



January 20, 2023

Tina T. Williams,
Director, Division of Policy and Program Development
Office of Federal Contract Compliance Programs
U.S. Department of Labor
200 Constitution Avenue NW, Room C-3325
Washington, DC 20210

Submitted via regulations.gov

Re: Comments on Supply and Service Program; Proposed Approval of Information Collection Requirements; FR Doc. 2022–25311

Dear Ms. Williams:

The Institute for Women’s Policy Research (IWPR) appreciates the opportunity to comment on the Office of Federal Contract Compliance Programs’ (OFCCP) request for reauthorization of its compliance review scheduling letter.¹ As a nonpartisan, nonprofit organization that engages in research and dissemination to shape public policy and improve the lives and opportunities of women from diverse backgrounds, IWPR is deeply concerned with the identification and removal of any barriers to women’s full and equal access to employment. We know that identifying the problems- knowing the data- is the first step to developing equitable solutions. We wholeheartedly support the proposal that the scheduling letter collect more detailed and complete information at the outset of a compliance review. This change is essential for OFCCP to conduct more efficient, consistent, and effective reviews of federal contractors’ compliance with nondiscrimination and equal employment opportunity requirements.

A significant portion of the American workers stand to benefit from enhanced contractor compliance. OFCCP has jurisdiction over approximately 120,000 contractor establishments and 25,000 firms, which employ approximately 20% of the American workforce. And with the new historic federal investments for infrastructure and economic recovery, many more businesses will become federal contractors subject to OFCCP oversight. Enhancing OFCCP’s ability to make good jobs free from discrimination available to all is especially critical.

Throughout its history, IWPR’s research has been particularly concerned with occupational segregation, and women’s – including women of color – underrepresentation in well-paid jobs in

¹ OMB Control Number 1250-0003.

construction and manufacturing. Addressing this underrepresentation is more critical than ever, given the unprecedented levels of federal investments committed to improving the nation's infrastructure and building the foundations for a green and sustainable economy. IWPR is the research partner and a member of the National Taskforce on Tradeswomen's Issues. We have recently completed the largest national survey of women working in construction trades ever conducted², and a report on women working in manufacturing shopfloor occupations is pending.

Almost half of respondents in both surveys consider leaving their industries, and the most important reason provided by them is 'discrimination and lack of respect'. They point to discrimination in recruitment, lay-offs, access to overtime, and access to promotions and advancement opportunities. Being a woman, especially a woman of color, in these predominantly male jobs makes it particularly difficult for women to lodge a complaint because they are so easily identified.

OFCCP oversees and enforces compliance with nondiscrimination and affirmative action requirements. OFCCP is unique in being able to conduct systemic compliance reviews as part of its enforcement authority. Such systemic reviews remove the burden and stigma of a complaints driven process for remedying discrimination from individual women. Through compliance reviews, OFCCP can proactively identify, investigate, and remedy patterns of discrimination, even in the absence of an individual complaint, and can evaluate contractors' compliance with affirmative action obligations. The scheduling letter, which OFCCP now proposes to revise, is the document OFCCP uses to notify contractors that they have been selected to undergo a compliance review and identifies the initial information those contractors must provide.

OFCCP proposes that its scheduling letter request more detailed and specific information from contractors at the outset of compliance reviews. Updating the scheduling letter to obtain critical information at the beginning of the compliance review will support OFCCP's goal of strengthening the effectiveness of its compliance evaluations, promoting greater contractor compliance, and ultimately benefiting more workers. It will also encourage employers to self audit the employment systems referenced in OFCCP's updated requests (e.g., technology-based employment systems) to identify potential EEO issues *before* they are selected for a compliance review by the OFCCP. The new information would include:

- Existing employment policies concerning equal opportunity, including anti-harassment policies, EEO complaint procedures, and employment agreements, such as arbitration agreements, that impact employees' equal opportunity rights and complaint processes. Having this information at the outset is essential for OFCCP to understand the contractors' systems and proceed with an informed and targeted review.

² See Ariane Hegewisch and Eve Mefferd, *A Future Worth Building: What Tradeswomen Say about the Change They Need in the Construction Industry*. Washington DC: Institute for Women's Policy Research (2021) <https://iwpr.org/iwpr-publications/a-future-worth-building-report/> .

- More details about the number of qualified people of color and women available for employment in each job group, enhancing OFCCP’s ability to evaluate contractors’ affirmative action programs.
- A list of any programs the contractor developed to respond to problem areas identified in the contractor’s required analyses of their employment process, enabling OFCCP to better tailor its review process.
- More complete information on compensation practices, including documentation of contractors’ compensation analyses and two years of compensation data, rather than one.
- Additional information about the contractor’s outreach and recruitment efforts to individuals with disabilities and veterans. This level of detail will require more than the current cursory summaries from the contractors, making OFCCP analysis more informed.
- More detailed information about promotions and terminations, including information necessary to make the review meaningful, such as whether the promotions were competitive and the reason for termination.
- New information on the contractor’s use of technology-based employment selection procedures, including artificial intelligence, algorithms, and automated systems, made essential given the documented potential for bias in such systems.³
- For post-secondary institutions and contractors with “campus-like settings” (e.g. hospitals or information technology companies), the relevant information for all AAPs for the campus as a whole. This clarification ensures that OFCCP will have complete and holistic information regarding the campus and enhances the efficiency of the review.

If authorized as proposed, these changes will speed the pace of reviews, conserve scarce agency resources, provide additional clarity for employers as to their obligations, and enable OFCCP to more quickly and accurately identify both potential problem areas and successes.

³ Manish Raghavan & Solon Barocas, *Challenges for mitigating bias in algorithmic hiring*, Brookings (Dec. 6, 2019), <https://www.brookings.edu/research/challenges-for-mitigating-bias-in-algorithmic-hiring/> (“Left unchecked, algorithms can perpetuate the same biases and discrimination present in existing hiring practices.”); Miranda Bogen, *All the Ways Hiring Algorithms Can Introduce Bias*, Harvard Business Review (May 6, 2019), <https://hbr.org/2019/05/all-the-ways-hiring-algorithms-can-introduce-bias>.

OFCCP has tailored the proposed changes to the scheduling letter to minimize the additional burden on contractors. As the agency explains, the new scheduling letter would reduce contractor uncertainty over what documentation is sufficient for the review and enhance review efficiency for both the contractor and OFCCP. And it would have minimal impact on small businesses, given limited recordkeeping and reporting requirements for contractors with relatively few employees.

Accordingly, we enthusiastically support OFCCP's requested authorization of the enhanced compliance review scheduling letter and encourage the agency to finalize it without change. Compliance reviews are a vital instrument for ensuring that employers and contractors receiving federal funds are upholding the law and take proactive steps for remedying discrimination and underrepresentation in access to employment. This is particularly so for women, especially women of color, who are working or seeking work in construction. The proposed changes will strengthen the OFCCP's compliance reviews, will help employers and contractors develop policies that meet the letter and intent of the law, and will particularly benefit women working in the trades and in other male-dominated fields.

Thank you for your consideration,

A handwritten signature in black ink, appearing to be 'C. Mason', enclosed in a thin black rectangular border.

C. Nicole Mason, PhD
President and CEO
Institute for Women's Policy Research