

January 28, 2021

Via [www.reginfo.gov](http://www.reginfo.gov)

Office of Information and Regulatory Affairs  
Attn: OMB Desk Officer for DOL-OFCCP  
Office of Management and Budget  
725 17th Street NW, Room 10235  
Washington, DC 20503

Re: Comments of the Center for Workplace Compliance on the Office of Federal Contract Compliance Programs' Proposed Information Collection Request, *Affirmative Action Program Verification Interface* (ICR Reference Number 202012-1250-001)

Dear Sir or Madam:

The Center for Workplace Compliance ("CWC") appreciates the opportunity to submit these comments to the Office of Management and Budget ("OMB") regarding the Office of Federal Contract Compliance Programs' ("OFCCP") proposed Information Collection Request ("ICR"), *Affirmative Action Program Verification Interface*, notice of which was published in the *Federal Register* on December 29, 2020.<sup>1</sup>

Largely in response to recommendations made by the Government Accountability Office ("GAO"), OFCCP is developing a new online portal named the Affirmative Action Program Verification Interface ("AAP-VI"), the goal of which is to "increase contractor compliance by creating an annual certification process and to optimize the compliance review process by creating a tool for scheduled contractors to upload their AAPs electronically for OFCCP's review." The agency posits that the AAP-VI will provide the agency visibility into a broader population of federal contractors, beyond the relatively small percentage of those audited each year by OFCCP.

CWC fully supports the fair and consistent enforcement of OFCCP's regulations. For too long, that enforcement has been limited to a relatively small subset of federal contractors. As discussed in more detail below, while we have some reservations that the AAP-VI will in fact "increase contractor compliance," to the extent that the AAP-VI would actually shift OFCCP's enforcement focus to a broader group of federal contractors, the AAP-VI seems to be a prudent response to the GAO's concerns.

We also encourage OMB to consider instructing OFCCP to implement an equally effective but less-burdensome alternative initially considered by OFCCP—and overwhelmingly supported by numerous commenters—that the above-referenced certification occur every two years, rather than annually.

### Statement of Interest

CWC<sup>2</sup> is the nation's leading nonprofit association of employers dedicated exclusively to helping its member companies develop practical and effective programs for ensuring compliance with fair employment and other workplace requirements. Formed in 1976, CWC's membership includes approximately 200 major

---

<sup>1</sup> 85 Fed. Reg. 85,672 (Dec. 29, 2020).

<sup>2</sup> Formerly the Equal Employment Advisory Council ("EEAC").

U.S. employers collectively providing employment to millions of workers. CWC's members are firmly committed to the principles and practice of equal employment opportunity and meaningful affirmative action.

Nearly all CWC members are subject to the nondiscrimination and affirmative action requirements of Executive Order ("E.O.") 11246, Section 503 of the Rehabilitation Act of 1973 ("Section 503"), Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA"), and their implementing regulations. As major federal contractors and subcontractors, CWC's members have a significant interest in ensuring that OFCCP's regulations efficiently and effectively accomplish their underlying policy objectives.

As noted earlier, as some of the nation's largest federal contractors, nearly all of CWC's members will be required to utilize the AAP-VI, and thus have a significant interest in OFCCP's ICR.

### **AAP-VI Represents a Reasonable Response to the GAO's Concerns but Should Be Required Biennially Rather Than Annually**

In 2016, the GAO observed that through its compliance evaluations and complaint investigations, OFCCP only evaluates approximately two (2) percent of all federal contractor establishments each year, and recommended that OFCCP "develop a mechanism to monitor AAPs from covered federal contractors on a regular basis. Such a mechanism could include electronically collecting AAPs and contractor certification of annual updates."<sup>3</sup> OFCCP developed the AAP-VI, in part, to serve as the "mechanism" recommended by the GAO. The AAP-VI, the theory goes, will broaden OFCCP's reach to the remaining 98% of federal contractors.

