

**U.S. Department of Labor
Office of Federal Contract Compliance Programs
Construction Compliance Check Letters**

OMB Number 1250-XXXX

A. JUSTIFICATION

The U.S. Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP) is requesting Office of Management and Budget (OMB) approval of a new information collection. Following approval of this request, OFCCP will begin to conduct compliance checks of construction contractors. The compliance check is an investigative method to help contractors comply with OFCCP’s Affirmative Action Program (AAP) and recordkeeping requirements. An annual AAP is fundamental to maintaining an active system capable of providing ongoing equal employment opportunity through affirmative action and ensuring nondiscrimination. In addition, data and accurate records are fundamental to building and monitoring successful affirmative action efforts, as any contractor’s analysis of their personnel activity or progress in meeting aspirational placement goals is only as good as the data used to create the analysis. If OFCCP determines during the compliance check that the contractor has not maintained AAPs, affirmative action specifications, and required records, OFCCP will provide individualized compliance assistance to help the contractor come into compliance and may place the contractor in a pool for a future compliance evaluation. Since the scope of a compliance check is narrower than the scope of a compliance review, OFCCP can reach more contractors without increasing agency resources and each compliance check will impose a smaller contractor burden.

This information collection request (ICR) contains two construction compliance check letters based on contract type, which will notify construction contractors that they have been selected to undergo a compliance check. The letters also will harmonize the types of compliance evaluations across OFCCP’s supply and service and construction programs as OFCCP already is authorized to conduct compliance checks in its supply and service program.¹ However, this ICR only covers the reporting requirements for the documentation that OFCCP will collect from construction contractors during a compliance check.

¹ OFCCP’s supply and service program is approved by OMB under OMB Control No. 1250-0003.

1. Legal and Administrative Requirements

OFCCP administers and enforces the three equal employment opportunity laws², which prohibit employment discrimination and set affirmative action requirements for contractors that meet certain jurisdictional thresholds:³

- Executive Order 11246, as amended (EO 11246),
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), and
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (VEVRAA).

EO 11246 prohibits contractors from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, and national origin. EO 11246 also requires contractors to take affirmative action to ensure that equal opportunity is provided to employment applicants and employees in all aspects of their employment.⁴ Additionally, EO 11246 prohibits contractors from taking adverse employment actions against employment applicants and employees for inquiring about, discussing, or disclosing information about their pay or the pay of their co-workers, subject to certain limitations. EO 11246 applies to contractors and federally-assisted construction contractors who hold a government contract in excess of \$10,000, or government contracts that have, or can reasonably expect to have, an aggregate total value exceeding \$10,000 in a 12-month period. EO 11246 also applies to government bills of lading, depositories of federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. savings bonds and notes in any amount.

Section 503 prohibits contractors from discriminating against employment applicants and employees on the basis of disability and requires contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Its requirements apply to contractors with a government contract in excess of \$15,000.⁵

² OFCCP promulgated regulations implementing these programs consistent with the Administrative Procedure Act. These regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60.

41 CFR 60, available at <https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=b686ff45080d69713c00bf18b651cc37&mc=true&tpl=/ecfrbrowse/Title41/41chapter60.tpl> (last accessed December 14, 2018).

³ OFCCP's jurisdictional thresholds are available at https://www.dol.gov/ofccp/posters/Infographics/files/JurisdnThresholds-7_ENGESQA508c.pdf (last accessed December 14, 2018).

⁴ The 16 affirmative action specifications listed under Section 60-4.3(a)7 describe the required steps that construction contractors must take to ensure nondiscrimination and equal employment opportunity. Construction contractors are not required to develop an AAP under EO 11246. Construction contractors comply with their affirmative action obligations by taking specific affirmative actions that are at least as extensive as the 16 affirmative action specifications found at 41 CFR 60-4.3(a)7.

⁵ 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 (August. 30, 2010).

VEVRAA prohibits contractors from discriminating against protected veterans, namely, disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans. VEVRAA also requires contractors to take affirmative action to employ and advance in employment qualified protected veterans. Its requirements apply to contractors with a government contract of \$150,000 or more.⁶

This ICR outlines the legal authority, procedures, burden, and cost associated with conducting a compliance check of construction contractor records. OFCCP's regulations at 41 CFR 60-1.20, 60-300.60, and 60-741.60 state that the agency may conduct a compliance evaluation to determine if contractors meet their obligations under the regulations. A compliance evaluation may consist of one or any combination of the investigative procedures listed in the regulations (a compliance review, an off-site review of records, a compliance check, and/or a focused review).

