



December 2, 2019

Via eRulemaking Portal @ regulations.gov

Harvey D. Fort
Deputy Director
Division of Policy and Program Development
Office of Federal Contract Compliance Programs
200 Constitution Avenue NW
Room C3325
Washington, D.C. 20210

**Re: National Industry Liaison Group's Comment on OFCCP's Proposed Renewal of the Approval of Information Collection Requirements
OMB Control Nos. 1250-0004 and 1250-0005**

Dear Mr. Fort:

The National Industry Liaison Group ("NILG") welcomes the opportunity to comment on the Information Collection Request published in the October 3, 2019 Federal Register regarding the OFCCP's proposal to renew the Office of Management and Budget's approval of information collections under the Vietnam Era Veterans' Readjustment Assistant Act (OMB Control No. 1250-0004) and Section 503 of the Rehabilitation Act of 1973 (OMB Control No. 1250-0005) ("Proposals").

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 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 U.S. Equal Employment Opportunity Commission, with mutual goals of fostering a non-discriminatory workplace. Therefore, in response to the Proposal, the NILG seeks to present the views of well over sixty local ILGs and their members.

We commend the OFCCP for, and share its commitment to, promoting equal employment opportunity and non-discrimination of applicants and employees based on race, color, religion,

sex, sexual orientation, gender identity, national origin, and veteran and disability status. In our comments below, we respectfully offer observations and suggestions designed to ensure the OFCCP is able to carry out its duty to review contractor practices and evaluate the opportunities and treatment these individuals are afforded while, at the same time, balancing the contractor community's legitimate interest in ensuring the Agency receives information reflective of the employer's actual workplace policies and workforce and minimizing administrative burdens.

I. Proposed Changes to Voluntary Self-Identification of Disability Form

The NILG concurs with the majority of the OFCCP's proposed changes to the Voluntary Self-Identification of Disability Form, especially the reformatting to include all required information on one page and the removal of the reasonable accommodation notice, which has potential to create confusion. However, we suggest the following revisions:

A. In the first paragraph, we recommend changing the sentence, "Identifying yourself as an individual with a disability is voluntary, and we hope that you will choose to do so," by adding "if you meet the definition of an individual with a disability" to the end of the sentence. Such additional language clarifies that employers only desire that employees and applicants who qualify as an individual with a disability to self-identify.

In addition, the NILG requests that these sentences be modified from:

We must make reasonable efforts to have at least 7% of our workforce be individuals with disabilities. To help us measure how well we are doing, we invite you to tell us if you have a disability or if you ever had a disability.

to:

We are required to report general demographic information, including disability status, to comply with federal government reporting obligations, and we invite you to tell us if you have a disability or if you have ever had a disability. Please note that any information provided is reported in the aggregate, and no person will be individually identified.

The NILG submits that the specific percentage goal is not relevant to the self-identification respondents and that applicants and employees should be expressly informed that their disclosure will not result in personally identifying information being reported to the government or elsewhere.

B. In the second paragraph, we recommend deleting "Again" from the beginning of the third sentence. The prior reference regarding maintaining self-identification forms in a private and confidential manner pertained to applicants. We believe that the inclusion of "Again" in this sentence is confusing and unnecessary.

C. The NILG suggests that "depression or anxiety" and "migraine headaches" be removed from the list of examples of disabling conditions. While these conditions may, in many cases, be considered a disability, these are terms that have colloquial, everyday usage outside of a

medical context and may not always constitute a disability when used informally. The NILG submits that inclusion of these terms may create confusion for applicants, employees, and contractors. For example, if “depression” or “anxiety” is included, an individual who occasionally feels depressed or anxious might assume that he is an individual with a disability even though he has never received a medical diagnosis or even if the condition does not substantially limit a major life activity. These terms are too nebulous to be included in the list of *per se* disabilities. Additionally, an individual can experience migraine headaches on an infrequent or irregular basis and not be substantially limited in a major life activity. While most of the examples provided by the OFCCP are appropriately illustrative of conditions that would be considered a disability *per se*, these three examples are not and should not be included based on the likelihood to cause confusion.

D. The NILG recommends that the OFCCP modify the second option under “Please check one of the boxes below” from “No, I don’t have a disability” to “No, I don’t have a disability or history/record of a disability.” This would make this option consistent with the language of the first option and avoid the possibility that an individual believes that she must currently have a disability to select the second option. The NILG further recommends that the font of all of the options be in both upper and lower case, instead of all upper case, to improve ease of reading and comprehension.

