally assisted construction contractors) holding a Government contract in excess of \$10,000, or Government contracts that have, or can reasonably expect to have, an aggregate total value exceeding \$10,000 in a 12-month period.⁵ E.O. 11246 also applies to Government bills of lading, depositories of Federal funds in any amount, and financial institutions that are issuing and paying agents for U.S. savings bonds and notes in any amount.⁶ Below OFCCP describes regulatory requirements relevant to this ICR.

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

This part prescribes the nondiscrimination and general affirmative action requirements under E.O. 11246. Among other things, it defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, and specifies certain reporting and recordkeeping requirements.

Section 60-1.4 describes the equal opportunity clause that must be included in Government contracts. This section includes the requirement that contractors state in all solicitations or advertisements for employment that applicants will receive consideration without regard to one or more of the protected bases⁷ and that contractors notify labor organizations of their obligations under E.O. 11246 and the implementing regulations.⁸ This section also provides that contractors will comply with all provisions of E.O. 11246 and the rules, regulations, and orders of the Secretary of Labor. It also provides that contractors will furnish all information and reports required by E.O. 11246 and the rules, regulations, and orders of the Secretary of Labor.⁹

Section 60-1.7 requires specific contractors to file an Employer Information Report (EEO-1 Report) annually.¹⁰ The U.S. Equal Employment Opportunity Commission (EEOC) and OFCCP use EEO-1 Report data to analyze employment patterns. Although the EEO-1 Report constitutes a joint data collection with OFCCP, the EEOC is the sponsor of the collection and carries the public reporting burden.¹¹

Section 60-1.12 requires contractors to preserve any personnel or employment record made or kept for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. However, if the contractor has fewer than

⁵ 41 CFR 60-1.5.

⁶ *Id.*

⁷ 41 CFR 60-1.4(a)(2).

⁸ 41 CFR 60-1.4(a)(4).

⁹ 41 CFR 60-1.4(a)(5)-(6), (b)(5)-(6).

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

¹¹ See OMB Control No. 3046-0049. This information collection is available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202304-3046-002.

150 employees or does not have a contract of at least \$150,000, the record retention period is one year from the date of the making of the record or the personnel action involved, whichever occurs later. This section also provides that the contractor must be able to identify the gender, race, and ethnicity¹² of each employee for any record the contractor maintains. Where possible, the contractor must also identify the gender, race, and ethnicity of each applicant or Internet applicant.¹³

Section 60-1.20 describes the types of compliance evaluations used to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure equal employment opportunity in their workplaces. A compliance evaluation may consist of one or any combination of the investigative procedures listed in these regulations (*i.e.*, a compliance review, an off-site review of records, a compliance check, and/or a focused review).

41 CFR part 60-3 - Uniform Guidelines on Employee Selection Procedures

DOL, along with the EEOC, the U.S. Office of Personnel Management (OPM), and the Department of Justice (DOJ), adopted the Uniform Guidelines on Employee Selection Procedures (UGESP) in 1978.¹⁴ UGESP applies to tests and other selection procedures used to make employment-related decisions. When a test or other selection procedure is determined to have an adverse impact, UGESP provides that the contractor validate the test or procedure and retain the validation documentation. Under UGESP, each contractor maintains records and other information for each job sufficient to permit analyses of the impact of its selection procedures on the employment opportunities of people based on race, sex, or ethnic group. Using this information, contractors and OFCCP identify and evaluate selection procedures for adverse impact.

Section 60-3.15A(1) applies to contractors with 100 or fewer employees. It requires contractors to keep records on the number of persons hired, promoted, and terminated for each job, by sex and, where appropriate, by race and national origin. This section also requires contractors to keep records showing the number of applicants for hire and promotion by sex and, where appropriate, by race and national origin, as well as records showing the selection procedures used. This section does not require contractors to make adverse impact determinations.¹⁵

Section 60-3.15A(2) requires contractors with more than 100 employees to keep records for each job that are sufficient to allow contractors to make an adverse impact determination.

12 OMB recently revised its standards for maintaining, collecting, and presenting federal data on race and ethnicity. *See* Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 FR 22182 (Mar. 29, 2024). As directed by OMB, DOL will develop an Action Plan on Race and Ethnicity Data describing how it intends to bring its agency collections and publications into compliance with these standards.

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

14 *See* OMB Control No. 3046-0017. This information collection is available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202106-3046-001.

15 If the user has reason to believe that a selection procedure has an adverse impact, the user should maintain any available evidence of validity for that procedure. *See* 41 CFR 60-3.15A(1).

Contractors make this determination at least annually and make it for each racial or ethnic group constituting at least two percent of the labor force in the relevant labor area or two percent of the applicable workforce.

41 CFR part 60-4 - Construction Contractors

41 CFR part 60-4 sets out E.O. 11246's nondiscrimination and affirmative action requirements for construction contractors. This part applies to all contractors, subcontractors, contracting agencies, and applicants¹⁶ that are party to or seek to enter Federal and federally assisted construction contracts in excess of \$10,000, as well as certain Federal nonconstruction contractors awarding construction contracts.¹⁷ It defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, and specifies certain recordkeeping and reporting requirements. The paragraphs that follow describe the requirements at this part.

Section 60-4.2 requires all contracting officers, applicants for construction contracts, and covered nonconstruction contractors to include the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)" set forth in this section, in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts. This section also provides that construction contractors, contracting officers, applicants for construction contracts, and covered nonconstruction contractors must notify OFCCP with written notification within 10 working days of award of a covered contract in excess of \$10,000.

This requirement ensures that all construction contractors are aware of the affirmative action requirements and obligations in the solicitation for offers and bids on all Federal and federally assisted construction projects. Without this notification, construction contractors may not be fully aware of their obligations before they develop their bids and proposals. Further, the required notice of subcontract awards provides OFCCP with accurate and current information regarding which employers are working on Federal contracts. As discussed in more detail below, this information serves two purposes: (1) to identify those construction employers that would benefit from technical assistance; and (2) to contribute to the formulation of OFCCP's pool for selecting construction contractors for compliance evaluations.

Section 60-4.3 requires all contracting officers, applicants for construction contracts, construction contractors, and covered nonconstruction contractors to incorporate the "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)" set forth in this section, into all nonexempt Federal contracts and subcontracts. The 16 equal employment opportunity specifications listed under Section 60-4.3(a)7. describe the required steps that contractors must take to ensure nondiscrimination and

¹⁶ An applicant is defined as an applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance. *See* 41 CFR 60-1.3.

¹⁷ Nonconstruction contractors and subcontractors are required to comply with these requirements if, as a part of their Federal contract or subcontract, construction work is necessary in whole or in part to the performance of a nonconstruction contract or subcontract. *See* 41 CFR 60-4.1.

equal employment opportunity. The recordkeeping requirements associated with executing these specifications are critical to the final evaluation and assessment of a contractor's compliance. During a compliance evaluation, OFCCP examines contractors' compliance with Section 60-4.3(a)7., supporting documentation, compensation data, documents related to personnel actions, and employment policies and practices to determine whether contractors are complying with their obligations not to discriminate in employment and to take affirmative action to ensure equal employment opportunity.

The contract specifications in Section 60-4.3 also require construction contractors and subcontractors to submit any reports relating to the provisions of the regulations as may be required by the Government.¹⁸

Section 60-4.6 explains the goals and timetables set by OFCCP and their application to a contractor's workforce.

Section 60-4.7 explains that the regulations in Part 60-4 are in addition to the other regulatory requirements in 41 CFR Chapter 60 that apply to construction contractors and subcontractors.

VEVRAA

VEVRAA¹⁹ prohibits contractors from discriminating in employment on the basis of veteran status – a protection that includes not only protected veterans²⁰ but also their spouses and other known associates.²¹ VEVRAA also requires contractors to take affirmative action to ensure equal employment opportunity for protected veterans. The VEVRAA requirements apply to businesses with a direct Federal construction contract of \$150,000 or more.²² If the contractor has at least 50 employees and a single contract of \$150,000 or more, it must also develop a VEVRAA AAP, as described in 41 CFR 60-300, subpart C.

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

This part establishes the nondiscrimination and affirmative action requirements under VEVRAA. More specifically, this part defines coverage, specifies clauses to be included in contracts, provides procedures to ensure compliance by covered contractors, specifies certain recordkeeping and reporting requirements, establishes an annual benchmark for veteran

¹⁸ 41 CFR 60-4.3(a)(14).

¹⁹ 38 U.S.C. 4212.

²⁰ Protected veteran means a veteran who is protected under the non-discrimination and affirmative action provisions of VEVRAA; specifically, a veteran who may be classified as a “disabled veteran,” “recently separated veteran,” “active duty wartime or campaign badge veteran,” or an “Armed Forces service medal veteran.” See 41 CFR 60-300.2(q).

²¹ 41 CFR 60-300.21(e).

²² Effective October 1, 2015, the coverage threshold under VEVRAA increased from \$100,000 to \$150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

hiring, and specifies the basic requirements for AAPs under VEVRAA. The paragraphs that follow describe the requirements of the applicable sections at this part, though the recordkeeping burden under VEVRAA is already authorized under OMB No. 1250-0004.

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

Section 60-300.40 requires contractors with 50 or more employees and a contract of \$150,000 or more to develop a VEVRAA AAP. This section also provides that the contractor shall submit the AAP within 30 days of a request from OFCCP, unless the request provides for a different time, and that the contractor shall make the AAP promptly available on-site upon OFCCP's request.

Section 300.42 requires contractors with a contract of \$150,000 or more to invite applicants to self-identify whether they believe they are a protected veteran covered by VEVRAA. The invitation must be given prior to an offer of employment being made, as well as after an offer of employment but before the applicant begins their job duties.

Section 60-300.44 identifies the required elements of a VEVRAA AAP, outlined below:

- Develop and include an equal opportunity policy statement in the AAP.
- Review personnel processes to ensure that qualified protected veterans are provided equal opportunity and that the contractor's personnel practices do not stereotype protected veterans in a manner which limits job opportunities.
- Review all physical and mental job qualification standards to ensure that those that tend to screen out qualified disabled veterans are job-related and are based on business necessity.
- Provide reasonable accommodations for physical and mental limitations.
- Develop and implement procedures to ensure that employees are not harassed because of their protected veteran status.
- Develop procedures and practices to disseminate affirmative action policies, both internally and externally.
- Design and implement an audit and reporting system to measure the effectiveness of the AAP.
- Designate a responsible official to implement and oversee the AAP.
- Provide training to all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes to ensure that the commitments in the contractor's AAP are implemented.
- Document data collection analysis pertaining to applicants and hires on an annual basis and maintain this data for a period of three years. The data shall include the number of applicants who self-identified as protected veterans pursuant to 41 CFR 60-300.42(a), or who are otherwise known as protected veterans; the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of protected veteran applicants hired; and the total number of applicants hired.

