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Tina T. Williams
Director, Division of Policy and Program Development
Office of Federal Contract Compliance Programs
200 Constitution Avenue NW
Room C-3325
Washington, DC 20507

Re: Comments to OFCCP's Proposed Revision to Information Collection Requirements

Dear Ms. Williams:

Seyfarth Shaw ("Seyfarth") welcomes the opportunity to submit these comments responding to the Office of Federal Contract Compliance Programs' ("OFCCP") November 21, 2022 Proposed Approval of Information Collection Requirements ("Proposal").

Seyfarth has a sincere and robust commitment to fair employment practices, fair pay, and diversity. Seyfarth has a substantial practice in affirmative action and equal employment opportunity compliance for federal contractors and subcontractors. We believe that diversity—in terms of people, perspectives and experiences—creates more innovative solutions and leads to greater contributions from everyone. Further, the contractors we represent are among some of the largest and most innovative thought-leaders in affirmative action principles, including diversity, equity and inclusion, pay equity, and best employment practices.

The comments we provide reflect our own thoughts as experienced practitioners in this arena as well as the input from many of the employers we serve. While we appreciate that the OFCCP needs reliable and meaningful data in order to fulfill its obligation as the government's affirmative action regulator, and contractors similarly need reliable and meaningful data to fulfill their obligations, a wholesale requirement to collect volumes of data that will serve little or no benefit for ensuring compliance, and which will pose a substantial increased burden on contractors, serves neither the agency's mission nor meets the requirements of the Paperwork Reduction Act. Here, we provide our significant concerns with the expansion of OFCCP's proposed data collection requirements.

While we share the desire to ensure that federal contractors meet their compliance obligations, the OFCCP's Proposal essentially puts the cart before the horse in requiring that federal contractors provide robust, expansive information to the Agency at the outset of a

compliance review, without regard to whether any preliminary indicators are determined. In practice, the Proposal would impose enormous burdens on employers in connection with reviews, without any demonstration of the utility that such information would provide in connection with the OFCCP's investigation. In particular, the proposed new and substantial data requests at the onset of a review is without support from the long-standing regulatory structure controlling audits. Overly burdensome data demands without regulatory foundation clearly runs counter to the Paperwork Reduction Act. As the OFCCP's Proposal will require the proactive submission of information that is not reasonably targeted to address indicators and is overbroad, we respectfully urge the OFCCP to withdraw this Proposal.

I. PAPERWORK REDUCTION ACT

The OFCCP's Proposal, ironically, is being conducted pursuant to the Paperwork Reduction Act ("PRA"). The PRA, which was reauthorized in 1995, was promulgated in response to the federal government's "insatiable appetite for data."). *See Dole v. United Steelworkers of America*, 494 U.S. 26 (1990). The purposes of the PRA set forth in direct terms what the Act was designed to accomplish:

> The purposes of this chapter are to--
>
> (1) *minimize* the paperwork burdens for individuals, small businesses…Federal contractors…and other persons resulting from the collection of information by or for the Federal Government;
>
> (2) ensure the *greatest possible public benefit* from and *maximize the utility* of information created, collected, maintained, used, shared and disseminated by or for the federal Government;
>
> …
>
> (4) improve the quality and use of Federal information to strengthen decision making, accountability and openness in Government and society…

44 USC 3501 (emphasis added).

The PRA established within the Office of Management and Budget ("OMB"), the Office of Information and Regulatory Affairs ("OIRA") whose Director is charged with the administration of the PRA. *Livestock Marketing Ass'n v. U.S. Dept. of Agr.*, 132 F. Supp. 2d 817, 830 (D.S.D. 2001) ("Among other things, the Act establishes the Office of Information and Regulatory Affairs within the Office of Management and Budget, with authority to" facilitate and manage the PRA). The Director, in turn, is mandated to review data collection requests in accordance with the direction of the PRA to *(1) minimize the burden on those individuals* and *entities most adversely affected and (2) maximize the practical utility of and public benefit from information collected by or for the Federal Government and establish standards for the agencies to estimate the burden of data collection*. *See Dole*, 494 U.S. at 32 (explaining that the PRA

charges the OMB with responsibility for minimizing the burden on individuals and establishing standards to reduce unnecessary federal collection of information). The Director is also charged with developing and promulgating standards to insure the privacy, confidentiality and security of information collected or maintained by agencies. *In re French*, 401. B.R. 295 (E.D. Tenn. 2009) (noting that, amongst other things, the PRA's purpose is to ensure that information is collected consistent with privacy and security laws) (quoting 44 U.S.C. § 3501).