E. The addition of “Employee ID, if applicable” after “Name” would allow contractors the ability to more easily match the completed form to the correct employee. Many contractors employ multiple individuals with the same name, and additional information is necessary to differentiate between respondents. Thus, the NILG requests that the OFCCP include such language or allow contractors the option to manually add it to the form.

II. Accuracy of OFCCP’s Estimates of Burden

The NILG believes that the OFCCP’s Proposal underestimates the burden on contractors in many instances. To assess the burden imposed by these various requirements, the NILG surveyed its constituency of federal contractors. The information below incorporates the information obtained from the responses to this survey.

A. Pre- and Post-Offer Invitation to Self-Identify (Section 503)

The OFCCP states:

Section 60-741.42(a) requires contractors to extend a pre- and post-offer invitation to self-identify as an “individual with a disability.” OFCCP estimates that contractors working at the company level will take 1.5 hours to review and retrieve the revised form, save it, and incorporate it into their application process. Because of updates made to the “Voluntary Self-Identification of Disability” form, the estimated burden in this information collection applies to all contractor parent companies, or 24,147 contractor companies. The burden for this provision is 36,221 hours (24,147 contractor companies × 1.5 hours = 36,221 hours).

(Supporting Statement, OMB Control No. 1250-0005, p. 9).

The NILG's constituents describe processes that require significantly more than 1.5 hours to incorporate the revised self-identification form into their existing systems. In fact, none of our respondents indicated that this task would take 1.5 hours or less. Updating electronic forms and systems will require the involvement of internal and external resources, testing of systems, and programming changes. Some constituents believe that this process will take 10 to 20 hours.

B. Employee Invitation to Self-Identify (Section 503)

The OFCCP states:

Section 60-741.42(c) requires contractors to invite incumbent employees to self-identify. This invitation to incumbent employees shall be extended the first year the contractor becomes subject to the requirements of this section and at five-year intervals, thereafter. OFCCP estimates that it will take contractors 1 hour to conduct the invitation to self-identify employee survey. This includes the time needed to set up procedures to conduct the invitation, distribute communications, and collect and track self-identification forms. The estimated annual burden for this provision is 23,564 hours (117,819 contractor establishments \times 1 hour/5 years = 23,564 hours).

OFCCP further estimates that it will take contractors 15 minutes to maintain self-identification forms. This time includes either manually storing the forms in a filing cabinet or saving them to an electronic database. The burden for this provision is 29,455 hours (117,819 contractor establishments \times 15 minutes/60 = 29,455 hours).

(Supporting Statement, OMB Control No. 1250-0005, pp. 9-10).

The majority of NILG constituents report that the process of inviting existing employees to self-identify takes more than 4 hours. Various individuals are involved in approving the communication to employees, updating forms, and ensuring that the electronic process is functioning properly. NILG survey respondents estimate that this process takes longer than 15 minutes. Only 17% agreed with the OFCCP's assessment; the remainder felt that more time would be necessary to comply with the recordkeeping requirements. This especially true for contractors that conduct the surveys through a manual, rather than electronic, process.

C. External Dissemination of Policy, Outreach and Positive Recruitment (Section 503)

The OFCCP states:

Section 60-741.44(f)(4) requires a contractor to document all outreach activities it undertakes for individuals with disabilities, and retain these documents for a period of 3 years. OFCCP estimates that it will take contractors 10 minutes to maintain the outreach and recruitment documentation that would typically be generated as a result of their obligations pursuant to other provisions in the regulations. Therefore, the recurring burden for this provision is 20,029 hours (117,819 contractor establishments \times 10 minutes/60 = 20,029 hours).

(Supporting Statement, OMB Control No. 1250-0005, p. 10).

Very few of the NILG survey respondents agreed with the OFCCP's burden estimates. Contractors note that this is an ongoing activity, which continually takes time and resources. Most contractors estimate that retaining documentation of outreach activities towards individuals with a disability takes 2 to 5 hours per year per establishment.

D. Audit and Reporting System (Section 503)

The OFCCP states:

Section 60-741.44(h)(1)(vi) requires contractors to document the actions taken to meet the requirements of 60-741.44(h), as mandated in the current regulations. OFCCP estimates that it will take contractors 10 minutes to document compliance with this existing provision. Documentation may include, as an example, the standard operating procedure of the system including roles and responsibilities, and audit and reporting timeframes and lifecycles. The annual recordkeeping burden of this provision is 20,029 hours ($117,819 \text{ contractor establishments} \times 10 \text{ minutes}/60 = 20,029 \text{ hours}$).

