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June 27, 2022

VIA [REGINFO.GOV](https://www.reginfo.gov)

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

Re: The Center for Workplace Compliance's Comments on the Office of Federal Contract Compliance Programs' Information Collection Request Revision, "Agreement Approval Process for Use of Functional Affirmative Action Programs" (OMB Control Number 1250-0006)

Dear OMB Desk Officer:

The Center for Workplace Compliance (CWC) respectfully submits these comments in response to the U.S. Department of Labor's Office of Federal Contract Compliance Programs' (OFCCP) proposed information collection request (ICR) regarding revisions to the Agreement Approval Process for Use of Functional Affirmative Action Programs, notice of which was published in the *Federal Register* on May 27, 2022.¹

OFCCP is proposing a handful of changes to the recordkeeping and reporting obligations imposed upon federal contractors that elect to enter into or modify a functional affirmative action program (FAAP) agreement with OFCCP, through which the contractor is permitted to implement affirmative action programs based on business function, rather than location.

CWC supports OFCCP's efforts to make the FAAP program "simple, fluid, and collaborative," and commends the agency for continuing to streamline the process contractors must use to obtain (and maintain) their FAAPs. To that end, we believe that one minor alteration to the agency's proposed changes will remove unnecessary barriers to entry and encourage participation in the FAAP program without harm to OFCCP's policy objectives.

Specifically, CWC recommends that OFCCP refrain from implementing a new requirement that contractors provide an annual update to OFCCP containing the managing official for each of their FAAPs. This practice was discontinued in 2019, with OMB's approval, and was well-received by the contractor community. While we appreciate OFCCP's need for this information, the annual update is now redundant, as contractors provide this information on an annual basis through OFCCP's new "Contractor Portal," which OMB approved in 2021.²

¹ 87 Fed. Reg. 32,191 (May 27, 2022).

² Notice of OMB Action, OMB Control Number 1250-0012 (August 31, 2021).

Statement of Interest

CWC³ 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 nondiscrimination and equal employment opportunity.

Nearly all of CWC's members are subject to the nondiscrimination and affirmative action requirements of Executive Order 11,246, Section 503 of the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and their implementing regulations. As major federal contractors and subcontractors, CWC's members have a significant stake and interest in ensuring that OFCCP's regulations and paperwork requirements, including those triggered by the agency's FAAP request-and-approval process, efficiently and effectively accomplish their underlying policy objectives.

CWC is an original and ongoing proponent of permitting federal contractors to prepare function-based affirmative action programs (AAPs) when doing so can result in more meaningful analyses and therefore help to better advance and enhance a company's affirmative action efforts.⁴ In addition to supporting OFCCP's proposed changes to the FAAP program, our recommendations below are designed to further improve and streamline OFCCP's FAAP request-and-approval process in a manner that encourages greater participation, and thus enhances contractor compliance efforts while achieving OFCCP's policy aims.

FAAP Managing Official Information Will Be Documented Annually in the OFCCP Contractor Portal

For background and OMB's reference, each contractor's FAAP Agreement contains the contact information for: (1) two "Corporate Contacts," which are prominently listed on the first page of Addendum A; and (2) the Managing Officials of each FAAP. The Corporate Contacts are responsible for maintaining the FAAP relationship with OFCCP, receiving desk audit scheduling letters, and serving as the centralized contact for OFCCP compliance officers during compliance evaluations. In contrast, the Managing Officials for each FAAP are typically senior- and mid-level managers responsible for their business units, and change regularly.

OFCCP is proposing that contractors provide an "annual notification of changes to the primary corporate contact listed in the FAAP Agreement and changes in a functional or business units' management official(s)." This practice, known informally among practitioners as the FAAP "annual update" was discontinued in 2019—with OMB's approval—in favor of a requirement that the contractor must certify in writing every five

³ Formerly the Equal Employment Advisory Council.

⁴ See, e.g., Center for Workplace Compliance Comments on the Office of Federal Contract Compliance Programs' Information Collection Request Revision, "Functional Affirmative Action Programs Agreement Approval Process," OMB Control Number 1250-0006 (June 3, 2019); Comments of the Equal Employment Advisory Council on the Office of Federal Contract Compliance Programs' Information Collection Request Revision Titled, "Agreement Approval Process for Use of Functional Affirmative Action Programs," OMB Control Number 1250-0006 (February 8, 2016); Comments of the Equal Employment Advisory Council on the Office of Federal Contract Compliance Programs' Functional Affirmative Action Program Information Collection Requirements, OMB Control Number 1250-0006 (September 14, 2015); and Equal Employment Advisory Council, Pre-Clearance Consultation for OFCCP's Proposed "Agreement Approval Process for Use of Functional Affirmative Action Programs," OMB Control Number 1250-XXXX, 77 Fed. Reg. 30,327 (July 23, 2012).

years “that there have been no functional or business units, or structure or organization, or other circumstances affecting the existing FAAP agreement,” or to notify OFCCP within 60 days if there are such changes that necessitate a FAAP modification.

While this latter approach is more reasonable and less burdensome for both parties, CWC proposes a compromise between the two extremes. First, CWC believes that ensuring OFCCP has current contact information of Corporate Contacts is critically important, and agrees that contractors should always notify OFCCP in a timely manner when these contacts change.

Second, while we could debate the value of providing OFCCP with the Managing Officials of each FAAP, that debate is now moot. OFCCP has requested—and OMB has already approved—an online Contractor Portal where FAAP contractors update the name, headcount, and contact information for each of their FAAPs.⁵ This portal was implemented as part of OFCCP’s Affirmative Action Program Verification Initiative (“AAP-VI”), and is utilized by all FAAP contractors. Thus, there is no need for FAAP contractors to provide a second annual update to OFCCP.

Conclusion

CWC appreciates the opportunity to offer these comments regarding OFCCP’s FAAP program. 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", with a stylized flourish at the end.

Danny Petrella

Senior Vice President, Compliance and Assistant General Counsel

⁵ Notice of OMB Action, OMB Control Number 1250-0012 (August 31, 2021).