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

Section 60-300.60 identifies the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. A compliance evaluation may consist of one or any combination of the investigative procedures listed in the regulations, *i.e.*, a compliance review, an off-site review of records, a compliance check, and/or a focused review.

Section 60-300.80 requires contractors to preserve any personnel or employment record made or kept for a period of not less than two years. However, if the contractor has fewer than 150 employees, this retention period is one year. It also mandates three-year record retention for records required under Sections 41 CFR 60-300.44(f)(4), 60-300.44(k), and 60-300.45(c).

Section 503

Section 503²³ prohibits contractors from discriminating against applicants and employees on the basis of disability and requires contractors to take affirmative action to ensure equal employment opportunity for individuals with disabilities. The Section 503 requirements apply to businesses with a direct Federal construction contract of more than \$15,000.²⁴ If the contractor has at least 50 employees and a single contract of \$50,000 or more, it must also develop a Section 503 AAP, as described in 41 CFR 60-741, subpart C.

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

This part establishes the affirmative action and nondiscrimination obligations under Section 503. More specifically, this part defines coverage, specifies clauses to be included in contracts, provides a procedure to ensure compliance by covered contractors, specifies certain recordkeeping and reporting requirements, establishes an aspirational utilization goal of 7 percent, and specifies the basic requirements for AAPs under Section 503. The paragraphs that follow describe the requirements of the applicable sections at this part, though the recordkeeping burden under Section 503 is already authorized under OMB No. 1250-0005.

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

Section 60-741.40 requires contractors with 50 or more employees and a contract of \$50,000 or more to develop a Section 503 AAP. This section also provides that the contractor shall submit the AAP within 30 days of a request from OFCCP, unless the request provides for a

23 29 U.S.C. 793.

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

different time, and that the contractor shall make the AAP promptly available on-site upon OFCCP's request.

Section 60-741.42 requires contractors with 50 or more employees and a contract of \$50,000 or more to invite applicants to self-identify whether they believe they are an individual with a disability covered by Section 503. The invitation must be given at the time of application or consideration for employment, as well as after an offer of employment but before the applicant begins their job duties. In addition, the invitation must be given to all employees the first year the contractor becomes subject to the requirements of this section, and then every five years.

Section 60-741.44 identifies the required elements of a Section 503 AAP, outlined below:

- Develop and include an equal opportunity policy statement in the AAP.
- Review personnel processes to ensure that qualified individuals with disabilities are provided equal opportunity and that the contractor's personnel practices do not stereotype individuals with disabilities in a manner which limits job opportunities.
- Review all physical and mental job qualification standards to ensure that those that tend to screen out qualified individuals with disabilities are job-related and are based on business necessity.
- Provide reasonable accommodations for physical and mental limitations.
- Develop and implement procedures to ensure that employees are not harassed because of their disability.
- Develop procedures and practices to disseminate affirmative action policies, both internally and externally.
- Design and implement an audit and reporting system to measure the effectiveness of the AAP.
- Designate a responsible official to implement and oversee the AAP.
- Provide training to all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes to ensure that the commitments in the contractor's AAP are implemented.
- Document data collection analysis pertaining to applicants and hires on an annual basis and maintain this information for a period of three years. The data collection analysis must include the number of applicants who self-identified as individuals with disabilities pursuant to 41 CFR 60-741.42(a), or who are otherwise known to be individuals with disabilities; the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of applicants with disabilities hired; and the total number of applicants hired.

Section 60-741.45 establishes a seven percent utilization goal for employment of qualified individuals with disabilities for each job group in the contractor's workforce, or for their entire workforce if the contractor has 100 or fewer employees. This section also requires contractors to conduct a utilization analysis to evaluate the representation of individuals with disabilities.

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

Section 60-741.80 requires contractors to preserve any personnel or employment record made or kept for a period of not less than two years. However, if the contractor has fewer than 150 employees or does not have a contract of at least \$150,000, this retention period is one year. It also mandates three-year record retention for records required under sections 41 CFR 60-741.44(f)(4) and 60-741.44(k).

Proposed Revisions to the Information Collection Instruments

In the 60-day ICR notice and supporting statement ("60-day proposal"), OFCCP proposed various changes to strengthen its enforcement and clarify the items contractors must submit. Below we summarize those proposed changes and describe minor changes OFCCP has made to improve clarity in this 30-day proposal.

Construction Scheduling Letter

Proposed revisions to the scheduling letter include:

- Page One: Adding in an option for the scheduling letter to be issued via email with a read receipt requested. This is a best practice originating from the COVID-19 pandemic where OFCCP was able to continue scheduling compliance reviews despite remote working conditions. This option is also more cost-effective for the agency, as there is no cost for printing and mailing. Issuing the scheduling letter via email also allows for quicker delivery and confirmation of receipt, promotes consistency with the supply and service scheduling letter,²⁵ and contributes to OFCCP's goal of becoming a paperless agency.
- Page Two: Requesting that contractors submit their employment activity data in an electronic database that is readable and in comma-separated values (.csv) or Excel (.xls and .xlsx) format. Contractors can also contact OFCCP to discuss alternative submission formats. During a compliance evaluation, OFCCP uses various tools to conduct statistical analyses on the contractor's employment activity data. To conduct efficient compliance evaluations, OFCCP needs employment activity data in an electronic format that is compatible with the agency's systems and in a useable format for analysis. The proposed language better ensures that OFCCP can access submitted records and promotes a more efficient analysis of contractors' employment activity data.

²⁵ OFCCP added the option for issuing the scheduling letter via email in its recent supply and service ICR. See OMB Control Number 1250-0003, Supply and Service Program, available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202304-1250-001#.

- Page Two: Requesting that contractors submit their AAPs and Itemized Listing information electronically. Contractors will still have the option to mail this information, but electronic submission is the preferred method, as the parties can easily confirm receipt and the agency can more efficiently analyze the submission.²⁶
- Page Two: Revising the language to clarify that OFCCP may initiate enforcement proceedings if the requested information is not provided within 30 calendar days of the contractor receiving the scheduling letter.²⁷
- Page Three: Revising the language to clarify that OFCCP will treat records provided by the contractor as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act (FOIA) and will safeguard and protect personally identifiable information to the maximum extent allowable under the law in accordance with the Privacy Act.
- Revising all references to “DOL” or “Department of Labor” to state “U.S. Department of Labor.”

E.O. 11246 Itemized Listing

Proposed revisions to the E.O. 11246 Itemized Listing include:

- Item 1 currently requests a list of all construction projects (Federal, non-Federal, and federally assisted) by name and location during the preceding 12 months, including identifying whether each project is commercial or residential and Federal or non-Federal. OFCCP proposes minor language changes for clarity and proposes modifying this item to also request the start and end dates (or anticipated end date) of each project. Having this information is important in construction reviews, as construction projects vary in duration and frequently stop work or reduce work hours due to seasonal downturns or other factors. Having information on the start and end dates will promote more efficient analyses, as OFCCP will better understand gaps and fluctuations in the contractor’s hiring, utilization, and pay data. This information will also help OFCCP better coordinate timing for conducting on-site reviews and contacting company personnel.

²⁶ Numerous safeguards are in place to ensure the confidentiality and integrity of the data received, including ensuring that all employees access OFCCP’s network using a Personal Identity Verification card, providing all employees annual training on safeguarding information when using IT systems, and offering use of the Department’s secure file sharing system, Kiteworks. OFCCP also has specific procedures for safeguarding information in its Federal Contract Compliance Manual (FCCM). *See FCCM at 4A02 Confidentiality*, <https://www.dol.gov/agencies/ofccp/manual/fccm/4a-introduction/4a02-confidentiality>.

²⁷ The 30-day response period is set forth in OFCCP’s regulations. *See* 41 CFR 60-1.20(e), 60-300.40(d), and 60-741.40(c). OFCCP understands that extraordinary circumstances may prevent contractors from meeting this 30-day period and such extraordinary circumstances do not necessarily infer non-compliance. As such, OFCCP allows for extensions in the event of extraordinary circumstances such as the unexpected turnover or departure of officials responsible for the contractor’s compliance with OFCCP’s regulations. *See* Requesting Extensions to Submit AAP(s) and Supporting Data, FAQ #6, <https://www.dol.gov/agencies/ofccp/faqs/scheduling-letters#Q6>.

- Item 2 currently requests “[e]mployee level payroll data for all construction trade employees working in the *(as appropriate insert either (1) the name(s) of SMSA or (2) the name(s) of Non-SMSA)* during the preceding 12 months.” For each project, Item 2 requests payroll data with the following information:
 - a. Employee name or ID;
 - b. Gender;
 - c. Race/Ethnicity;²⁸
 - d. Hire date;
 - e. All trades the employee was paid to work in;
 - f. Total hours worked in each trade;
 - g. Overtime hours worked in each trade;
 - h. Wage rate(s) for each trade;
 - i. Union affiliation;
 - j. Apprenticeship status; and
 - k. Employment type, including but not limited to, full-time, part-time, contract, per diem or day labor, and temporary employees.

OFCCP proposes modifying Item 2 to read as:

For each project identified in Item 1, please provide employee-level payroll data for all construction trade employees working in the *(as appropriate insert either (1) the name(s) of SMSA(s) or (2) the name(s) of Non-SMSA(s))* during the preceding 12 months. The information should include items (a)-(q) for all trade employees, as well as those employees involved in the supervision, inspection, and other onsite functions incidental to the actual construction:

- a. Employee name or ID;
- b. Gender;
- c. Race/Ethnicity;²⁹
- d. Hire date;
- e. Union affiliation;
- f. Apprenticeship status;
- g. Employment type, including but not limited to, full-time, part-time, contract, per diem or day labor, and temporary employees;
- h. Job title;
- i. Trade or supervision, inspection, or onsite function (*e.g.*, foreperson);
- j. Regular hours worked in each trade, as indicated in your certified payroll;
- k. Regular rate of pay, as indicated in your certified payroll;
- l. Total regular pay, as indicated in your certified payroll;
- m. Overtime hours worked in each trade, as indicated in your certified payroll;
- n. Overtime rate of pay, as indicated in your certified payroll;
- o. Total overtime pay, as indicated in your certified payroll;

²⁸ The term “race/ethnicity” as used throughout the Itemized Listing includes these racial and ethnic groups: African-American/Black, Asian/Pacific Islander, Hispanic, American Indian/Alaskan Native, and White. You also have the option of submitting the requested data using the race and ethnic categories on the EEO-1 survey.
²⁹ *Id.*

- p. Bonus or other pay, as indicated in your certified payroll;
- q. Time period covered for the pay and work hours provided in (j)-(p).

Asking for this additional information allows OFCCP to conduct a more robust analysis, where the agency can determine whether there is potential discrimination with respect to all forms of compensation (*e.g.*, disparities in overtime and bonuses), work hours, assignments, and other employment opportunities.