(Supporting Statement, OMB Control No. 1250-0005, p. 10).

Most of the NILG survey respondents indicate that documenting compliance with the audit and reporting system requirements take hours or weeks, not minutes. The OFCCP generally expects contractors to provide a detailed and tailored analysis of its processes; only a cookie-cutter approach can be accomplished in the few minutes that the OFCCP estimates. The NILG submits that this is not a reasonable assessment.

E. Data Collection and Analysis (Section 503)

The OFCCP states:

Section 60-741.44(k) requires contractors to collect and analyze certain categories of data. OFCCP believes that most contractors have the capability to conduct the required calculations electronically. However, some companies may have to calculate this information manually. Therefore, OFCCP estimates that the average time to conduct the analysis and maintain the relevant documentation would be 1 hour 25 minutes. Relevant documentation could include the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations. The recurring burden for this provision is 167,303 hours ($117,819 \text{ contractor establishments} \times 85 \text{ minutes}/60 = 167,303 \text{ hours}$).

(Supporting Statement, OMB Control No. 1250-0005, pp. 10-11).

The data collection analysis requires contractors to report annually for each establishment: (1) the number of applicants who self-identified as an individual with a disability; (2) the total number of job openings; (3) the total number of jobs filled; (4) the total number of applicants for all jobs; (5) the number of applicants with a disability that were hired; and (6) the total number of applicants hired. Determining the specifics for each of these categories takes careful assessment and evaluation of multiple data components. Most of the NILG survey respondents report that completing this process each year takes well over 5 hours for each establishment.

F. Utilization Goal (Section 503)

The OFCCP states:

Section 60-741.45 requires contractors to conduct a utilization analysis to evaluate the representation of individuals with disabilities in each job group within the contractor's workforce with the utilization goal established in paragraph (a) of this section. OFCCP estimates that contractors will take 1 hour to conduct the utilization analysis. The burden for this provision is 117,819 hours (117,819 contractor establishments \times 1 hour = 117,819 hours).

(Supporting Statement, OMB Control No. 1250-0005, p. 11).

Conducting an appropriate and accurate utilization analysis of individuals with a disability involves a variety of different data components, calculations, and assessments. Contractors must ensure that all employees are counted in the correct AAP establishment as well as the correct job group. Those figures must then be compared to the number of employees that self-identified as an individual with a disability. Most of the NILG survey respondents state that this process takes between 1 to 5 hours per establishment.

G. Applicant Self-Identification Completion (Section 503)

The OFCCP states:

Applicants for available positions with covered contractors will have a minimal burden complying with Sections 60-741.42(a) and (b) in the course of completing their application for employment with the contractor. These sections require contractors to invite all applicants, pre- and post-offer, to self-identify whether or not they are an individual with a disability. OFCCP estimates that there will be an average of 24 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision is 3,393,187 hours (117,819 contractor establishments \times 15 vacancies \times 24 applicants \times 5 minutes/60 = 3,393,187 hours).

(Supporting Statement, OMB Control No. 1250-0005, p. 12).

NILG constituents estimate that the average amount of time it takes an applicant and new hire to complete the self-identification form is between 5 and 10 minutes. However, none of survey respondents estimate the number of job openings to average 15 or less. The majority of contractors have hundreds or thousands of job openings during any given year. Further, most survey respondents advise that job vacancies typically average over 100 or more applicants, with some receiving several hundred or thousands of applicants. The OFCCP's estimates with respect to this third-party burden are woefully short of a reasonable mark.

H. Notification to Subcontractors (Section 503)

The OFCCP states:

Section 60-741.44(f)(1)(ii) requires contractors to send written notification of the company's affirmative action program policies to subcontractors, vendors, and suppliers. OFCCP estimates that contractors will take 15 minutes (.25 hours) to prepare the notification and send it to subcontractors, vendors, and suppliers, and an additional 15 minutes (.25 hours) to update email address changes in the company's email system. Likewise, the agency estimates the burden for any information technology assistance needed to send the written communication as 15 minutes (.25 hours). The burden for this request is 88,364 hours (117,819 contractor establishments \times .75 hours = 88,364 hours).

(Supporting Statement, OMB Control No. 1250-0005, p. 12).

