

May 19, 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, *Construction Recordkeeping and Reporting Requirements* (ICR Reference Number 202104-1250-001)

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"), *Construction Recordkeeping and Reporting Requirements*, notice of which was published in the *Federal Register* on April 19, 2021.<sup>1</sup>

OFCCP is seeking reauthorization of its standard Construction Contract Award Notification Form ("Form CC-314"), two earlier OMB-approved construction compliance check scheduling letters,<sup>2</sup> and a new Scheduling Letter, with an accompanying Itemized Listing, which the agency would use to notify both construction contractors and federally-assisted construction contractors that they have been selected for a compliance review. OFCCP avers that this new Scheduling Letter will provide construction contractors consistency in their compliance by better aligning them with how the agency conducts compliance reviews under its supply and service program. By proposing to now evaluate a construction contractor's compliance *offsite* rather than going onsite, OFCCP claims the new Scheduling Letter will reduce the burden on both contractors and the agency. This is a goal we share, and we commend OFCCP for its effort.

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<sup>1</sup> 86 Fed. Reg. 20,417 (Apr. 19, 2021).

<sup>2</sup> Except for the proposed Scheduling Letter and Itemized Listing, CWC considers these other ICR items—the Contract Award Notification Form and the two earlier construction compliance check scheduling letters—to be non-controversial and offers no comments to OMB on these items.

We believe, however, that if the new Scheduling Letter is approved by OMB as submitted, it is still likely to increase the burden on those federal construction contractors scheduled for a compliance review. Accordingly, we request that before giving approval, OMB instruct OFCCP to implement two minor revisions to the letter that will achieve OFCCP's goal of making such reviews more effective and less burdensome for both OFCCP and for scheduled construction contractors and subcontractors without in any way compromising OFCCP's enforcement authority.

### **Statement of Interest**

CWC<sup>3</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 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.

### **OFCCP's Proposal**

During a typical construction compliance review, OFCCP notifies the contractor that it must assemble information on its personnel and employment practices, its applicable written affirmative action programs ("AAPs"), and supporting documentation in preparation for the audit. These items, roughly 14 in total, are then reviewed by OFCCP onsite at the contractor's premises. In contrast, supply and service contractors historically have provided similar information offsite, during what is known as the "desk audit" phase of a compliance review.

With its new scheduling letter, OFCCP is now proposing to initiate an *offsite* review of data and records supplied by the construction contractor during a compliance review, which the agency believes will result in greater efficiency for both the contractor and the agency by limiting onsite reviews only if OFCCP identifies "indicators that warrant further investigation."

In contrast to its supply and service counterpart, however, the proposed new Scheduling Letter and Itemized Listing would inherently require construction contractors to assemble and provide *offsite* even more data and information than what is currently reviewed *onsite*. As a

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<sup>3</sup> Formerly the Equal Employment Advisory Council ("EEAC").

result, we respectfully submit that both parties would experience an increased, not a lesser, burden during a construction compliance review.

### **Two Minor Changes to the Letter Will Help To Reduce the Additional Burden**

For OFCCP to achieve its stated goal of improving efficiency and lessening the burden for both the agency and federal construction contractors and subcontractors during scheduled compliance reviews, CWC recommends that OMB instruct OFCCP to modify its proposed Scheduling Letter and Itemized Listing by making two relatively minor changes:

1. For construction contractors subject to Section 503 and VEVRAA, instead of requiring a contractor to provide OFCCP with *all* “communications with unions and community organizations regarding the company's EEO obligations and recruitment efforts to hire” individuals with disabilities or protected veterans during the last 12 months, clarify that *examples (i.e., a sample subset)* of such communications will suffice for purposes of the desk audit. In the rare cases where such examples are insufficient to determine a contractor’s compliance posture, OFCCP of course retains the discretion to request additional information and records as needed.
2. OFCCP states in its supporting statement that federal construction contractors and subcontractors may submit their documentation and data to the agency in the original format in which they are maintained, but does not state this in the letter itself. Accordingly, we would recommend that language to that effect be added to the proposed Scheduling Letter.

Adopted together, these two minor modifications to the proposed Scheduling Letter and Itemized Listing would increase efficiency and inherently decrease the burdens for OFCCP and scheduled federal construction contractors and subcontractors during construction compliance reviews.

### **Conclusion**

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,



Gilberto Garcia, Jr.  
Senior Counsel