Note that in this 30-day proposal, OFCCP added the following sentence to Item 2: “The information should include items (a)-(q) for all trade employees, as well as those employees involved in the supervision, inspection, and other onsite functions incidental to the actual construction.” Item 2(i) in the 60-day proposal already indicated that these employees are covered in the request. OFCCP has added this language to the introductory language in Item 2 to make that requirement clearer.

- Item 3 currently requests data on the contractor’s construction trade employment activity (applicants, hires, promotions, layoffs, recalls, and terminations) in the covered area during the preceding 12 months.

OFCCP proposes modifying this item to clarify that the contractor should be providing the requested information for all trade employees, as well as those employees involved in the supervision, inspection, and other on-site functions incidental to the actual construction. This clarification is consistent with 41 CFR 60-1.3, which provides that “construction work” includes the supervision, inspection, and other on-site functions incidental to the actual construction.

Item 3(a) currently requests information on all applicants identified by name, race/ethnicity, gender, date applied, trade(s) applied for, referral source, and the action taken for each individual. OFCCP proposes modifying Item 3(a) to clarify that the information should include information on walk-in applicants, electronic applications, and referrals from unions and/or employment and recruitment services. Requesting this information is consistent with the regulations at 41 CFR 60-4.3(a)7.c., which require contractors to maintain this applicant and recruitment source information. The proposed language will ensure that contractors are clear about the scope of OFCCP’s request and will ensure greater uniformity in what OFCCP field offices request for this item.

Item 3(b) currently requests the contractor’s hire information, including the name,³⁰ trade, gender, and race/ethnicity for each employee. OFCCP proposes modifying this request to include information on the employees’ job title and date of hire. OFCCP uses the information in Item 3(b) to analyze whether there is potential hiring discrimination and this additional information will assist OFCCP in determining which positions are similar for the purpose of analysis.

³⁰ The contractor may submit an employee ID rather than an employee name, as provided in 41 CFR 60-1.20(f).

Item 3(c) requires contractors to provide the name, trade/job title, gender, and race/ethnicity for each promoted employee. OFCCP uses this information to analyze whether there is potential discrimination with respect to promotions. OFCCP proposes modifying this item to include the date of each promotion. This information will improve OFCCP's promotion analyses, as the agency can more easily identify which employees should be grouped together in its analyses and better identify what policies and practices were in place at the time of the promotion.

Item 3 currently requests information on layoffs but does not include a subpart specifying the layoff data contractors must submit. For clarity and consistency with the other items requested in Item 3, OFCCP proposes adding a new subpart, Item 3(d), specifying what information contractors must provide with respect to layoffs. The proposed language reads as follows:

Layoffs: This list should include the name, trade/job title, gender, race/ethnicity, date of layoff, reason for layoff, and recall eligibility for each employee laid off.

Specifying this information will provide clarity on the scope of OFCCP's request and ensure greater uniformity in what information field offices are requesting with respect to layoffs.

Item 3(d) currently requests information on a contractor's recalls, including the name, trade/job title, gender, and race/ethnicity for each recalled employee. OFCCP proposes expanding this request to include the date of the recall. Having this information will allow OFCCP to better analyze whether employees were subjected to similar/dissimilar treatment with respect to recalls, and better identify what recall policies and practices were in place at the time of each recall. OFCCP also proposes moving this item to Item 3(e) (due to the addition of the layoff subpart discussed above).

Item 3(e) currently requests information on a contractor's terminations, including the name, trade/job title, gender, and race/ethnicity for each terminated employee, and the specific reason for termination. OFCCP proposes expanding this request to include the date of the termination. Having this information will allow OFCCP to better analyze whether employees were subjected to similar/dissimilar treatment with respect to terminations, and better identify what termination policies and practices were in place at the time of each termination. OFCCP also proposes moving this item to Item 3(f) (due to the addition of the layoff subpart discussed above).

- Item 4 currently requests a copy of the company's current EEO Policy, as required by 41 CFR 60-4.3(a)7.f. OFCCP proposes modifying this request to read as follows:

Copies of the company's current Equal Employment Opportunity (EEO) policies, including the EEO Policy implemented pursuant to 41 CFR 60-4.3(a)7.f., antiharassment policies, policies on EEO complaint procedures,

policies on employment agreements that impact employees' equal opportunity rights and complaint processes (e.g., policies on arbitration agreements), and any other EEO policies.

Having this information at the desk audit will help OFCCP ascertain whether there are any provisions in these employment policies and agreements that limit or interfere with employees' rights under OFCCP's antidiscrimination authorities and will allow OFCCP to better determine where to focus its inquiries to have the greatest impact. The proposed changes will also better align Item 4 with the information OFCCP already requests in its supply and service scheduling letter, promoting greater uniformity across OFCCP's programs and enforcement.³¹

- Item 5 in the currently approved scheduling letter reads as follows:

Records of notices to the company's subcontractors about their EEO obligations during the preceding 12 months. 41 CFR 60-4.3(a)(2).

In this 30-day proposal, OFCCP has modified the language in this item for clarity. The item now includes the specific names of the notices referenced in this item. This revision does not change what information contractors must submit but will help OFCCP's investigators and contractors better understand what documentation is required. Item 5 now reads as follows:

Records showing that the contractor included the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" and the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" in its construction subcontracts in excess of \$10,000, as required by 41 CFR 60-4.3(a)2. The records must cover the preceding 12 months.

- Item 8 in the currently approved scheduling letter reads as follows:

Communications with unions and training programs describing the company's EEO obligations and requesting their cooperation in assisting the company in meeting its EEO obligations in the *(as appropriate insert either (1) the name(s) of SMSA(s) or (2) the name(s) of Non-SMSA(s))* during the preceding 12 months. 41 CFR 60-4.3(a)7.f.

In this 30-day proposal, OFCCP has modified the language in this item for clarity and to better align with the applicable regulatory language. OFCCP has also added language asking the contractor to state that it does not have a union or training program, if applicable. This language will help OFCCP's investigators determine whether this item is applicable to the contractor (thereby decreasing follow up requests for confirmation). Item 8 now reads as follows:

³¹FCCM at Figure F-3: Combined Scheduling Letter and Itemized Listing, Itemized Listing Item #24, <https://www.dol.gov/agencies/ofccp/manual/fccm/figures-1-6/figure-f-3-combined-scheduling-letter-and-itemized-listing>.

Documentation showing that the contractor provided notice of the company's EEO policy to unions and training programs and requested their cooperation in assisting the company in meeting its EEO obligations during the preceding 12 months, as provided in 41 CFR 60-4.3(a)7.f. If the company does not have a union or training program, it should note that in its submission.

- Item 9 in the currently approved scheduling letter reads as follows:

Records identifying trade organization affiliations and unions that provide workers for the company's construction contracts in the *(as appropriate insert either (1) the name(s) of SMSA or (2) the name(s) of Non-SMSA)*, including a copy of any applicable collective bargaining agreements. 41 CFR 60-4.3(a)7.f.

In this 30-day proposal, OFCCP has corrected the regulatory citation for this item and added language asking the contractor to indicate that it does not use a union or trade organization to provide workers, if applicable. This language will help OFCCP's investigators determine whether this item is applicable to the contractor (thereby decreasing follow up requests for confirmation). Item 9 now reads as follows:

Records identifying trade organization affiliations and unions that provide workers for the company's construction contracts in the *(as appropriate insert either (1) the name(s) of SMSA(s) or (2) the name(s) of Non-SMSA(s))*, including a copy of any applicable collective bargaining agreements. 41 CFR 60-1.4(a)(6), 41 CFR 60-1.4(b)(6), and 41 CFR 60-1.12; *see* 41 CFR 60-4.3(a)5 and 41 CFR 60-4.3(a)7.d. If your company does not use a union or trade organization to provide workers, please indicate so in your response.

- Item 12 in the currently approved scheduling letter reads as follows:

Documentation of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations for construction subcontracts in the *(as appropriate insert either (1) the name(s) of SMSA or (2) the name(s) of Non-SMSA)* during the preceding 12 months. 41 CFR 60-4.3(a)7.o.

In this 30-day proposal, OFCCP has updated the language in this item to clarify the information OFCCP is requesting. Item 12 now reads as follows:

Documentation of subcontract solicitations made to minority- and female-owned and operated construction contractors, including documentation that the company circulated solicitations to minority and female contractor associations and other business associations for construction subcontracts in the *(as appropriate insert either (1) the name(s) of SMSA(s) or (2) the name(s) of Non-SMSA(s))* during the preceding 12 months. 41 CFR 60-4.3(a)7.o.

- Item 13 currently reads as follows:

A list of training programs your company participated in, including upgrading programs, apprenticeship, and trainee programs, and on-the-job training programs in the *(as appropriate insert either (1) the name(s) of SMSA or (2) the name(s) of Non-SMSA)* during the preceding 12 months. 41 CFR 60-4.3(a)7.e.

In the 60-day proposal, OFCCP proposed adding pre-apprenticeship programs to the list of training programs noted in this request. The language in the current scheduling letter is intended to cover these programs, but adding a specific reference to pre-apprenticeship programs will clarify the scope of this request and ensure uniformity in contractors' submissions.

In this 30-day proposal, OFCCP has also replaced the phrase "your company participated in" with "your company developed and/or participated in" to better align with the regulatory language at 41 CFR 60-4.3(a)7.e. Item 13 now reads as follows:

A list of training programs your company developed and/or participated in, including upgrading programs, pre-apprenticeship, apprenticeship, trainee, and on-the-job training programs in the *(as appropriate insert either (1) the name(s) of SMSA(s) or (2) the name(s) of Non-SMSA(s))* during the preceding 12 months. 41 CFR 60-4.3(a)7.e.

- Item 14 of the currently approved scheduling letter requires contractors to submit the Type 2 - Consolidated Employer Information Report EEO-1 (Standard Form 100 Rev.) from the most recent filing period. This item has been renamed as the EEO-1 Consolidated Report (EEOC Standard Form 100, formerly referred to as a "Type 2" report).³² OFCCP has modified Item 14 to align with this revision. Item 14 now reads as follows:

A copy of your EEO-1 Consolidated Report (EEOC Standard Form 100, formerly referred to as a "Type 2" report) from the most recent filing period.³³ If your company did not file an EEO-1 Report, please provide the total number of individuals employed company-wide as of the date of this letter. 41 CFR 60-1.7(a).
- Item 15 of the E.O. 11246 itemized listing currently requests a copy of the contractor's reasonable accommodation policies and documentation of all accommodation requests received and their resolution, if any, during the preceding 12 months. The Section 503 and VEVRAA itemized listings request that contractors submit documentation of all

³² See 2023 EEO-1 Component 1 Data Collection Instruction Booklet, *Chapter 7, Required Reports for a Multi-Establishment Employer*, available at https://www.eeocdata.org/pdfs/2023_EEO_1_Component_1_Instruction_Booklet.pdf.

