



NATIONAL  
INDUSTRY  
LIAISON  
GROUP

December 4, 2018

**VIA ELECTRONIC SUBMISSION**

Mr. Harvey D. Fort  
Acting Director, Division of Policy and Program Development  
U.S. Department of Labor  
Office of Federal Contract Compliance Programs  
200 Constitution Avenue NW  
Room C - 3325  
Washington, DC 20210

**Re: National Industry Liaison Group's Comment on  
OFCCP's Contractor Recognition Program—  
Excellence in Disability Inclusion Award.  
OMB Number: 1250**

Dear Mr. Fort:

The National Industry Liaison Group (NILG) Board welcomes the opportunity to comment on the Office of Federal Contractor Compliance Program's (OFCCP) proposed Contractor Recognition Program—Excellence in Disability Inclusion Award. OMB Number: 1250-.OMB Reference Number 1250-0006.

By way of background, the NILG was created over 30 years ago as a forum for the OFCCP and federal contractors to work together towards equality 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 across the country, 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. Therefore, in response to the Information Collection Request, the NILG seeks to present the views of well over 60 local ILGs and their members.

As a preliminary matter, we commend the OFCCP for, and share its commitment to, promoting equal employment opportunity. In our comments below, we offer observations and suggestions designed to enable federal contractors to continue to meet their compliance obligations while minimizing administrative burdens.

The NILG agrees with the OFCCP that recognition for best practices in disability employment is laudable and worthwhile. However, the requirements for submission are very complex, burdensome, and time consuming, especially for organizations that have limited HR resources and compliance operations. Many organizations that do highly regarded work in disability employment will not have the time or resources to complete the nomination form and provide the required information.

Rather than requiring a lengthy and burdensome nomination process, the NILG recommends that the OFCCP use the information already in its possession and allow Compliance Officers to make nominations based on the results of compliance evaluations. For example, when the OFCCP was administering the previous EVE award, OFCCP Compliance Officers were the nominating officials. Any contractor that otherwise wanted to compete for an EVE award would voluntarily submit to a compliance evaluation. Therefore, as the OFCCP will be conducting focused reviews on compliance with Section 503 of the Rehabilitation Act, the OFCCP will have an abundance of nominees for an award in any given year. The OFCCP will also have access to any of the violation information through the various MOUs the agency has implemented such other enforcement agencies. This approach will also be efficient in that the information provided in a compliance evaluation can be easily adapted for nominations.

With regard to the award as proposed by the OFCCP, the NILG has a number of questions and concerns about the proposed nomination requirements themselves and requests the OFCCP to provide more detail in any final version.

First, the NILG believes that joint public service announcements, work with ODEP and the OFCCP in a peer-to-peer mentoring program, and/or development of best practices should not be mandatory requirements for the recipients of the award. These are extremely burdensome obligations that will effectively dissuade many contractors with commendable programs from applying for the award. Even if ultimately required for the awardees, those contractors receiving only honorable mention recognition should be excluded from these onerous requirements.

Second, it is not clear whether multiple establishments of a contractor can be nominated in a year or even in a two-year period. Many times, a contractor will have overall guidelines for disability employment inclusion but will cascade the responsibility for implementation to the local level. Programs that may work at one location may not at another; thereby, a contractor could have a number of programs that are specifically local to the establishment. The nomination process should address whether more than one establishment of a contractor can be considered.

Third, our members who have functional affirmative action plans (FAAPs) are requesting clarification on the definition of an establishment for purposes of the award. A FAAP typically includes multiple locations and multiple EINs. If FAAPs are eligible for the award, the NILG requests clarity as to how the OFCCP will treat the contractor and the establishment, when multiple establishments could be nominated and are pursuing different disability employment programs.

Further, the NILG questions why “contractor establishments that received, or are otherwise covered by, a moratorium through another OFCCP incentive or recognition program within the

last two calendar years are not eligible.” The NILG submits that there is no compelling reason to exclude such contractors from eligibility. A contractor’s prior recognition on another basis should not preclude eligibility for an award recognizing disability inclusion.

In addition, for contractors with 100 or fewer employees, the NILG requests further clarification as to why the OFCCP seeks information on whether the contractor measures its disability representation by job group or workforce, as either method is allowed under the regulations.. The NILG believes that any and all disability employment programs that a small contractor implements should be the focus of the evaluation of the award, not the methodology to determine whether the utilization goal has been met. If one method is preferred over the other, then contractors should be advised of that.

Also, the above begs the question if the quantifiable impact of the program or initiative on attaining or demonstrating significant progress toward attaining the aspirational seven percent goal is code for actually meeting or exceeding that the goal. Therefore, would any contractor who has made incremental improvements in the disability participation rate be eligible for recognition regardless of the programs put in place? Or to state it another way, can a contractor’s establishment be considered for the disability practices themselves, even if the practice is providing slow incremental change?