As some of the nation's largest federal contractors, CWC's members represent a significant portion of the aforementioned "two percent," and many of their establishments are audited routinely every few years. Thus, to the extent that the AAP-VI would actually shift OFCCP's enforcement focus to a larger subset of federal contractors beyond these two percent, CWC believes that the AAP-VI represents a reasonable step towards addressing the GAO's concerns.

It is our understanding that development of the AAP-VI is well underway, but that OMB's approval is required under the Paperwork Reduction Act ("PRA") before OFCCP can mandate that covered federal contractors begin using the portal. The version of the AAP-VI currently being proposed would have federal contractors:

- Certify that they have developed and maintained AAPs in accordance with OFCCP's regulations on an annual basis; and
- Upload their AAPs and supporting materials to the agency once selected for a compliance evaluation.

OFCCP specifically seeks comments on "ways to minimize the burden of the collection of information on those who are to respond." To that end, we would like to bring to OMB's attention a less-burdensome approach, an approach that was initially considered by OFCCP and supported by the commenters (including CWC), namely that the above-referenced certification occur every two years, rather than annually.

---

<sup>3</sup> Government Accountability Office, GAO-16-750, *Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance* (Sept. 2016), available at <https://www.gao.gov/assets/680/679960.pdf> (last accessed Jan. 28, 2021).

### **OFCCP Already Has Access to Government Databases That Provide the Information It Says It Needs**

In further consideration of a less burdensome alternative, OFCCP claims in its supporting statement that “[w]ithout the data collection being proposed in this ICR, OFCCP will continue to lack the ability and resources to ensure AAP compliance by all contractors.” We respectfully disagree. As we pointed out in CWC’s original comments to OFCCP, the agency’s historical focus on the two percent reflects OFCCP’s past practices and policies, not a lack of data sources. Indeed, there are a number of data sources already available to the federal government, and to OFCCP in particular, that weigh against the imposition of a new and overly burdensome information collection.

Federal contractors that are required to prepare affirmative action programs (AAPs) under E.O. 11246, Section 503, and VEVRAA already are required to engage in no less than three other compliance certifications. Indeed, these are the same contractors that:

- Identify themselves as federal contractors subject to E.O. 11246 on Section C, Question 3, of the Employer Information (“EEO-1”) Report, which is filed each year with a federal “Joint Reporting Committee” consisting of OFCCP and the Equal Employment Opportunity Commission (EEOC);
- File annually one or more VETS-4212 Reports with the Department of Labor’s Veterans’ Employment and Training Service (“DOL-VETS”); and
- Voluntarily affirm their compliance with these laws and regulations through the General Service Administration’s (“GSA”) System for Award Management (“SAM”).

Furthermore, each of these databases is either: (1) currently available to OFCCP (EEO-1 and VETS-4212); or (2) should be available through normal government channels (SAM). OFCCP does note in its supporting statement that GSA and OFCCP “were not able to come to an agreement on sharing [SAM] data.” Regardless, the contractor names, locations, and addresses that OFCCP is most interested in are readily available to the agency through the EEO-1 and VETS-4212 databases.

We further submit that there is no reason to believe that OFCCP’s new AAP-VI will reach an audience materially different than the federal contractors that already certify their compliance with federal laws and regulations each year through the means listed above. Indeed, we respectfully submit that if a covered federal contractor is *not* already complying with the certifications listed above, there is no reason to believe that it would comply with the AAP-VI.

### **Conclusion**

In conclusion, CWC recommends that the AAP-VI’s certification requirement occur every two years, rather than annually. There is no reason to believe that biennial certification—rather than annual certification—would produce a materially different group of federal contractors, and it would still give OFCCP the broader reach it is seeking through the AAP-VI, with the added benefit of reducing *by half* the burden on federal contractors.

OMB Desk Officer for DOL-OFCCP  
January 28, 2021  
Page 4 of 4

CWC appreciates the opportunity to offer these comments regarding OFCCP's proposal. Please do not hesitate to contact us if we can provide further assistance as you consider these important issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Danny Petrella". The signature is stylized with a large, looping initial "D" and a flourish at the end.

Danny Petrella  
Vice President, Compliance and Assistant General Counsel