Again, the NILG submits that the OFCCP has underestimated the burden associated with providing notice of affirmative action policies to subcontractors, vendors, and suppliers. None of our survey respondents provided that this was an accurate estimate; rather, most respondents state that this process takes 90 to 120 minutes.

I. Invitation to Self-Identify (VEVRAA)

The OFCCP states:

Sections 60-300.42(a) and 60-300.42(b) require contractors to extend a pre-offer and post-offer invitation to self-identify as a "protected veteran." OFCCP estimates that contractors working at the company level will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample "as is" or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application process. The estimated burden in this information collection applies to only new contractor parent companies, or 1 percent of the 24,147 contractor companies. The burden for this provision is 362 hours (241 new contractor companies \times 1.5 hours = 362 hours).

OFCCP further estimates that it will take contractors 15 minutes to maintain self-identification forms. This time includes either manually storing the forms in a filing

cabinet or saving them to an electronic database. The burden for this provision is 29,455 hours (117,819 contractor establishments \times 15 minutes/60 = 29,455 hours).

(Supporting Statement, OMB Control No. 1250-0004, pp. 8-9).

None of the NILG survey respondents believe that this process takes less than 1.5 hours. The majority of the NILG's constituents estimate the process to add self-identification forms takes at least 3 to 5 hours. Maintaining completed forms on an on-going basis is expected to require 1 to 5 hours per establishment.

J. Affirmative Action Programs (Section 503 & VEVRAA)

The OFCCP states:

OFCCP estimates that it takes existing contractors (99 percent of all contractor establishments), or 116,641, approximately 7.5 hours to document and maintain material evidence of annually updating a joint section 503 and VEVRAA AAP. The burden for this requirement is 874,808 hours (116,641 contractor establishments \times 7.5 hours = 874,808 hours).

OFCCP estimates that it takes new contractors (1 percent of all contractor establishments), or 1,178, approximately 18 hours to document and maintain material evidence of developing a joint Section 503 and VEVRAA affirmative action program. The burden for this provision is 21,204 hours (1,178 contractor establishments \times 18 hours = 21,204 hours).

(Supporting Statement, OMB Control No. 1250-0004, p. 9).

Very few of the NILG survey respondents agree with the OFCCP's estimates. Developing AAPs to comply with Section 503 and VEVRAA requires detailed assessment of data and personnel processes and an in-depth analysis of progress and/or impediments to achieving goals. Most existing contractors estimate that updating these AAPs take more than 25 hours per establishment. For new contractors, the estimate is greater than 30 hours.

K. External Dissemination of Policy, Outreach and Positive Recruitment (VEVRAA)

The OFCCP states:

Section 60-300.44(f)(4) requires contractors to document all outreach activities it undertakes for protected veterans, and retain these documents for a period of 3 years. OFCCP estimates that it will take contractors 10 minutes (.17 hours) to retain the required documentation. Retaining these records means storing the records generated either electronically or in hardcopy, consistent with the contractor's existing business practices for how to store records. The annual recordkeeping burden for this provision is 20,029 hours (117,819 contractor establishments \times .17 hours = 20,029 hours).

(Supporting Statement, OMB Control No. 1250-0004, p. 9).

Very few of the NILG survey respondents agreed with the OFCCP's burden estimates. Contractors note that this is an ongoing activity, which continually takes time and resources. Most contractors estimate that retaining documentation of outreach activities towards protected veterans takes 2 to 5 hours per year.

L. Audit & Reporting System (VEVRAA)

The OFCCP states:

Section 60-300.44(h)(1)(vi) requires contractors to document the actions taken to meet the requirements of 60-300.44(h). OFCCP estimates that it will take contractors 10 minutes (.17 hours) to document compliance with this provision to create an audit and reporting system. Documentation may include, as an example, the standard operating procedure of the system including roles and responsibilities, and audit and reporting timeframes and lifecycles. The annual recordkeeping burden of this provision is 20,029 hours (117,819 contractor establishments \times .17 hours = 20,029 hours).

(Supporting Statement, OMB Control No. 1250-0004, p. 9).

Most of the NILG survey respondents indicate that documenting compliance with the audit and reporting system requirements take several hours, not minutes. The OFCCP generally expects contractors to provide a detailed and tailored analysis of its processes; only a cookie-cutter approach can be accomplished in the few minutes that the OFCCP estimates. The NILG submits that this is not a reasonable assessment.