Construction contractors currently undergo compliance reviews, which are lengthier and more involved than a compliance check. Upon approval of this ICR, OFCCP anticipates it will schedule a portion of the construction compliance evaluations in the form of a compliance check to determine contractor compliance with the agency's regulations related to maintenance of AAPs and record keeping requirements. The narrower scope of a compliance check carries less burden than a compliance review.⁷ At the same time, OFCCP seeks to gain the option to conduct other types of compliance evaluations, as prescribed in the agency's regulations, to ensure that contractors meet their nondiscrimination and affirmative action obligations.

This ICR contains two collection instruments: (1) a compliance check letter for construction contractors that have a direct federal contract and meet the jurisdictional thresholds under all three laws and, (2) a compliance check letter for construction contractors that are federally assisted.⁸ EO 11246 applies to direct federal construction contracts and federally assisted construction contracts. Section 503 and VEVRAA only apply to direct federal contracts.

The proposed compliance check letter for construction contractors with direct federal contracts requests the following items:

⁶ 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).

⁷ The information collected during the course of a compliance review is exempt from the PRA requirements, 5 CFR § 1320.4.

⁸ A direct federal construction contract is an agreement or modification to an agreement entered into directly with the federal government through one of its agencies for the purchase, sale, or use of personal property or nonpersonal services, where the term "nonpersonal services" includes construction services. A federally assisted construction contract is any agreement or modification which is paid for in whole or in part with funds obtained from the federal government but where the government is not a party to the construction contract. Federally assisted contracts could be funded through, for example, a federal grant, contract, loan, insurance or guarantee.

- Personnel records that list construction trade employment activity (applicants, hires, promotions, layoffs, recalls, voluntary terminations, and involuntary terminations), including the name, job classification, gender, race and/or ethnic designation for each employee or applicant (41 CFR § 60-1.12(a) and (c)).⁹
- Payroll records for all construction trade employees working in the Standard Metropolitan Statistical Area(s) (SMSA) or in the Economic Area(s) (EA) during the specified review period, submitted by project, including each employee's name or ID, gender, race/ethnicity, hire date, trade(s), total hours worked in each trade, overtime hours worked in each trade, wage rate(s) for each trade, apprenticeship status, and employment type (e.g., full-time, part-time, temporary, contract, per diem, day labor).¹⁰
- Examples of job advertisements and postings.¹¹
- Documentation of accommodation requests received and their resolution, if any.¹²
- A copy of the current Section 503 AAP.¹³
- A copy of the current VEVRAA AAP.¹⁴
- Documentation of the data collection analysis.¹⁵
- Documentation of the most recently adopted VEVRAA hiring benchmark.¹⁶

The proposed compliance check letter for federally assisted construction contractors requests the following items:

- Personnel records that list construction trade employment activity (applicants, hires, promotions, layoffs, recalls, voluntary terminations, and involuntary terminations), including the name, job classification, gender, race and/or ethnic designation for each employee or applicant (41 CFR § 60-1.12(a) and (c)).¹⁷
- Payroll records for all construction trade employees working in the Standard Metropolitan Statistical Area(s) (SMSA) or in the Economic Area(s) (EA) during the

⁹ 41 CFR 60-1.12(a) and (c).

¹⁰ *Ibid.*

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

¹² *Ibid.*

¹³ 41 CFR § 60-741.40 through § 60-741.47.

¹⁴ 41 CFR § 60-300.40 through § 60-300.45.

¹⁵ 41 CFR § 60-300.44(k) and § 60-741.44(k).

¹⁶ 41 CFR § 60-300.45(c).

¹⁷ 41 CFR § 60-1.12(a) and (c).

specified review period, submitted by project, including each employee's name or ID, gender, race/ethnicity, hire date, trade(s), total hours worked in each trade, overtime hours worked in each trade, wage rate(s) for each trade, apprenticeship status, and employment type (e.g., full-time, part-time, temporary, contract, per diem, day labor).¹⁸

- Examples of job advertisements and postings.¹⁹
- Documentation of accommodation requests received and their resolution, if any.²⁰

2. Use of Collected Material

OFCCP will use the material to determine contractor compliance with the agency's regulations related to construction contractor recordkeeping requirements and maintenance of AAPs.

