



NATIONAL  
INDUSTRY  
LIAISON  
GROUP

December 28, 2015

**VIA INTERNET SUBMISSION**

Ms. Debra A. Carr  
Director, Division of Policy and Program Development  
Office of Federal Contract Compliance Programs  
U.S. Department of Labor  
Room C-3325  
200 Constitution Avenue, NW  
Washington, DC 20210

**Re: National Industry Liaison Group's Comment on  
OFCCP's Proposed Renewal of Information  
Collection Requirements**

**Control Number 1250-0003**

Dear Director Carr:

The National Industry Liaison Group ("NILG") welcomes the opportunity to comment on the OFCCP's Proposed Renewal of Information Collection Requirements published in the Federal Register on October 29, 2015.

By way of background, the NILG was created over thirty years ago as a forum for the Office of Federal Contract Compliance Programs ("OFCCP" or "Agency") and federal contractors to work together towards equal opportunity in the workplace. Throughout the country, local Industry Liaison Groups ("ILGs") have formed to further this unique partnership of public and private sector cooperation to proactively advance workplace equal employment opportunity. The NILG Board is comprised of elected members representing the local ILGs from across the country. Over the years, the NILG and the ILGs, which are comprised of thousands of small, mid-size, and large employers, have reached out to the OFCCP and other agencies, such as the Equal Employment Opportunity Commission ("EEOC"), with mutual goals of fostering a non-discriminatory workplace. In response to the proposal, the NILG seeks to present the views of its constituency and has gathered their input and guidance in preparing these comments.

We commend the OFCCP for, and share its commitment to, promoting equal employment opportunity and fair pay. In our comments below, we offer observations and suggestions designed to ensure all individuals are provided equal employment opportunity while, at the same

time, balancing the contractor community's legitimate interest in ensuring actions taken by the Agency are based upon valid assumptions and minimize administrative burdens.

## **I. General Response to OFCCP's Proposed Renew of the Non-construction Supply and Service Information Collection.**

As noted above, the NILG shares the OFCCP's commitment to equal opportunity in all terms of employment. NILG recognizes OFCCP's need and right to collect information for purposes of the pursuit of equal opportunity. NILG does not take issue with the Agency's ability to collect information, but it does have concerns about the way in which the Agency seeks to collect it and what it proposes to do with the information once collected.

OFCCP's current scheduling letter was previously approved by OMB September 30, 2014. As set forth in the invitation for comments on its Proposed Renewal of Information Collection Requirements, OFCCP seeks to modify not the type of information collected, but what the Agency can do with the information once submitted.

As part of its renewal request, OFCCP also updated the number of hours it estimates it will take contractors to comply with the information request.

As discussed below, the NILG respectfully questions OFCCP's authority to unlimited information sharing as well as the Agency's burden estimate for a contractor's response to the twenty-two point Itemized Listing.

## **II. Responses to Specific Sections in the ICR**

### **A. The proposed sharing of audit information with other agencies for any reason including enforcement is an improper expansion of OFCCP's authority**

Perhaps the largest change to the proposed scheduling letter is the inclusion of a statement informing federal contractors who receive the letter notifying them of the initiation of an audit by the Agency, that they should

“[p]lease also be aware that OFCCP may use the information you provide during a compliance evaluation in an enforcement action and may share such information with other federal government agencies to promote interagency coordination and collaboration.

Finally, the public may seek disclosure of the information you provide during a compliance evaluation. In response, OFCCP will make any public disclosure consistent with the provisions of the Freedom of Information Act.”

In short, it appears these proposed changes seek to expand OFCCP's authority to share contractor data and other information with other agencies and possibly third parties for seemingly unlimited reasons, including enforcement. This is concerning given the sensitive and confidential nature of information submitted by contractors during a compliance review, including pay data,

employment activities, and contact information of employees, former employees and applicants. The NILG is concerned about the actual information shared, as well as the timing (before, during or after an audit), and the Agency's purpose for sharing.

We recognize that the Equal Employment Opportunity Commission (EEOC) shares closed charges with the OFCCP as part of the Memorandum of Understanding (MOU) between the agencies. However, that information is clearly limited and does not include case files, interview notes, witness information, and the like.

The NILG requests OFCCP provide a detailed explanation of what information will be shared to what agency, the timing of the sharing, the processes OFCCP will develop to protect any and all confidential information as well as establish a protocol for notifying the contractor when its information is being shared. In addition, NILG strongly encourages OFCCP to adopt a protocol by which the contractor can object to the dissemination of information, much like the process under FOIA. As a note, if the information is similar or the same as to what is found in the Department of Labor's [data enforcement database](#) or found in OFCCP's [Cleared EEO Establishment](#) database, the NILG would not object to the sharing of publically available data only.

#### **B. OFCCP Underestimates the Burden of the Information Collection Request on Contractors**

In addition to concerns with the proposed substantive change to the Scheduling Letter, the NILG has concerns with the OFCCP's revised burden estimates associated with the information collection. The Notes to Reviewer explain the time burden "includes the time contractors spend responding to the Scheduling Letter and Itemized Listing." The OFCCP also explains that the ICR does not include the recordkeeping burden estimates for compliance with the information collections in VEVRAA and Section 503 because Control Numbers 1250-0004 and 1250-0005, respectively. OFCCP further states that most contractors are repeat contractors and imply that they should have systems in place for all the work required under all the regulations, noting that only 1% of the contractor community is made up of new contractors.

OFCCP states in the Notes it estimates it will take contractors "9,559,739 hours in combined recordkeeping, reporting and third party disclosure burden hours for compliance with Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) (VEVRAA) by non-construction (supply and service) Federal contractors."

We believe from discussions with our members that the burden may be up to five times or more than what OFCCP reports especially given the fact OFCCP estimates the range of contractors to span from 104,545 to "nearly 200,000 (p. 15) and admittedly does not take into consideration compliance with the recordkeeping obligations of VEVRAA and Section 503. As a result, the NILG requests OFCCP review and revise its burden estimates.

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We thank the OFCCP for its consideration of our comments and suggestions. If the Agency should wish to discuss this Commentary Letter, please contact Mickey Silberman, NILG Board Counsel, at (303) 225-2400 or [silbermanm@jacksonlewis.com](mailto:silbermanm@jacksonlewis.com).

Respectfully submitted,

The National Industry Liaison Group Board



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