³³ If you are a single-establishment employer, please submit a copy of your most recent EEO-1 Single-Establishment Employer Report (EEOC Standard Form 100, formerly referred to as a "Type 1" report). You are only required to submit component 1 of the EEO-1 Report.

accommodation requests received and their resolution for individuals with a disability and disabled veterans, as required by 41 CFR 60-741.80 and 41 CFR 60-300.80.

In the 60-day proposal, OFCCP proposed modifying Item 15 of the E.O. 11246 itemized listing to clarify that the contractor is only required to submit copies of its reasonable accommodation requests and resolutions, if any, if such reasonable accommodation requests and resolutions are different than those submitted in response to the Section 503 and VEVRAA itemized listings. This will prevent contractors from submitting duplicative information when responding to these items.

In this 30-day proposal, OFCCP has also added the sentence italicized below:

A copy of any reasonable accommodation policies and documentation of all accommodation requests received and their resolution, if any, during the preceding 12 months (if different than those submitted in response to Section 503 Item 9 and VEVRAA Item 9 below). This documentation would include requests for accommodations for pregnancy, childbirth, or related medical conditions and accommodations for religious observances and practices. 41 CFR 60-1.12(a). If your company does not have written reasonable accommodation policies or did not receive reasonable accommodation requests during the preceding 12 months, indicate so in your response.

This language will help OFCCP’s investigators determine whether this item is applicable to the contractor (thereby decreasing follow up requests for confirmation).

- Item 16 is a new item that OFCCP included in the 60-day proposal. This item allows OFCCP to verify contractors’ compliance with the regulations at 41 CFR 60-4.3(a)7.k. which require a contractor to validate all tests and other selection requirements where there is an obligation to do so pursuant to the UGESP requirements outlined in 41 CFR part 60–3. In the 60-day proposal, OFCCP proposed the following language:

Identify all tests and selection procedures used in the hiring process for positions in the (as appropriate insert either (1) the name(s) of SMSA or (2) the name(s) of Non-SMSA) during the preceding 12 months. Provide evidence that these tests and selection procedures were validated where necessary in accordance with 41 CFR 60-4.3(a)7.k.

In this 30-day proposal, OFCCP has modified the language to make clear that “all tests and selection procedures” includes technology-based tests and selection procedures such as artificial intelligence, algorithms, or automated systems, as well as any other non-technology-based tests and selection procedures utilized by the company in the hiring process. OFCCP made this clarification in its recent supply and service scheduling letter, and adding this language to this item will better ensure that stakeholders understand that the same requirement applies to construction.

In response to a public comment on this item, OFCCP is also adding a citation to the UGESP regulations at 41 CFR part 60-3 (see discussion of public comments in Part 8). Item 16 now reads as follows:

Identify *all* tests and selection procedures used in the hiring process for positions in the *(as appropriate insert either (1) the name(s) of SMSA(s) or (2) the name(s) of Non-SMSA(s))* during the preceding 12 months. This includes technology-based tests and selection procedures (*e.g.*, artificial intelligence, algorithms, automated systems), as well as *any other* non-technology-based tests and selection procedures (*e.g.*, written tests, work simulations, structured interview questions) utilized by your company in the hiring process. Provide evidence that these tests and selection procedures were validated where necessary in accordance with 41 CFR 60-4.3(a)7.k. and 41 CFR 60-3.

- Item 17 is a new item that OFCCP included in the 60-day proposal. It requires contractors to provide the following information:

Provide evidence that your company monitored personnel and employment-related activities during the preceding year to ensure that seniority practices, job classifications, work assignments and other personnel practices did not have a discriminatory effect and that the EEO policy and the contractor's EEO obligations were being carried out, as provided in 41 CFR 60-4.3(a)7.m.

As described in the 60-day proposal, reviewing this information at the desk audit stage will assist OFCCP in determining whether all scheduled contractors are meeting their monitoring obligations at 41 CFR 60-4.3(a)7.m. The language in the current scheduling letter does not allow for OFCCP to make this determination.

Section 503 Itemized Listing

Below is a summary of the proposed revisions to the Section 503 Itemized Listing:

- Item 2 of the Section 503 Itemized Listing currently reads as follows:

Communications with unions and community organizations regarding the company's EEO obligations and recruitment efforts to hire individuals with disabilities for the immediately preceding AAP year and, if you are six months or more into your current AAP when you receive this listing, provide the communications for the at least the first six months current AAP year.

In this 30-day proposal, OFCCP has modified the language in this item for clarity and to better align with the regulatory requirement outlined in 41 CFR 60-741.44(g)(2). OFCCP has also removed the request for information regarding recruitment via community organizations during the covered period, as that information is already requested in Item 5.

OFCCP has also added language asking the contractor to state that it does not have a union, if applicable. This language will help OFCCP’s investigators determine whether this item is applicable to the contractor (thereby decreasing follow up requests for confirmation). Item 2 now reads as follows:

Documentation showing the contractor provided notice of the company’s EEO policy to unions and requested their cooperation in assisting the company in meeting its EEO obligations during the preceding 12 months, as provided in 41 CFR 60-741.44(g)(2). If the company does not have a union, it should note that in its submission.

- Item 3 currently requests the following information from contractors:

Your most recent assessment of your personnel processes, as required by 41 CFR 60-741.44(b), including a description of the assessment and any actions taken or changes made as a result of the assessment.

OFCCP proposes revising Section 503 Item 3 to read as follows:

Your most recent assessment of your personnel processes, as required by 41 CFR 60-741.44(b). This assessment shall include, at a minimum, a description of the assessment, any impediments to equal employment opportunity identified through the assessment, and any actions taken, including modifications made or new processes added, as a result of the assessment.

Contractors have expressed confusion over what documentation is sufficient for this item, and the more detailed request provides greater specificity about what information contractors must provide to document their compliance. The proposed language will promote uniformity in contractors’ submissions and ensure consistency in what OFCCP is requesting across field offices. OFCCP also recently added this new language to a similar item in the supply and service scheduling letter.³⁴

- Item 4 currently requests information on the contractor’s “most recent assessment of physical and mental qualifications.” In this 30-day proposal, OFCCP has corrected this language to refer to the “most recent assessment of physical and mental job qualifications” which better aligns with the applicable regulatory language at 41 CFR 60-741.44(c).
- Item 5 currently requests the following information from contractors:

³⁴ FCCM at *Figure F-3: Combined Scheduling Letter and Itemized Listing, Itemized Listing Item #25*, <https://www.dol.gov/agencies/ofccp/manual/fccm/figures-1-6/figure-f-3-combined-scheduling-letter-and-itemized-listing>.

Results of the evaluation of the effectiveness of outreach and recruitment efforts taken to identify and recruit qualified individuals with disabilities as described in 41 CFR 60-741.44(f).

In the 60-day proposal, OFCCP proposed revising this item to provide more specificity on the documentation a contractor must submit regarding its Section 503 outreach and positive recruitment efforts. In this 30-day proposal, OFCCP has also added language at the end of the item clarifying the period covered by the request. Item 5 now reads as follows:

Documentation of appropriate outreach and positive recruitment activities reasonably designed to effectively recruit qualified individuals with disabilities, and an assessment of the effectiveness of these efforts, as provided in 41 CFR 60-741.44(f). This includes documentation of all activities undertaken to comply with the obligations at 41 CFR 60-741.44(f), the criteria used to evaluate the effectiveness of each effort, and whether you found each effort to be effective. The documentation should also indicate whether you believe the totality of your efforts were effective. In the event the totality of your efforts was not effective in identifying and recruiting qualified individuals with disabilities, provide detailed documentation describing your actions in implementing and identifying alternative efforts, as provided in 41 CFR 60-741.44(f)(3). Provide this information for the immediately preceding AAP year. If you are six months or more into your current AAP year on the date you receive this listing, also provide information on your outreach and recruitment activities for at least the first six months of the current AAP year.³⁵

The proposed language will clarify the scope of OFCCP's request, promote uniformity in contractors' submissions, and ensure consistency in what OFCCP is requesting across field offices. Further, OFCCP recently added the proposed language to a similar item in the supply and service scheduling letter.³⁶

- Item 8 currently requests the following information from contractors:

The utilization analysis evaluating the representation of individuals with disabilities in each construction trade, or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, as provided in 41 CFR 60-741.45. If you are six months or more into your current AAP year on the date you receive this letter, please also submit information that reflects current year progress.

³⁵ For example, if a contractor's AAP year begins on January 1 and the contractor receives the scheduling letter in October, the contractor must provide data for January through June for the current year in addition to the data for the entire immediately preceding year.

³⁶ FCCM at *Figure F-3: Combined Scheduling Letter and Itemized Listing, Itemized Listing Item #8*, <https://www.dol.gov/agencies/ofccp/manual/fccm/figures-1-6/figure-f-3-combined-scheduling-letter-and-itemized-listing>.

OFCCP proposes revising Item 8 to provide more specificity on the documentation a contractor must submit regarding its Section 503 utilization analysis. The proposed item reads as follows:

The utilization analysis evaluating the representation of individuals with disabilities in each construction trade, or, if appropriate, evaluating the representation of individuals with disabilities in the workforce as a whole, as provided in 41 CFR 60-741.45. If any underutilization of individuals with disabilities is identified, provide a description of the steps taken to determine whether and where impediments to equal employment opportunity exist in accordance with 41 CFR 60-741.45(e). Pursuant to 41 CFR 60-741.45(e) and (f), this description shall include your assessment of personnel processes, the effectiveness of your outreach and recruitment efforts (if different than Item 5), the results of your affirmative action program audit, any other areas that might affect the success of the affirmative action program, and a description of action-oriented programs developed and executed to correct any identified problem areas. Provide this information for the immediately preceding AAP year. If you are six months or more into your current AAP year on the date you receive this listing, provide the information that reflects your progress for at least the first six months of the current AAP year.

Like the items discussed above, contractors have expressed confusion over what documentation is sufficient for Item 8. This additional language will clarify the scope of the request, promote uniformity in contractors' submissions, and ensure consistency in what OFCCP is requesting across field offices. Further, OFCCP recently added this new language to a similar item in the supply and service scheduling letter.³⁷ Adding this language to the construction scheduling letter will promote greater uniformity across OFCCP's programs.

- **Additional Proposed Revisions:** Federally assisted construction contracts are exempt from the Section 503 requirements.³⁸ Therefore, OFCCP proposes adding in language clarifying that companies whose sole contract coverage comes from federally assisted construction contracts are not required to submit the information requested in the Section 503 Itemized Listing.