M. Data Collection and Analysis (VEVRAA)

The OFCCP states:

Section 60-300(k) requires contractors to collect and analyze certain categories of data. OFCCP believes that most contractors have the capability to conduct the required calculations electronically. However, some companies may have to calculate this information manually. Therefore, OFCCP estimates that the average time to conduct the analysis and maintain the relevant documentation would be 1 hour 25 minutes (1.42 hours). Relevant documentation could include the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations. The recurring burden for this provision is 167,303 hours (117,819 contractor establishments \times 1.42 hours = 167,303 hours).

(Supporting Statement, OMB Control No. 1250-0004, pp. 9-10).

The data collection analysis requires contractors to report annually for each establishment: (1) the number of applicants who self-identified as a protected veteran; (2) the total number of job openings; (3) the total number of jobs filled; (4) the total number of applicants for all jobs; (5) the number of protected veteran applicants that were hired; and (6) the total number of applicants hired. Determining the specifics for each of these categories takes careful assessment and evaluation of multiple data components. Most of the NILG survey respondents report that completing this process each year takes well over 5 hours for each establishment.

N. Hiring Benchmark (VEVRAA)

The OFCCP states:

Section 60-300.45 requires the contractor to establish benchmarks in one of two ways. A contractor may use as its benchmark the national average number of veterans in the civilian labor force, which OFCCP will provide (and periodically update) on its public website. Or, alternatively, the contractor may establish its own individual benchmark using the five-factor method set forth in Section 60-300.45(b)(2)(i) – (v). OFCCP estimates that it will take contractors on average 10 minutes (.17 hours) to maintain material evidence of compliance with this provision. The burden of this provision would be 20,029 hours (117,819 establishments \times .17 hours = 20,029 hours).

(Supporting Statement, OMB Control No. 1250-0004, p. 10).

Documenting compliance with setting a hiring benchmark for protected veterans takes more than a few minutes. Most of the NILG's survey respondents report that this process averages 30 to 60 minutes per establishment.

O. Listing of Job Openings (VEVRAA)

The OFCCP states:

Paragraph 2 of the EO Clause requires contractors to list their job openings with the state or local ESDS. OFCCP estimates that gathering records and providing the job openings to the employment service will take 25 minutes (.42 hours) for approximately 15 vacancies per year. The burden is 742,260 hours (117,819 contractor establishments \times 15 vacancies \times .42 hours = 742,260 hours).

(Supporting Statement, OMB Control No. 1250-0004, p. 11).

None of the NILG survey respondents state that they spent less than 25 minutes on average per establishment to list job openings with the local state unemployment agency. Rather, most contractors report that this process takes close to 2 hours on average.

P. Applicant Self-Identification Completion (VEVRAA)

The OFCCP states:

Applicants for available positions with covered contractors will incur a burden when they choose to self-identify as a protected veteran at either the pre-offer or post-offer stage. OFCCP estimates that there will be an average of 24 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes (.08 hours) to complete the form. If every applicant decides to self-identify at either the pre-offer or post-offer stage, the burden for this provision is 3,393,187 hours (117,819 contractor establishments \times 15 vacancies \times 24 applicants \times .08 hours = 3,393,187 hours).

(Supporting Statement, OMB Control No. 1250-0004, p. 11).

The calculations noted above in Section G apply here as well.

Q. Notification to Subcontractors (VEVRAA)

The OFCCP states:

Section 60-300.44(f)(1)(ii) requires contractors to send written notification of the company's affirmative action program policies to subcontractors, vendors, and suppliers. OFCCP estimates that contractors will take 15 minutes (.25 hours) to prepare the notification and send it to subcontractors, vendors, and suppliers, and an additional 15 minutes (.25 hours) to update email address changes in the company's email system. Likewise, the burden for any information technology assistance needed to send the written communication is estimated at 15 minutes (.25 hours). The burden for this request is 88,364 hours (117,819 contractor establishments \times .75 hours = 88,364 hours).

(Supporting Statement, OMB Control No. 1250-0004, pp. 11-12).

The calculations noted above in Section H apply here as well.

III. Conclusion

While we disagree with many of the OFCCP's burden estimates, the NILG appreciates the opportunity to provide feedback to the agency regarding this important aspect of Section 503 and VEVRAA compliance. The NILG hopes to provide "real world" practical insight into the mechanics of compliance for federal contractors, which the OFCCP understandably may not possess.

We thank the OFCCP in advance for its consideration of our comments and suggestions. If the OFCCP should wish to discuss this comment, please contact Cara Crotty, NILG Counsel at ccrotty@constangy.com.

Respectfully submitted,

Paul McGovern

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