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.²¹ OFCCP fulfills the GPEA requirements by permitting electronic recordkeeping of contractors' documentation. Specific to this information collection, OFCCP requires that contractors submit the requested information in an electronic format.

4. Description of Efforts to Identify Duplication

The reporting requirements in this ICR result exclusively from EO 11246, Section 503, and VEVRAA and their implementing regulations. No duplication of effort exists because no other federal agencies administer and enforce these regulations.²²

5. Impact on Small Businesses

Generally, OFCCP minimizes the impact of information collections on small businesses by exempting contractors with less than 50 employees from the requirement to create and maintain AAPs. OFCCP anticipates that the proposed construction compliance check will be especially beneficial to small construction contractors that would otherwise undergo a compliance review. By being able to utilize the compliance check for construction contractors and focus the

¹⁸ *Ibid.*

¹⁹ 41 CFR § 60-1.12(a).

²⁰ *Ibid.*

²¹ Government Paperwork Elimination Act (Public Law 105-277, 1998), available at <https://www.gpo.gov/fdsys/pkg/PLAW-105publ277/pdf/PLAW-105publ277.pdf> (last accessed June 12, 2018).

²² The Employer Information Report (EEO-1) is promulgated jointly by OFCCP and the Equal Employment Opportunity Commission (EEOC), see 41 CFR 60-1.7(a). That report is certified under OMB Control No. 3046-0007 through a collection that is sponsored by the EEOC.

evaluation of the maintenance of AAPs and records as the foundation of successful equal employment opportunity, OFCCP will be able to limit the burden imposed on small contractors.

6. Consequences of a Less Frequent Collection

Contractors are obligated to comply with all regulations enforced by OFCCP. In order to carry out its mission, OFCCP must verify that contractors maintain AAPs, personnel data, and other records and documentation, as prescribed in its regulations. OFCCP initiates compliance evaluations on an ongoing basis in order to review contractor activity and records to confirm that they comply with their obligations.

7. Special Circumstances

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

8. Consultation Outside the Agency

Pursuant to the Paperwork Reduction Act of 1995, as amended (PRA), OFCCP invites the public to submit comments on this proposed information collection. The comments the agency receives will be addressed under this paragraph during the 30-day Federal Register publication of this ICR.

9. Gift Giving

OFCCP does not provide gifts or payments to respondents.

10. Confidentiality of Information

Some of the information contractors submit to OFCCP during a compliance evaluation may be considered business confidential information or personally identifiable information. OFCCP will evaluate all information requests pursuant to the public inspection and disclosure provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and DOL's implementing regulations at 29 CFR Part 70. OFCCP notifies contractors, in writing, whose records are subject to a FOIA request. OFCCP makes no decision to disclose the information until contractors have an opportunity to submit objections to its release.

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.

11. Questions of Sensitive Nature

OFCCP will not request information of sensitive nature from contractors or any other parties during the course of a compliance check. As explained above, compliance checks are a type of compliance evaluation used to confirm that contractors maintain certain records, in accordance with OFCCP’s regulations.

12. Information Collection Hour Burden

OFCCP anticipates that it will conduct approximately 500 annual compliance checks of construction contractors. The following estimate breaks down the reporting burden for both direct contracts and federally assisted contracts.

Letter version: Contractor has a direct federal contract and meets the jurisdiction dollar thresholds for all three programs. OFCCP estimates that the construction contractors in this category will take 30 minutes to read the letter and instructions and 8 hours to retrieve and submit the required documentation. Therefore, the burden is calculated at 2,550 hours (8.5 hours x 300 contractors).

Letter version: Contractors whose sole coverage comes only from federally assisted construction projects. OFCCP estimates that the construction contractors in this category will take 30 minutes to read the letter and instructions and 5 hours to retrieve and submit the required documentation. Therefore, the burden is calculated at 1,100 hours (5.5 hours x 200 contractors).

The total estimated burden for contractors resulting from this collection amounts 3,650 hours.