VEVRAA Itemized Listing

Below is a summary of the proposed revisions to the VEVRAA Itemized Listing:

- Item 2 of the VEVRAA Itemized Listing currently reads as follows:

³⁷ FCCM at *Figure F-3: Combined Scheduling Letter and Itemized Listing, Itemized Listing Item #11*, <https://www.dol.gov/agencies/ofccp/manual/fccm/figures-1-6/figure-f-3-combined-scheduling-letter-and-itemized-listing>.

³⁸ Construction Compliance Frequently Asked Questions, Application of Legal Authorities FAQ #3, <https://www.dol.gov/agencies/ofccp/faqs/construction-compliance#Q3>.

Communications with unions and community organizations regarding the company's EEO obligations and recruitment efforts to hire protected veterans for the immediately preceding AAP year and, if you are six months or more into your current AAP when you receive this listing, provide the communications for at least the first six months of the current AAP year.

In this 30-day proposal, OFCCP has modified the language in this item for clarity and to better align with the regulatory language. OFCCP has also removed the request for information regarding recruitment via community organizations during the covered period, as that information is already requested in Item 5.

OFCCP has also added language asking the contractor to state that it does not have a union, if applicable. This language will help OFCCP's investigators determine whether this item is applicable to the contractor (thereby decreasing follow-up requests for confirmation). Item 2 now reads as follows:

Documentation showing the contractor provided notice of the company's EEO policy to unions and requested their cooperation in assisting the company in meeting its EEO obligations during the preceding 12 months, as provided in 41 CFR 60-300.44(g)(2). If the company does not have a union, it should note that in its submission.

- Item 3 currently requests the following information from contractors:

Your most recent assessment of your personnel processes, as required by 41 CFR 60-300.44(b), including a description of the assessment and any actions taken or changes made as a result of the assessment.

OFCCP proposes revising VEVRAA Item 3 to read as follows:

Your most recent assessment of your personnel processes, as required by 41 CFR 60-300.44(b). This assessment shall include, at a minimum, a description of the assessment, any impediments to equal employment opportunity identified through the assessment, and any actions taken, including modifications made or new processes added, as a result of the assessment.

Like the Section 503 changes discussed above, adding the proposed language will clarify the scope of OFCCP's request, promote uniformity in contractors' submissions, and ensure consistency in what OFCCP is requesting across field offices. Recently, OFCCP also added this level of specificity to its supply and service scheduling letter.³⁹

³⁹FCCM at *Figure F-3: Combined Scheduling Letter and Itemized Listing, Itemized Listing Item #25*, <https://www.dol.gov/agencies/ofccp/manual/fccm/figures-1-6/figure-f-3-combined-scheduling-letter-and-itemized-listing>.

Adding this language to the construction scheduling letter will promote uniformity across OFCCP's programs.

- Item 4 currently requests information on the contractor's "most recent assessment of physical and mental qualifications." In this 30-day proposal, OFCCP has corrected this language to refer to the "most recent assessment of physical and mental job qualifications" which better aligns with the applicable regulatory language at 41 CFR 60-300.44(c).
- Item 5 currently requests the following information from contractors:

Results of the evaluation of the effectiveness of outreach and recruitment efforts that were intended to identify and recruit qualified protected veterans as described in 41 CFR § 60-300.44(f).

In the 60-day proposal, OFCCP proposed revising this item to provide more specificity on the documentation a contractor must submit regarding its VEVRAA outreach and positive recruitment efforts. In this 30-day proposal, OFCCP also proposes adding language at the end of the item clarifying the period covered by the request. Item 5 now reads as follows:

Documentation of appropriate outreach and positive recruitment activities reasonably designed to effectively recruit qualified protected veterans, and an assessment of the effectiveness of these efforts, as provided in 41 CFR 60-300.44(f). This includes documentation of all activities undertaken to comply with the obligations at 41 CFR 60-300.44(f), the criteria used to evaluate the effectiveness of each effort, and whether you found each effort to be effective. The documentation should also indicate whether you believe the totality of your efforts were effective. In the event the totality of your efforts was not effective in identifying and recruiting qualified protected veterans, provide detailed documentation describing your actions in implementing and identifying alternative efforts, as provided in 41 CFR 60-300.44(f)(3). Provide this information for the immediately preceding AAP year. If you are six months or more into your current AAP year on the date you receive this listing, also provide information on your outreach and recruitment activities for at least the first six months of the current AAP year.⁴⁰

This additional language will clarify the scope of OFCCP's request, promote uniformity in contractors' submissions, and ensure consistency in what OFCCP is requesting across field offices. Further, OFCCP recently added this new language to a similar item in the supply and service scheduling letter.⁴¹

⁴⁰ For example, if a contractor's AAP year begins on January 1 and the contractor receives the scheduling letter in October, the contractor must provide data for January through June for the current year in addition to the data for the entire immediately preceding year.

⁴¹ FCCM at *Figure F-3: Combined Scheduling Letter and Itemized Listing, Itemized Listing Item #8*, <https://www.dol.gov/agencies/ofccp/manual/fccm/figures-1-6/figure-f-3-combined-scheduling-letter-and-itemized-listing>.

- Item 8 currently requests information on a contractor’s VEVRAA hiring benchmark. Specifically, the item requests documentation of the hiring benchmark adopted, and the methodology used to establish the benchmark if the contract used the five factors described in 41 CFR 60-300.45(b)(2). OFCCP proposes adding language that clarifies that the request is for the hiring benchmark adopted for the current AAP year. The current language is unclear about the applicable AAP period.
- Additional Proposed Revisions: Like Section 503, federally assisted construction contracts are exempt from the VEVRAA requirements.⁴² Therefore, OFCCP proposes adding in language clarifying that companies whose sole contract coverage comes from federally assisted construction contracts are not required to submit the information requested in the VEVRAA Itemized Listing.

In addition to these changes, OFCCP has also made other minor language changes for clarity (*e.g.*, stating “compliance review” rather than “review”).

Construction Contract Award Notification Requirement Form (Form CC-314)⁴³

The currently approved CC-314 requires contracting officers, applicants, and contractors to submit information relevant to the contract award such as the prime contract number, the name of the awarding Federal agency, applicant, or contractor, the name and contact information of the representative submitting the notification, information on the contractor receiving the award, and basic information on the awarded contract.

OFCCP proposes the following changes:

- Requesting contract type (*i.e.*, whether the contract is a prime contract or subcontract).
OFCCP can use this information when developing its compliance evaluation scheduling list.
- Requesting the NAICS code for the contractor receiving the award, if a prime contract.
Having NAICS code information allows the agency to identify the specific type of construction work being performed. OFCCP will use this information to develop its compliance evaluation scheduling list.
- Inquiring about whether the notice is being submitted on behalf of a nonconstruction contractor subject to the notice requirements.

The regulations at 41 CFR 60-4.2(b)-(c) provide that nonconstruction contractors are subject to the notice requirement if construction work is necessary in whole or in part

⁴² Construction Compliance Frequently Asked Questions, Application of Legal Authorities FAQ #3, <https://www.dol.gov/agencies/ofccp/faqs/construction-compliance#Q3>.

⁴³ OFCCP also refers to this form as the Notification of Construction Contract Award Portal (NCAP) form.

to the performance of their nonconstruction contract. Adding the proposed inquiry will allow OFCCP to determine whether the notice is on behalf of these nonconstruction contractors. Having this information allows OFCCP to better identify the pool of contractors for its scheduling lists.

- Requesting the Unique Entity Identifier (UEI) or DUNS number for awarding entities that are contractors.

The UEI is an alphanumeric identifier assigned to an entity by the System for Award Management (SAM.gov). OFCCP uses the UEI to identify businesses and other entities that do business with the Federal Government. The UEI has replaced the Data Universal Numbering System (DUNS) number, which the Federal Government stopped using in April 2022. OFCCP proposes including the option to provide a DUNS Number to account for those users who may have not yet completed the transition UEI.

In this 30-day proposal, OFCCP also added a sentence instructing the user to insert “unavailable” if it does not have a UEI or DUNS number.

- Requesting the Employer Identification Number (EIN) for awarding entities that are contractors.

Having EIN information allows the agency to align the submitted information with contract information in available data sources such as USASpending.gov. OFCCP will use this information to develop its compliance evaluation scheduling list and determine the agency’s jurisdiction over contractors.

In addition to these changes, OFCCP proposes updating the help desk call in information on the form and proposes other minor language changes for clarity.

2. Use of Collected Material

OFCCP uses the scheduling letter information to verify contractor compliance with the agency’s regulations. During a compliance evaluation, OFCCP may review the contractor’s compliance with specific affirmative actions and, as applicable, the contractor’s AAPs under Section 503 and VEVRAA, along with supporting documentation, personnel data, and other documents relevant to a contractor’s compliance with its nondiscrimination and affirmative action obligations.

OFCCP will use the CC-314 information to verify that contractors are meeting their notification requirements pursuant to 41 CFR 60-4.2, and as an information source for determining jurisdiction and neutrally scheduling construction contractors and subcontractors for compliance evaluations.

To allow for a transition period, OFCCP is requesting to use the currently approved scheduling letter and CC-314 up to 120 days after OMB approves the new collection. The

implementation period will allow OFCCP to update IT systems with the changes described above. OFCCP will provide stakeholder education on the collection and inform stakeholders of the implementation dates through its stakeholder messaging or other means.

3. Use of Information Technology

Pursuant to the Government Paperwork Elimination Act (GPEA), Government agencies must provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable.⁴⁴ OFCCP fulfills the GPEA requirements by permitting electronic recordkeeping of construction contractors' documentation. Generally, contractors are able to develop and use any method that best suits their needs for collecting and maintaining information, as long as they can retrieve and provide to OFCCP the data required by its regulations.

Additionally, as stated above, construction contractors, contracting officers, applicants for construction contracts, and covered nonconstruction contractors are required to give written notice to OFCCP within 10 working days of awarding a Federal or federally assisted construction contract or subcontract in excess of \$10,000, as required by 41 CFR 60-4.2. In 2022, OFCCP launched the NCAP portal, which provides an efficient and secure method to electronically submit CC-314 information. In addition to making the process easier, NCAP eliminates mailing costs for respondents and reduces the burden on Federal staff by decreasing the number of notices requiring manual entry into a database. Respondents who choose not to use the portal will still have the option to submit the construction contract award notification via one of the other approved methods.⁴⁵

4. Description of Efforts to Identify Duplication

The reporting requirements in this ICR result exclusively from E.O. 11246, Section 503, and VEVRAA, and their implementing regulations. No duplication of effort exists between Federal agencies because no other Federal agencies administer and enforce these regulations. Where possible, OFCCP participates in information sharing and standardized requirements, such as the use of the EEO-1 Report data⁴⁶ and the use of UGESP created by EEOC, OPM, DOJ, and DOL.⁴⁷

5. Impact on Small Businesses

44 Government Paperwork Elimination Act (Public Law 105-277, 1998), <https://www.gpo.gov/fdsys/pkg/PLAW-105publ277/pdf/PLAW-105publ277.pdf>.

