

VIA E-FILE

July 8, 2011

Debra A. Carr
Director, Division of Policy
Planning and Program Development
Office of Federal Contract Compliance Programs
200 Constitution Avenue, N.W., Room C-3325
Washington, D.C. 20210

RE: Control Number 1250-0003, Notice of Proposed Rulemaking Proposed Extension of the Approval of Information Collection Requirements; Comment Request

Dear Ms. Carr:

St. Jude Children's Research Hospital ("St. Jude") wishes to submit its public comments to the Office of Federal Contract Compliance Programs ("OFCCP") in response to the Notice of Proposed Rulemaking Proposed Extension of the Approval of Information Collection Requirements; Comment Request announcement, which was published in the Federal Register Vol. 76, No. 92, May 12, 2011, p. 27670.

BACKGROUND

St. Jude is a world-renowned healthcare institution recognized for its pioneering research and treatment of children with cancer and other catastrophic diseases. The mission of St. Jude is to advance cures, and means for prevention, for pediatric catastrophic diseases through research and treatment. St. Jude is a unique research center and hospital because, consistent with the vision of our founder, Danny Thomas, no child is denied treatment based on race, religion, or a family's ability to pay. In fact, it is the only pediatric cancer research center where families never pay for treatment not covered by insurance, and it is the only cancer center solely focused on pediatric cancer to be designated by the National Cancer Institute as a Comprehensive Cancer Center. St. Jude also has world-class and internationally-recognized programs in influenza research, sickle cell disease, and other childhood diseases.

In order to fulfill its mission, St. Jude requires a superior, diverse, and well-trained group of clinicians, researchers, postdoctoral fellows, administrators, and information technology specialists. St. Jude has 1 clinical neuropsychologist, 7 histology technicians, 26 staff scientists, and 278 postdoctoral research associates on staff from around the world. St. Jude recruits globally and currently employs 562 non-U.S. residents due to their very unique and specific skill sets. Pay and promotions are based on numerous factors for which discrimination is prohibited under the Civil Rights Act of 1964 which may include degree and quality of education, publications, prestige of publications, research citations, and work experience. These factors are not easily quantifiable in a database, yet they play a large role in hiring, retention, and promotion decisions. St. Jude is an equal opportunity employer and believes that the full utilization of the talents of all persons can be achieved by adopting practices that will assure equal opportunities to all employment candidates.

St. Jude supports OFCCP in its efforts to collect data from Federal contractors in order to enforce affirmative action obligations and non-discriminatory employment practices. However, under the proposed changes, OFCCP is seeking more detailed information from Federal contractors during the desk audit phase of compliance evaluations. These proposed changes would be burdensome on Federal contractors in general, and institutions like St. Jude in particular, and would not provide any further indicators to OFCCP of potential employment discrimination. St. Jude offers the following specific comments.

SPECIFIC COMMENTS

Evaluate whether the proposed collection of information is necessary for the compliance and enforcement functions of the agency, including whether the information will have practical utility.

The proposed collection of information will have limited practical utility (and could be counterproductive in cases such as St. Jude's) because it would likely lead to false indicators of discrimination. St. Jude believes that the information collection by job group and job title could readily indicate a statistical misrepresentation because small sample sizes would lead to skewed results; while collecting information by job group alone may not show indicia of discrimination, analyzing the same information by job title could show misleading indicia of discrimination due to small sample sizes. For example, suppose that there are only three applicants for an anatomic pathology specialist position because of the highly-specialized job functions. The job group sample size is 50, and the job title sample size is one. Under the proposed rule, OFCCP would be collecting information by both job group and job title. Collecting this data would be statistically problematic because the sample size of the job title is far too small. As a result, this methodology would falsely indicate discrimination.

Under the proposed rule, Federal contractors would be required to submit data by job group and job title, instead of job group or job title in the current scheduling letter. As a result, this revised submission would result in the OFCCP obtaining inaccurate reporting data for its analyses related to identifying sex and race discrimination indicators. St. Jude strongly recommends maintaining the current option of providing information by job group or job title.

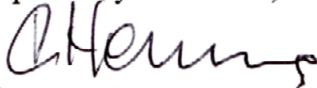
Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

Because the proposed collection of information may falsely indicate employment discrimination, the burden for St. Jude and other academic medical centers would be much higher than estimated because we anticipate responding to much more frequent OFCCP audits. Significant resources and expenses are used to respond to charges of discrimination. To gather and quantify data, run statistical analyses, and explain the results and discuss implications with consultants and legal advisors quickly is burdensome in time and resources, particularly for a charity that relies on public donations for the majority of its operating budget. For example, in response to a recent OFCCP audit, St. Jude spent 200 hours reviewing personnel files, performance reviews, CVs, and applications only to learn from the OFCCP that the findings clearly showed that any indicia of discrimination were unfounded. In fact, after OFCCP considered information provided by St. Jude relating to external and internal job experiences, level of education, and past performance reviews, the OFCCP found no employment discrimination whatsoever. St. Jude is gravely concerned that the OFCCP's proposing changes that would allow the agency to seek additional information from Federal contractors, including proposed changes to its scheduling letter, will materially increase time spent on audits triggered by data that, taken in context, do not reflect any discriminatory practices.

CONCLUSION

St. Jude would like to thank the OFCCP for the opportunity to provide public comments on this notice of proposed rulemaking. In providing these public comments, St. Jude expresses its desire that the OFCCP considers these public comments, which reflect St. Jude's concerns. St. Jude continues to assure equal employment opportunities and a prohibition of employment discrimination but has significant concerns about the methods OFCCP is proposing to use to assess employment discrimination. Please contact me at (901) 595-5686 or clinton.hermes@stjude.org if you have any questions about St. Jude's comments.

Respectively Submitted,



Clinton D. Hermes, JD
Senior Vice President
Chief Legal Officer