Burden Summary Table

Activity	Number of Respondents	Frequency	Total Annual Responses	Time Per Response (Hours)	Total Annual Burden (Hours)	Hourly Rate	Monetized Value of Respondent Time
Direct Federal Contracts	300	Once	300	8.5	2,550	\$69.82	\$178,041
Federally Assisted Contracts	200	Once	200	5.5	1,100	\$69.82	\$76,802
<i>Unduplicated Totals</i>	<i>500</i>		<i>500</i>		<i>3,650</i>		<i>\$254,843</i>

OFCCP obtains the average hourly rate of \$47.82 using an 80 percent and 20 percent split between Management Analyst and Human Resource Manager wages²³, respectively, according to data from the Bureau of Labor Statistics.²⁴ In order to estimate the total monetized burden on contractors, OFCCP adds an additional 46 percent rate to the hourly rate to account for overhead and fringe benefits. Therefore, the monetized burden is calculated as follows: $\$47.82 + (\$47.82 \times 46 \text{ percent}) = \69.82 . $3,650 \text{ hours} \times \$69.82 = \$254,843$.

13. Information Collection Cost Burden

OFCCP will require respondents to submit information in response to a construction compliance check in electronic format. As such, there is no cost burden associated with this information collection such as copying or mailing costs.

14. Cost to the Federal Government

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

- OFCCP staff on the Senior Executive Services (SES) scale²⁵ and the General Service (GS)²⁶ scale spent approximately 24 hours creating the compliance check letters. Using an average hourly salary of \$47.58 of staff from various levels that were involved in the creation of the letters, the cost is \$1,667. $\$47.58 + (\$47.58 \times 46 \text{ percent}^{27}) = \69.47 . $24 \text{ hours} \times \$69.47 = \$1,667$.
- OFCCP staff on the GS scale will spend approximately 4 hours reviewing documentation received in response to each direct contract letter. The burden is calculated as 1,200 hours (4 hours x 300 contractors). The cost is \$58,728. $\$32.52 + (\$32.52 \times 46 \text{ percent}^{28}) = \48.94 . $1,200 \text{ hours} \times \$48.94 = \$58,728$.

²³ Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, May 2017, available at https://www.bls.gov/oes/current/oes_nat.htm (last accessed March 1, 2019) (\$44.92/hr Management Analysts and \$59.38/hr Human Resource Managers). The calculation uses an 80/20 split between Management Analyst and Human Resource Manager (\$47.82).

²⁴ Bureau of Labor Statistics, Employer Costs for Employee Compensation, available at <https://www.bls.gov/news.release/ecec.toc.htm> (last accessed March 1, 2019), fringe benefit and overhead costs are an additional 46% of wages.

²⁵ Senior Executive Service, Compensation, available at <https://www.opm.gov/policy-data-oversight/senior-executive-service/compensation/> (last accessed February 11, 2019). OFCCP believes that the contractor staff that will be involved in the gathering and submission of the data belong predominantly in the employment categories of Management Analyst and Human Resource Manager.

²⁶ See “Salary Table 2018-GS Incorporating the 1.4% General Schedule Increase,” available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2018/GS_h.pdf (last accessed February 11, 2019).

²⁷ OFCCP adds an additional 46% of wages for fringe benefit and overhead costs.

²⁸ Hourly rate based on grade 12, step 4 on the General Schedule, which represents an average salary for an OFCCP compliance officer.

- OFCCP staff on the GS scale will spend approximately 2 hours reviewing documentation received in response to each federally assisted letter. The burden is calculated as 400 hours (2 hours x 200 contractors). The cost is \$19,576. $\$33.52 + (\$33.52^{29} \times 46 \text{ percent}) = \48.94 . $400 \text{ hours} \times \$48.94 = \$19,576$.

The cost to the federal government for the first year is \$79,971 (\$1,667 + \$58,728 + \$19,576) and \$78,304 (\$58,728 + \$19,576) for subsequent years.

15. Program Changes or Burden Adjustments

This is a new information collection.

16. Publication of Data for Statistical Use

OFCCP will not publish the data it collects under this information request.

17. Approval Not to Display the Expiration Date

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

18. Exception to the Certification Statement

OFCCP is not seeking exemptions to the certification statement.

B. STATISTICAL METHODS

This information collection does not use statistical methods.

²⁹ *Ibid.*