45 Users who prefer not to use NCAP maintain the option to send their notifications via mail, email, and facsimile to the OFCCP Regional office in which the work will be performed. See <https://www.dol.gov/agencies/ofccp/contract-award-notifications>.

46 The EEO-1 Report is promulgated jointly by OFCCP and the EEOC. See 41 CFR 60-1.7(a)(1). The EEO-1 Report is sponsored by the EEOC and approved by OMB under OMB Control No. 3046-0049. This information collection is available at https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202304-3046-002.

47 The UGESP information collection requirements are sponsored by the EEOC and approved under OMB Control No. 3046-0017. To view this information collection, visit https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202106-3046-001.

Generally, OFCCP minimizes the impact of information collections on small businesses by exempting contractors with fewer than 50 employees from the requirement to create and maintain AAPs.⁴⁸ Additionally, the recordkeeping requirements found at 41 CFR 60-1.12(a), 60-300.80(a), and 60-741.80(a) reduce the two-year recordkeeping requirement to one year for contractors with fewer than 150 employees. Further, when preparing a Section 503 AAP, contractors with 100 or fewer employees need not use AAP job groups for utilization analysis; rather, they have the option to measure representation of individuals with disabilities in their entire workforce.⁴⁹

To minimize impact on contractors who maintain smaller construction contracts, covered contractors are only required to submit the CC-314 to OFCCP when awarding a Federal or federally assisted construction subcontract in excess of \$10,000.⁵⁰ Contracts less than \$10,000 do not require OFCCP notification. Also, submitting the CC-314 through NCAP, which is available to all contractors, reduces financial burden on small businesses by eliminating mailing costs. Those who choose not to use the portal can submit the construction contract award notification via one of the other approved methods.⁵¹

6. Consequences of a Less Frequent Collection

OFCCP achieves its mission through both enforcement actions and compliance assistance. Contractors are obligated to comply with all applicable regulations enforced by OFCCP. To carry out its mission, OFCCP must verify that contractors maintain records and documentation as prescribed in its regulations. Through the construction scheduling letter, OFCCP initiates compliance evaluations on an ongoing basis in order to review contractors' activity and records. Without this ICR, construction contractors' employment data would become outdated, discrimination could be undetected for longer periods, and victims would not receive timely remedies for discrimination.

Less frequent collection of the CC-314 information would lead to outdated contractor employment data and could negatively affect civil rights enforcement activities. Current information is imperative if OFCCP is to accurately assess contractors' compliance with the agency's regulations. Likewise, less frequent collection could undermine the success of contractors' affirmative action activities and undermine OFCCP's ability to provide timely compliance assistance.

7. Special Circumstances

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

⁴⁸ Once OFCCP's AAP requirement covers one establishment of the contractor, all its employees must be accounted for in an AAP whether or not each of the contractor's establishments meet the minimum 50 employee threshold. 41 CFR 60-2.1.

⁴⁹ 41 CFR 60-741.45(d)(2)(i).

⁵⁰ 41 CFR 60-4.1, 4.2(c) and (d)(3).

⁵¹ Users who prefer not to use NCAP maintain the option to send their notifications via mail, email, and facsimile to the OFCCP Regional office in which the work will be performed. See <https://www.dol.gov/agencies/ofccp/contract-award-notifications>.

8. Consultation Outside the Agency

Since 2022, OFCCP has conducted over 300 outreach and compliance assistance events on its construction program. This extensive stakeholder engagement helped inform the proposed changes described in this ICR.

On February 26, 2024, OFCCP also published a 60-day notice in the *Federal Register* (89 FR 14109) seeking comments from the public on this ICR. Particularly, OFCCP sought feedback on the proposed changes to the construction scheduling letter and CC-314. OFCCP did not receive any comments on the proposed NCAP changes. OFCCP received two comments from employer associations on the scheduling letter. OFCCP responds to those comments below:

Requesting Additional Information at the Desk Audit

As described above, OFCCP's proposal requests additional data on a contractor's employment practices such as additional payroll and employment activity data. One commenter disagreed with these changes. It stated that seeking additional data at the desk audit is neither necessary nor efficient. Rather, it believed that OFCCP should request more summary data at the onset of a compliance evaluation, and request more detailed information if necessary at a later stage.

OFCCP disagrees with this comment. Providing additional information at the beginning of a compliance evaluation will significantly improve the efficiency of the desk audit process. Currently, over 90% of desk audits conducted by OFCCP's field offices require further investigation due to missing or unclear information. In these cases, the field offices must seek additional clarification in order to determine contractor compliance, thus delaying the compliance evaluation process and diverting resources. Ultimately, approximately 37% of construction compliance evaluations result in conciliation agreements to resolve violations. By providing complete documentation at the outset, the need for additional requests can be significantly reduced. This approach would allow the agency to focus its efforts on the smaller percentage of cases involving potential violations, ultimately leading to faster and more efficient compliance determinations.

Item 3 (Employment Activity Data)

Both commenters disagreed with Item 3 in the proposed scheduling letter. Item 3 requests data on the contractor's employment activity (applicants, hires, promotions, layoffs, recalls, and terminations) in the covered area during the preceding 12 months. One commenter asserted that this proposal is inappropriate, as it is requiring contractors to submit "actual logs" on their employment activity. Both commenters also noted that the proposal would require construction contractors to provide different information than supply and service contractors, who generally submit employment activity data by aggregated job groups. To better align with the supply and service program, they recommended that OFCCP request the construction employment activity data by aggregated trade. They asserted that aggregated data would be sufficient for conducting a desk audit analysis.

OFCCP disagrees with these comments. First, OFCCP notes that Item 3 in the currently approved scheduling letter already requests employee-level information.⁵² This ICR does not change that existing requirement. The proposal (and the currently approved letter) also requests a “list” of the requested information and does not use the terminology “log.”⁵³ For example, for hire information, a contractor would be required to provide a list that includes the name/employee ID, trade, job title, date of hire, gender, and race/ethnicity for each employee hired during the review period. If an individual is a re-hire, the contractor would also indicate that information in their submission. Contractors generally provide this information in a comma-separated values or excel format, and the proposed ICR continues to encourage this method of submission.⁵⁴

Further, OFCCP disagrees with the commenters’ assertion that Item 3 should request aggregated employment activity data similar to Item 18 in OFCCP’s supply and service scheduling letter. These items serve different purposes and address distinguishable regulatory requirements. In addition to verifying nondiscrimination obligations, OFCCP uses these items to verify the affirmative action requirements that are specific to each program. Supply and service contractors, for example, must conduct self-analyses of their employment activity by job group. See 41 CFR 60-2.12 – 60-2.17. Item 18 in their scheduling letter similarly requests information by job group, allowing OFCCP to compare this data with a contractor’s AAP analyses. Unlike supply and service contractors, construction contractors are not subject to the job group analyses requirements.

In addition, Item 3 includes information that contractors cannot provide by aggregated job group (*e.g.*, the referral source for each applicant). This type of information is crucial for assessing a construction contractor’s compliance with the affirmative action requirements at 41 CFR 60-4.3(a)7, which do not apply to supply and service contractors. By requesting applicant/employee-level data in Item 3, OFCCP can conduct a robust analysis of the construction contractor’s employment practices and verify a contractor’s compliance with its various regulatory requirements. For these reasons, OFCCP declines to adopt the commenters’ recommendation to request the information by aggregated trade groups.

Item 16 (Tests and Selection Procedures)

In the 60-day proposal, OFCCP proposed adding Item 16 which would require the contractor to identify tests and selection procedures used in the hiring process and evidence of validity where necessary. One commenter stated that this information is unnecessary at the desk audit phase, as the Uniform Guidelines on Employee Selection Procedures (UGESP) provides that an employer should first determine if there is adverse impact in their overall selection process before having to examine individual components of the selection process. The commenter asserts that finding adverse impact in the overall selection process is rare, so OFCCP is unnecessarily burdening contractors with the Item 16 request. Another commenter also

⁵² See Item 3 of current construction scheduling letter, available at https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202211-1250-001&icID=246722.

⁵³ *Id.*

⁵⁴ See Page 2 of proposed scheduling letter encouraging contractors to submit the information in an electronic comma separated values format or excel format.

disagreed with OFCCP's proposal to request this information, stating that OFCCP does not need to review this information unless the agency first identifies an adverse impact.

OFCCP disagrees with these comments. First, OFCCP's regulations clearly prohibit contractors from discriminating against employees and applicants in all employment actions, including selection procedures.⁵⁵ OFCCP's regulations also provide that the agency can request all records relevant to determining a contractor's compliance, and that such records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship.⁵⁶ As such, requesting and reviewing contractors' policies and practices for making selection decisions is within the scope of OFCCP's authority, and is an integral part of reviewing contractors' compliance.

Second, with respect to UGESP, the proposed item specifically notes that the contractor is only obligated to provide evidence that these tests and selection procedures were validated "where necessary in accordance with [the UGESP requirements referenced in] 41 CFR 60-4.3(a)7.k." As such, Item 16 is consistent with the UGESP requirements, as it does not require contractors to submit validity evidence if their UGESP analysis did not reveal an adverse impact.⁵⁷ To further clarify this point, OFCCP does agree to add a citation to the UGESP regulations. See Updated Item 16 language noted in Section 1.

Item 17 (Monitoring Personnel Processes)

A commenter also disagreed with OFCCP's proposal to add Item 17. Item 17 requires contractors to provide evidence that their company monitored personnel and employment related activities during the preceding year to ensure that seniority practices, job classifications, work assignments and other personnel practices did not have a discriminatory effect and that the EEO policy and the contractor's EEO obligations were being carried out, as provided in 41 CFR 60-4.3(a)7.m. The commenter disagreed with OFCCP's proposal to request this information, stating that OFCCP does not need to review this information unless the agency first identifies an adverse impact.

OFCCP declines to remove this item from the proposal. As part of their obligations at 41 CFR 60-4.3(a)7.m., covered contractors have an existing obligation to monitor employment practices, as provided in Item 17. This obligation is not contingent upon OFCCP or the contractor first identifying adverse impact. Further, the regulations at 41 CFR 60-4.3(a)7. require the contractor to document its efforts towards meeting this obligation. By adding Item 17, OFCCP will be able to verify a contractor's compliance with these regulations.

Estimated Burden

Both commenters noted that OFCCP's proposal would increase the burden on contractors and asserted that the agency was underestimating the burden for the collection. For example, one commenter stated that the proposal would require additional time and personnel to retrieve

⁵⁵ See 41 CFR 60-1.4, 60-300.5, 60-741.5.

⁵⁶ See 41 CFR 60-1.4(a)(6), 41 CFR 60-1.4(b)(6), and 41 CFR 60-1.12.