The NILG has a concern with the certification requirement:

a certification that the nominated contractor establishment is currently in compliance with its Section 503 and EO 11246 obligations, and VEVRAA if applicable, and has no unresolved (i.e., violations that are in litigation, violations in an open conciliation agreement, and violations in a pending compliance review) OFCCP violations; and a certification that the nominated contractor establishment has no adverse decisions by a court, ARB, or ALJ related to any of the below laws, and is not currently under monitoring related to the same, for the three years prior to its nomination package submission for any of the following:

- Section 503;
- EO 11246;
- VEVRAA, if applicable; and
- ADA.

The definition of “violation” appears very broad. First, violations of Executive Order 11246, VEVRAA, and the ADA generally have no bearing on disability compliance under Section 503 and should not be relevant for an award for recognition of disability inclusion. In addition, “violations” cited by the OFCCP that are not finally adjudicated or resolved, such as those in “a pending compliance review,” should not be considered as the contractor has not exhausted all avenues of review and/or appeal. The NILG requests clarification whether the compliance is simply for the contractor establishment or for the contractor. Although the wording is nominated contractor establishment, one establishment of a contractor may be in full compliance, but another may not. The NILG requests the OFCCP to clarify impact, if any, of a contractor’s compliance in respect to the nomination of a contractor’s establishment.

This issue of certification also arises for winners of the award. The OFCCP proposes to require recipients to certify their compliance with EO 11246, Section 503, and VEVRAA, if applicable, each year during the two-year moratorium on compliance evaluations. The NILG requests that the OFCCP clarify what this certification means and whether it is under oath.

The OFCCP also requests a nominated contractor provide statements of support from disabled applicants or employees. Contractors are required to keep the self-identification information of applicants and employees for reporting purposes, and that information must be maintained confidentially. If a contractor approaches applicants or employees who have self-identified as disabled for the purposes of providing such statements, it may erode their confidence in the confidentiality of the self-identification process. This may, in turn, result in a decrease in those willing to self-identify. Thus, the value of such statements in light of the potential unintended consequences is questionable.

In addition, the OFCCP requests statements from disability employee resource groups (ERGs), if they exist. If they do not, the NILG requests clarification on whether the OFCCP expects contractors to establish them as best practices in order to be considered for the award. Many organizations do not have ERGs or the resources to develop these type of diversity programs.

The OFCCP also proposes to provide additional points for those contractors with apprenticeship programs. Although the NILG agrees that apprenticeship programs are an important tool for opening doors for all types of individuals, the program itself may have no relation to disability employment practices. Therefore, the NILG requests clarification as to how the three points will be granted for those nominations identifying apprenticeship programs and why the automatic award of points is warranted without a connection to disability inclusion.

The NILG has a question about confidentiality in providing information for the award. Will this information be subject to a Freedom of Information Request (FOIA), or will there be a “safe harbor” for keeping the information submitted confidential? If there is no protection from FOIA disclosures, many contractors will find this a deterrent to applying. The NILG has a concern that the information provided could be used in furtherance of other investigations of the contractor, those that may be known and those that may not. Again, the NILG requests clarification as to whether any safe harbor will be established so the information submitted for the award cannot be used in any other manner or means.

The NILG requests more information as to how the Executive Review Committee (ERC) will be selected. Will there be a list of “qualified non-profit disability rights organizations” from which members are chosen? If so, how are those organizations selected?

The NILG agrees that the evaluation process should be conducted “blind” in that the names of the nominated contractor establishment would be unknown to the reviewers.

Finally, the NILG requests clarification as to the rating system on the 5-point scale. Will there be an evaluation guide to provide the criteria for each numeric value that will allow for consistency in evaluation among the various ERC members. Further, as the recognition program continues, will the criteria be adjusted and evaluated for relevancy and validity?

## **Conclusion**

The NILG agrees with the OFCCP that recognition for best practices in disability employment and inclusion is laudable and worthwhile. There are many contractors who are implementing disability employment programs and practices that are leading edge and inclusive and that have achieved remarkable results for the disabled community. However, for the reasons set forth above, we believe that there are a number of issues that need to be reviewed before implementation of this proposed award program, such as burden in the submission process, confidentiality, certifications, and other deterrents to potential awardees.

The NILG also recommends that the OFCCP again take the lead in nominating a contractor for the disability inclusion award, similar to the EVE award in the past, by having Compliance Officers make the nominations based on the results of compliance evaluations that have been conducted. As the OFCCP will be conducting focused reviews on Section 503 compliance, the OFCCP should have an abundance of nominees for an award in any given year. This approach will also be efficient in that the information provided in a compliance evaluation can be easily adapted for nominations.

\*

\*

\*

We thank the OMB in advance for its consideration of our comments and suggestions. If the OMB should wish to discuss this request, please contact Cara Crotty, NILG Board Counsel, at 803.256.3200 or [ccrotty@constangy.com](mailto:ccrotty@constangy.com).

Respectfully submitted,

*Paul McGovern*

Paul McGovern  
Chair, National Industry Liaison Group