

NATIONAL TASK FORCE ON TRADESWOMEN'S ISSUES

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:

On behalf of the National Taskforce on Tradeswomen Issues, I write to comment on the Office of Federal Contract Compliance Programs' (OFCCP) request for reauthorization of its compliance review scheduling letter. We strongly 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. As Director Yang has concluded, enhancing the effectiveness of these compliance reviews will "positively impact more workers" through increased contractor compliance.

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.

The National Taskforce on Tradeswomen Issues (the Taskforce) is a national coalition of tradeswomen, allies, and advocates promoting access, opportunity, retention and equity in the construction industry and other trades occupations. We do this through promoting a federal public policy platform and advocacy initiatives which includes efforts at the national level to improve, enforce, fund, and promote best practices in apprenticeship, training, workforce development, career tech, nontraditional employment, and job site equity. Since its inception, the Taskforce has organized to raise the issue of equal opportunity in construction at the state and national level. Our tradeswomen members often work for federal contractors and are all too aware of the need for robust enforcement of anti-discrimination and equal employment opportunity requirements.

Despite longstanding protections under the law, working people across the United States continue to experience employment discrimination that robs them of employment opportunities, economic security, and dignity on the job. The cost of discrimination for people of color, women, LGBTQ+ people, people with disabilities, veterans, and other marginalized and multi-marginalized groups is significant. Workplace discrimination can prevent access to a job or a promotion, cause a

hostile working environment, or lower pay — all because of who you are. These unlawful practices inhibit economic security and opportunity and help to perpetuate disparities in health outcomes, housing, education, and more.

For tradeswomen, it is critically important that OFCCP have the information it needs to conduct efficient and effective compliance. It is still very difficult for women to even gain access to jobs in the trades as they are extremely underrepresented in pre-apprenticeship and apprenticeship programs, a key pathway to construction jobs. Although the representation of women in these male-dominated and often well-paid jobs has grown somewhat, the numbers are still incredibly low. Women make up only 4% of workers in the trades and constitute the vast majority of minimum wage and low-wage workers. For the relatively few women who are actually able to gain access to these higher-paid jobs, they face extreme barriers to success on the job. Our tradeswomen members are often the only woman on a work site. As a result, they are frequently subjected to egregious harassment and discrimination. We hear stories of tradeswomen being called derogatory names, subjected to harassing comments and images of a sexual nature, and even assaulted on the job, often with little to no action taken by federal contractor employers. The experience of tradeswomen of color is often even more dire as they experience intersectional discrimination based on sex, race, national origin. Tradeswomen rely on OFCCP enforcement to not only remedy issues of discrimination and harassment, but to try to prevent these harms from occurring in the first place by ensuring compliance by federal contractors with anti-discrimination and equal employment opportunity requirements.

When companies have the privilege of contracting with the federal government, they not only must refrain from employment discrimination, but also must agree to take affirmative steps to promote employment opportunities for individuals who are members of certain underrepresented groups. These affirmative steps include proactively monitoring workplace equal employment opportunity and pay equity, making a meaningful effort to recruit qualified applicants from groups who are underrepresented in their workplaces, and breaking down barriers to equal opportunity for veterans and individuals with disabilities. Federal contractors subject to these requirements have better records when it comes to equal employment opportunity than employers who are not federal contractors. OFCCP oversees and enforces compliance with these nondiscrimination and affirmative action requirements.

OFCCP is unique in being able to conduct systemic compliance reviews as part of its enforcement authority. 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.

- 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.
- 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.

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.

For years, tradeswomen have relied on OFCCP to help remedy discrimination and harassment they have endured and to try to prevent future harms. The agency plays a critical role in ensuring more women are able to obtain and remain in jobs in the trades. Since our inception in 2011, the Taskforce has regularly made recommendations to OFCCP regarding effective enforcement of anti-discrimination

and equal employment opportunity requirements for federal contractors. For the reasons described above, we wholeheartedly support OFCCP's requested authorization of the enhanced compliance review scheduling letter and strongly encourage the agency to finalize it without change.

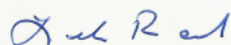
While women, and particularly women of color, remain sorely underrepresented in these higher paid jobs and continue to experience discrimination and harassment on the job, these proposed changes will greatly enhance OFCCP's enforcement capacity to address these issues, while creating only a minimal additional burden on contractors. These reasonable proposed changes in the compliance review scheduling letter will greatly benefit tradeswomen and we strongly support their adoption. Tradeswomen deserve no less.

Sincerely,

Connie Ashbrook, Co-Chair

Handwritten signature of Connie Ashbrook in black ink.

Leah Rambo, Co-Chair

Handwritten signature of Leah Rambo in blue ink, set against a light gray rectangular background.