

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:

Public Justice is grateful for the opportunity to comment on the Office of Federal Contract Compliance Programs' (OFCCP) request for reauthorization of its compliance review scheduling letter. As a nonprofit legal advocacy organization that supports workers' rights, civil rights, consumer protection, and environmental protection, we are committed to ensuring adequate workplace protections for all workers, including federal contractors.

We enthusiastically support the proposal that the scheduling letter collect more detailed and complete information at the outset of a compliance review. This change will allow OFCCP to conduct significantly more comprehensive and logical reviews of federal contractors' compliance with nondiscrimination and equal employment opportunity requirements, and will ensure greater contractor compliance.

This change will positively impact millions of Americans. Indeed, federal contractors currently employ approximately 20% of the American workforce, a number that will continue to expand under the recent federal infrastructure and economic investments. Improved information on discrimination will enhance OFCCP's ability to ensure equitable workplaces.

As an organization that often represents individuals when they face discrimination based on their protected classes, including when they face the additional hurdle of arbitration clauses, Public Justice has seen firsthand how employment discrimination can lead to and perpetuate pay disparities in every field. [Because forced arbitration can prevent workers from vindicating their workplace rights](#), we are particularly pleased that information about arbitration agreements will be gathered under the proposal. Despite numerous legal protections, working people across the United States continue to experience employment discrimination that robs them of employment opportunities, economic security, and dignity on the job. Discrimination based on race, gender, sexuality, disability, veteran status, and other marginalized and protected identities can lead to lost promotions and salary increases, lost job opportunities, and hostile work environments — which can in turn jeopardize health, housing, and educational outcomes.

Contracting with the federal government is a privilege that comes with required additional worker protections. In order to promote employment opportunities for individuals who belong to certain underrepresented groups, companies in this position must take affirmative measures. A number of affirmative steps can be taken to accomplish these goals, including proactively monitoring workplace pay equity and equal employment opportunities, recruiting qualified applicants who are underrepresented in the workplace, and eliminating barriers to equal opportunity for veterans and disabled individuals. These requirements lead to improved equal employment opportunity records. Granting the OFCCP a greater ability to monitor compliance will lead to further enhanced outcomes.

Systemic compliance reviews are a unique feature of the OFCCP's enforcement authority. Even without an individual complaint, OFCCP can use compliance reviews to proactively identify, investigate, and remedy discrimination patterns, as well as gauge contractors' compliance with affirmative action requirements. By revising the scheduling letter, OFCCP proposes to inform contractors that they have been selected to undergo a compliance review, as well as identify the initial information they must provide. By updating the scheduling letter, OFCCP can strengthen the effectiveness of its compliance evaluations, promote greater contractor compliance, and ultimately benefit more workers in the long run. In addition, employers will be encouraged to conduct their own audits of employment systems as referred to in OFCCP's updated requests so that potential EEO issues may be identified before OFCCP conducts a compliance review.

The new information would include:

- Current employment policies concerning equal opportunity, which will help inform reviews. These include anti-harassment policies, EEO complaint procedures, and employment agreements, such as arbitration agreements, that impact employees' equal opportunity rights and complaint processes.
- More information 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.

This proposal will speed the pace of reviews, conserve scarce agency resources, clarify employer obligations, and enable the OFCCP to identify potential problems and successes more quickly and accurately.

As part of the proposed changes, OFCCP has focused on minimizing the additional burden on contractors. The new scheduling letter would reduce contractor uncertainty over appropriate documentation, enhance review efficiency, and have minimal impact on small businesses.

We enthusiastically support OFCCP’s requested authorization of the enhanced compliance review scheduling letter and encourage the agency to finalize it as is. Public Justice is pleased to hear of this welcome change and the increased support for workers facing discrimination.

Sincerely,

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