⁵⁷ Note this does not prevent OFCCP from requesting validity evidence at a later stage if OFCCP's analysis reveals adverse impact.

and compile the information. Another commenter specifically mentioned the burden associated with providing additional payroll data (Item 2), asserting that most contractors would need substantial time to compile the payroll data and may need additional programs, systems, or personnel to provide the requested information.

With respect to Item 2, OFCCP notes that contractors are already obligated to provide most of the information in this item pursuant to the currently approved scheduling letter. With this ICR, OFCCP has proposed some additional information such as data on overtime pay and bonuses. As detailed in the 60-day proposal, asking for this additional information allows OFCCP to conduct a more robust analysis, where the agency can determine whether there is potential discrimination with respect to all forms of compensation (*e.g.*, disparities in overtime and bonuses), work hours, assignments, and other employment opportunities. Further, OFCCP's regulations already require contractors to maintain this type of information and submit it to OFCCP upon request for the purpose of determining compliance.⁵⁸

OFCCP acknowledges that the precise amount of time each contractor will take to provide the requested information in the collection is difficult to estimate, as contractors vary in terms of structure, resources, and procedures. However, OFCCP bases its estimates on the average time for contractors of all sizes and structures. *See* Burden Discussion in Section 12 below. As such, OFCCP declines to remove the proposed changes or modify its burden estimates.

9. Gift or Payments

OFCCP does not provide payments or gifts to respondents.

10. Confidentiality of Information

Some of the information contractors submit to OFCCP, through either the CC-314 or in response to the construction scheduling letter, may be considered business confidential information or personally identifiable information. OFCCP will treat all records provided by the contractor as confidential to the maximum extent the information is exempt from public disclosure under FOIA, 5 U.S.C. 552. OFCCP will evaluate all information requests pursuant to the public inspection and disclosure provisions of FOIA and DOL's implementing regulations at 29 CFR part 70.

OFCCP safeguards and protects personally identifiable information it receives from contractors to the maximum extent allowable under the law in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). In addition, the regulation at 41 CFR 60-1.20(f) allows a contractor that is concerned with the confidentiality of personally identifiable information such as lists of employee names, reasons for termination, or pay data, to use alphabetic or numeric coding or an index. The coding or index for pay and pay ranges must be consistent with the ranges assigned to each job group for purposes of the compliance evaluation.

⁵⁸ See 41 CFR 60-1.4(a)(6), 41 CFR 60-1.4(b)(6), 41 CFR 60-1.12, and 41 CFR 60-1.43 (describing E.O. 11246 obligations), 41 CFR; 41 CFR 60-300.80 and 41 CFR 60-300.81 (describing VEVRAA obligations); and 41 CFR 60-741.80 and 41 CFR 60-741.81 (describing Section 503 obligations).

11. Questions of Sensitive Nature

Generally, OFCCP does not collect information of a personal nature, such as marital status, religious beliefs, or most other matters commonly considered private when conducting its enforcement, outreach, or compliance assistance activities. OFCCP's regulations do require contractors to list employees and applicants by sex and by race or ethnicity in their employment activity data to evaluate contractors' nondiscrimination and affirmative action efforts. Similarly, contractors invite applicants to self-identify whether they are a protected veteran or have a disability. Contractors, as required by OFCCP's regulations, regularly survey their employees as to whether they have a disability. Contractors inform their employees that they collect and maintain such data for purposes of meeting their nondiscrimination and affirmative action obligations.

During compliance evaluations, OFCCP also regularly requests information from contractors on workplace accommodations received, including reasonable accommodation requests for disability or religious accommodation requests, and their resolution. Where allegations of employment discrimination are present, evidence of a personal nature may become relevant. Under such circumstances, OFCCP may seek evidence concerning race, color, religion, sex, sexual orientation, gender identity, national origin, disability status, or veteran status of job applicants and employees, and the compensation of a contractor's employees, as appropriate. In general, the gathering of such data is unique to each investigation.

As described above, OFCCP has safeguards in place to protect the confidentiality of this information and protects personally identifiable information it receives from contractors to the maximum extent allowable under the law in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a).

12. Information Collection Hour Burden

The sections that follow outline the burden associated with this information collection. OFCCP bases its calculations on the 9,982 construction contractors subject to its regulatory requirements.⁵⁹ Certain wage rates and copying/printing costs have changed since the 60-day proposal. OFCCP has noted those updates, where applicable, below.

Recordkeeping Burden

OFCCP's regulations impose a recordkeeping burden for developing, updating, and maintaining documentation and records related to contractors' efforts to comply with the regulations. The following table breaks down the calculations for the E.O. 11246 construction recordkeeping requirements. The recordkeeping burdens for Section 503 and VEVRAA are already authorized under OMB Control Nos. 1250-0004 and 1250-0005. There is no additional recordkeeping burden associated with the Construction Contract Award

⁵⁹ This estimate is based on FY 2021-2023 USA Spending data on the average number of construction contractors with contracts greater than \$10,000. See USASpending data, available at https://www.usaspending.gov/#/download_center/award_data_archive.

Notification Requirement Form (CC-314) as this recordkeeping burden is covered by the Executive Order 11246 construction recordkeeping requirements.

Recordkeeping Burden for Information Collection Request	
Description	Estimated Burden Hours for Contractors
<p>Equal Opportunity Clause: Section 60-1.4(a)(8) requires contractors to include the equal opportunity (EO) clause in all nonexempt subcontracts. The Federal government supplies the contract clause verbatim, and it may be incorporated by reference or operation⁶⁰ into subcontracts.</p>	<p>OFCCP estimates that one percent of its contractor universe (9,982 x .01 = 100 contractors) will be new contractors annually, and that new contractors will take 15 minutes (.25 hours) to incorporate the EO clause into their contracts. Therefore, the burden for this provision is 25 hours (100 new construction contractors x .25 hours).</p>
<p>Employment Record Retention: Covered contractors are required to maintain records on their employment-related decisions.⁶¹ The EEOC, under OMB Control No. 3046-0017, accounts for the burden associated with all employers with 15 or more employees. Federal construction contractors with 1 to 14 employees are subject to OFCCP’s recordkeeping requirements and are included in this ICR.</p>	<p>OFCCP estimates that there are 6,389 construction contractors that employ 1 to 14 employees.⁶² OFCCP estimates that, on average, contractors expend 2.18 hours meeting the UGESP obligations. Therefore, the burden for this provision is 13,928 hours (6,389 construction contractors x 2.18 hours).</p>
<p>Solicitations: Section 60-4.2 requires all contracting officers, applicants for construction contracts, and covered nonconstruction contractors to include the “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity” set forth in this section in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000.</p>	<p>OFCCP estimates that one percent of its contractor universe (9,982 x .01 = 100 contractors) will be new covered contractors annually. The agency further estimates that new contractors will take 15 minutes (.25 hours) to incorporate the “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity” in all solicitations. Therefore, the burden for this provision is 25 hours (100 new construction contractors x .25 hours).</p>
<p>Affirmative Actions to Ensure Equal Employment Opportunity Specifications: Section 60-4.3(a)7 requires construction contractors to</p>	<p>OFCCP estimates that for first-time contractors it takes 12.44 hours to meet the requirements of Section 60-4.3(a)7. OFCCP also estimates that it takes 8.87 hours for existing contractors</p>

⁶⁰ 41 CFR 60-1.4(d)-(e).

⁶¹ See 41 CFR 60-1.12.

⁶² In FY 2016, USA Spending.gov included a column in its data set for number of employees. In FY 2019, the column for number of employees was removed from the data set. OFCCP does not have an alternative data source to use to determine the number of construction contractors with 1 to 14 employees. The agency continues to use the FY 2016 share as a proxy for the number of construction contractors that employ 1 to 14 employees.

maintain records and documentation demonstrating efforts to comply with the 16 equal employment opportunity specifications.	to meet these requirements. Thus, the overall burden for maintaining records and documentation demonstrating efforts to comply with the 16 equal employment opportunity specifications is estimated at 88,897 hours (12.44 hours x 100 first time contractors = 1,244 hours) + (8.87 hours x 9,882 existing contractors = 87,653).
Total Recordkeeping Burden	102,875 hours

Reporting Burden

OFCCP’s reporting burden, as detailed below, includes providing documentation in response to a construction scheduling letter, notification of subcontract awards (CC-314), filing EEO-1 Reports, reporting foreign visa denials, and notifying the OFCCP Director as prescribed at 41 CFR 60-4.3(a)7.d.

Construction Scheduling Letter - Estimated Reporting Burden Hours for Contractors	
Direct Federal Contracts: OFCCP anticipates that it will conduct approximately 162 annual compliance reviews of construction contractors, and that 122 of these reviews will involve direct Federal contracts. ⁶³	OFCCP estimates that it will take 35 minutes (0.60 hours) to read the letter and instructions and 35.8 hours to retrieve and submit the required documentation. Therefore, the burden is calculated at 4,441 hours (36.4 hours x 122 contractors).
Federally Assisted Contracts: OFCCP anticipates that it will conduct approximately 162 annual compliance reviews of construction contractors, and that 40 of these reviews will involve federally assisted construction contracts.	OFCCP estimates that it will take 35 minutes (0.60 hours) to read the letter and instructions and 19.1 hours to retrieve and submit the required documentation. Therefore, the burden is calculated at 788 hours (19.7 hours x 40 contractors).
Total	5,229 hours

CC-314 (NCAP) Form - Estimated Reporting Burden Hours for Contractors	
Section 60-4.2(c) requires applicants for construction contracts, covered nonconstruction contractors, and federal construction contractors to notify OFCCP within 10 working days of awards of covered contracts and subcontract in excess of \$10,000. ⁶⁴	OFCCP estimates it will take .625 hours (37.5 minutes) to identify the needed information and send the notification to OFCCP. Using data collected from OFCCP’s Construction Contract Award Notification Form, the agency determined that it receives 29,000 notifications of Federal construction contracts

⁶³ The estimated number of annual compliance reviews is based on the average number of scheduled construction reviews in FY 2021-2023, available at <https://www.dol.gov/sites/dolgov/files/ofccp/BTN/sheets/ConstCompEvalQ42023.xlsx>.

	awarded annually. Therefore, OFCCP estimates this burden at 18,125 hours (29,000 awards x 0.625 hours).
Total	18,125 hours

Other Reporting Requirements for Construction Contractors	
	Estimated Burden Hours per Contractor
EEO-1 Reports	Construction contractors with 50 or more employees and a contract of \$50,000 or more are required to file EEO-1 Reports with the Joint Reporting Committee. The burden associated with this information collection is sponsored by the EEOC and approved under OMB Control No. 3046-0007. Therefore, OFCCP includes no additional burden for this requirement.
Notifying OFCCP's Director	Section 4.3(a)7.d requires contractors to notify OFCCP's Director in writing if a union with which a contractor has a collective bargaining agreement impedes a contractor's efforts to comply with EEO and affirmative action requirements. OFCCP has received no notifications during the last three years, thus it estimates the total burden to be negligible.
Visa Denials	Section 60-1.10 requires contractors to report to the Department of State and OFCCP if an employee or prospective employee is denied a visa of entry to a country in which or with which it is doing business, and the contractor believes the denial is due to a basis covered by EO 11246. To date, OFCCP has not received any visa denial notifications related to the existing protected categories. Therefore, OFCCP includes no additional burden for this requirement.
Total	0 hours

Total Reporting Burden Hours for Contractors	
Scheduling Letter	5,229 hours
CC-314 Form	18,125 hours
Other Requirements	0 hours
Total	23,354 hours

Third Party Disclosure to Labor Unions

	Estimated Burden Hours per Contractor

⁶⁴ This requirement includes construction contractors, as explicitly prescribed at 41 CFR 60-4.2(d)3.

Contractors are required to notify its labor organizations that they must comply with EO 11246, VEVRAA, and Section 503, respectively. ⁶⁵	OFCCP estimates it will take 0.5 hours (30 minutes) to compose and 0.5 hours (30 minutes) to distribute the written notification by mail to its labor organizations. Therefore, OFCCP estimates this burden at 9,982 hours (9,982 contractors x 1 hours). ⁶⁶
Total	9,982 hours

Total Burden Hours

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

Activity	Hours
Recordkeeping	102,875 hours
Reporting	23,354 hours
Third-Party Disclosure	9,982 hours
Total	136,211 hours

The following is the costs associated with the time burden described above:

Time Burden	Hourly Rate	Total annual costs for recordkeeping, reporting, and third-party disclosure requirements
136,211 hours	OFCCP obtains an average hourly rate of \$54.90 using a 60 percent and 40 percent split between Management Analyst and Human Resource Manager wages. In order to estimate the total monetized burden on contractors, OFCCP adds an additional 42% to the hourly rate to account for fringe benefits. Therefore, the hourly rate is calculated as follows: \$54.90 (wages) + \$54.90 x 42 % (benefits) = \$77.96.	\$10,619,010 (136,211 hours x \$77.96)

⁶⁵ 41 CFR 60-1.4(a)(4), 60-1.4(b)(1)(4), 60-300.5(a)10, and 60-741.5(a)5.

⁶⁶ This is an overestimation because it assumes that all contractors are party to collective bargaining agreements and that they would use mail distribution, which takes longer than electronic distribution.

Total		\$10,619,010
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The total costs associated with this burden has increased since the 60-day proposal due to changes in the wage rates since the 60-day proposal (\$10,619,010 vs. \$10,367,019).

13. Information Collection Cost Burden (Capital, Start Up, and/or Operating Costs)

OFCCP estimates that contractors will have operating costs (e.g., printing/copying and mailing costs) associated with this collection. The following table breaks down the calculations for these costs, based on these estimates.

Activity	Estimated Copying/Printing Cost for Contractors	Estimated Mailing Cost for Contractors	Total Annual Cost for Copying/Printing and Mailing
Submission of Documentation in Response to Scheduling Letter	OFCCP estimates an annual copying cost of \$35.78 ⁶⁷ ((140 pages x \$.18 per page) x (122 Contractors with Direct Federal Contracts x .01)) + ((70 pages x \$.18 per page) x (40 Contractors with Federally Assisted Contracts x .01)).	OFCCP estimates an annual mailing cost of \$15.96 ((162 scheduled contractors x .01) x \$9.85). ⁶⁸	OFCCP estimates a total annual cost of \$51.74 (\$35.78 + \$15.96).
Submission of CC-314 (NCAP) Form: OFCCP estimates that approximately 10 percent of the 29,000 notifications (2,900 notifications) will be mailed using the United States	OFCCP estimates an annual printing cost of \$1,044 (2,900 notifications x 2 pages/form x \$0.18 per page).	OFCCP estimates an annual mailing cost of \$1,972 (2,900 notifications x \$0.68 per mailing). ⁶⁹	OFCCP estimates a total annual cost of \$3,016 (\$1,044 + \$1,972).

⁶⁷Based on the average cost at major printing/copying stores in May 2024.

⁶⁸The estimated mailing cost is based on the standard cost for mailing a

USPS Flat Rate Envelope,

⁶⁹The estimated mailing cost is based on the standard cost for mailing USPS letters, found at <https://www.usps.com/business/prices.htm>.

Postal Service (USPS).			
Third Party Disclosure to Labor Unions: OFCCP estimates that approximately 10 percent of the 9,982 third-party disclosures (998 third-party disclosures) will be mailed using the United States Postal Service (USPS).	OFCCP estimates an annual printing cost of \$179.64 (998 disclosures x 1 page /disclosure x \$0.18 per page).	OFCCP annual mailing cost of \$678.64 (998 disclosures x \$0.68 per mailing). ⁷⁰	OFCCP estimates a total annual cost of \$858.28 (\$179.64 + \$678.64).
Total	\$1,259	\$2,667	\$3,926

This cost is a decrease from what was included in the 60-day proposal (\$3,926 vs. \$4,067) due to updates in the copying/printing costs since the 60-day proposal.

Total Annual Respondents

		No. of Respondents	No. of Responses per Respondent	Total Responses
Information Collection Instrument	Scheduling Letter and Itemized Listing Reporting	162	1	162
Information Collection Instrument	CC-314 (NCAP) Form	9,982	Varies based on contract awards	Average 29,000 annually
Other Requirement	Recordkeeping	9,982	1	9,982

⁷⁰The estimated mailing cost is based on the standard cost for mailing USPS letters, found at <https://www.usps.com/business/prices.htm>.

Other Requirement	Third Party Disclosure	9,982	1	9,982
Total (duplicated)				49,126
Unduplicated Totals				29,162

14. Cost to the Federal Government

OFCCP estimates the annual cost to the Federal Government as outlined in the table below:

Activity	Estimated Federal Government Burden Hours	Estimated Federal Government Hourly Rate⁷¹	Estimated Federal Government Cost Burden per Contractor
Reviewing Documentation in Response to Direct Federal Contracts Scheduling Letter:	OFCCP staff on the GS scale will spend approximately 19 hours reviewing documentation received in response to each direct Federal contract scheduling letter. The burden is calculated as 2,318 hours (19 hours x 122 contractors).	Hourly rate based on Grade 12, Step 5 on the General Schedule, which represents an average salary for an OFCCP compliance officer plus an additional 69% of wages for fringe benefit costs. $\$40.42 \times 1.69 = \68.31 .	Using an average hourly salary of \$68.31, the total estimated cost for this requirement is \$158,343 (2,318 hours x \$68.31).
Reviewing Documentation in Response to Federally Assisted Contracts Scheduling Letter:	OFCCP staff on the GS scale will spend approximately 11 hours reviewing documentation received in response	Hourly rate based on Grade 12, Step 5 on the General Schedule, which represents an average salary for	Using an average hourly salary of \$68.31, the total estimated cost for this requirement is \$30,056 (440

⁷¹ Hourly rates based on federal worker general schedule rates. See “Salary Table 2024-GS Incorporating the 4.7% General Schedule Increase,” available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2024/GS_h.pdf.

	to each federally assisted scheduling letter. The burden is calculated as 440 hours (11 hours x 40 contractors).	an OFCCP compliance officer plus an additional 69% of wages for fringe benefit costs. $\$40.42 \times 1.69 = \68.31 .	hours x \$68.31).
Reviewing Notifications of Construction Subcontract Awards	OFCCP staff on the GS scale will spend approximately 1 hour per week reviewing notifications of construction subcontract awards. The annual burden is calculated as 52 hours (1 hour x 52 weeks).	Hourly rate based on Grade 13, Step 5, plus an additional 69% of wages for fringe benefit costs. $\$48.07 \times 1.69 = \81.24 .	Using an average hourly salary of \$81.24, the total estimated cost for this requirement is \$4,225 (52 hours x \$81.24).
Total Cost to Federal Government	2,810 hours	Rate Varies	\$192,624

15. Program Changes or Burden Adjustments

OFCCP is requesting OMB approval of **136,211** burden hours which is a decrease in the burden from the previous approval of 157,570 hours. Changes in burden and costs from OMB's last review are reported in the tables below.

Activity	Currently Approved ICR Burden Hours	Proposed ICR Burden Hours	Change	Explanation
Recordkeeping	129,837	102,875	Decrease of 26,962 hours	This change is due primarily to the decrease in the estimated construction contractor universe (as described above, the lower estimate is based on FY 2021-2023 USA Spending data).
Scheduling Letter and Itemized	10,900	5,229	Decrease of 5,671 hours	This decrease is due primarily to a lower estimate for the

Listing				expected number of compliance reviews. As described above, OFCCP's estimate for the proposed collection is based on the average number of scheduled construction compliance reviews in FY 2021-2023.
CC-314 (NCAP) Form	3,174	18,125	Increase of 14,951 hours	This increase is due to a higher estimate for CC-314 report submissions. The new estimate is based on the number of CC-314 submissions OFCCP received in FY 2023, which is higher than the previous ICR estimate.
Third Party Disclosure	12,609	9,982	Decrease of 2,627 hours	This change is due primarily to the decrease in the estimated construction contractor universe (as described above, the lower estimate is based on FY 2021-2023 USA Spending data).
Totals	157,570	136,211	Decrease of 21,359 hours	See explanations above

Activity	Cost of Currently Approved ICR	Cost for Proposed ICR	Requested Change	Explanation
Recordkeeping, Reporting, and Third-Party Disclosure Costs	\$11,321,405	\$10,619,010	Decrease of \$702,395	This decrease is due primarily to the smaller contractor universe and a lower estimate for the expected number of compliance reviews. As described above, OFCCP's estimate for the proposed collection is

				based on the average number of scheduled construction compliance reviews in FY 2021-2023.
Printing/Copying and Mailing Costs	\$10,125	\$3,926	Decrease of \$6,199	This decrease is due primarily to a lower estimate for the expected number of compliance reviews. As described above, OFCCP's estimate for the proposed collection is based on the average number of scheduled construction compliance reviews in FY 2021-2023.
Totals	\$11,331,530	\$10,622,936	Decrease of \$708,594	See explanations above

This estimate differs from the 60-day proposal (\$708,594 vs. \$960,444) due to the updated wage and copying/printing costs described above.

16. Publication of Data for Statistical Use

OFCCP does not publish the data collected by way of the items contained under this information collection as statistical tables.

17. Approval Not to Display the Expiration Date

OFCCP is not seeking approval to not display the expiration date of this collection.

18. Exceptions to the Certification Statement

OFCCP is not seeking exemptions to the certification statement.

B. STATISTICAL METHODS

This information collection does not employ statistical methods.