To start, the OFCCP's Proposal is based on wholly insufficient burden estimates. At the same time, the Proposal's purported benefit in connection with conducting compliance reviews is speculative at best, given that contractors would be required to produce information even where there are no preliminary adverse impact indicators suggesting that further review is warranted. Moreover, the Proposal raises serious concerns with regard to the security and confidentiality of the often proprietary and highly sensitive data the OFCCP seeks to gather. Accordingly, the OFCCP's Proposal does not comply with the requirements of the PRA. For this reason, the Proposal should be withdrawn.

II. THE OFCCP HAS FAILED TO DEMONSTRATE THE UTILITY OF THE PROPOSAL OUTWEIGHS THE SIGNIFICANT ESTIMATED BURDEN INCREASE UNDER THE PRA

The OFCCP estimates that burden hours for assembling and submitting the information that would be required with the initial compliance review submission, would be approximately 39 hours per contractor per compliance review. While the Agency's supporting information to justify its burden estimate is significantly lacking, it nonetheless represents a whopping 40% increase over prior burden estimates.

The OFCCP has failed to undertake even a minimal PRA analysis despite the fact that the Proposal significantly expands and imposes new data and information requests before any triggering indicators are found. The OFCCP seeks to audit all establishments in a "City" if it deems a contractor is in a campus-like setting. It has determined that it can impose enormous new burdens by requiring compensation data for employees of staffing agencies. It is demanding that contractors submit additional compensation, promotion, and termination data prior to any preliminary indicators being found. It is requiring that contractors provide policies and practices regarding the use of artificial intelligence in employment selection procedures.

The PRA is not a substitute for agency rulemaking and cannot be used as an undeclared procedure by which agencies can amend or alter regulations otherwise governed by the Administrative Procedure Act. Nor can an agency use the "umbrella" of a PRA submission to effectively expand its jurisdiction by suggesting that even different enterprises geographically located within a "Campus" (which is nowhere addressed or defined in OFCCP regulations or other guidance) can be combined for purposes of expanding its jurisdiction. In short, OFCCP has failed to meet the PRA standards because it has provided no reasonable explanation, nor corresponding benefit, for the significant increase in the burden caused by expanding the scope of information submitted in response to the initial data collection request. Furthermore, the OFCCP's intent in submitting this request under the PRA is to impose major regulatory changes

in its program while ignoring the more exacting requirements of the Administrative Procedure Act and evading judicial review.

III. THE PROPOSAL SERVES NO PUBLIC BENEFIT NOR ADVANCE INVESTIGATIONS UNDER LAWS ENFORCED BY OFCCP.

The OFCCP's proposed changes do far more than "clarify" terms and would create inefficiencies -- rather than efficiencies -- at the desk audit stage. Many of the Agency's requests not only go beyond the scope of the current scheduling letter, but exceed the plain text and intent of the OFCCP's regulations. The changes that exceed OFCCP's authority or needlessly expand the initial submission phase include the following, which would require: (1) companies in campus-like settings to submit information for all AAPs within the same city, (2) the production of compensation data for non-employee workers provided by staffing agencies, (3) two years of detailed, employee-level compensation data prior to any investigation or indication of a need for additional review, (4) documentation to support that a contractor conducted a compensation analysis, though OFCCP could readily, and without any prejudice to its process, request this at a subsequent step of the desk audit phase, (5) expanded promotions and terminations data, again without any showing of a potential issue in the summary data, and (6) the submission of policies and practices regarding the use of artificial intelligence in selection procedures, when there has been no showing of adverse impact in hiring.

The nature of the changes that OFCCP is proposing are more suited to Notice and Comment rulemaking as required by the Administrative Procedure Act, rather than through the PRA process. Even so, OFCCP has failed to meet its burden under the PRA to demonstrate the utility of these changes. Accordingly, OFCCP should withdraw its proposed revisions and maintain its use of its current scheduling letter and itemized listing.

A. OFCCP cannot require contractors in campus-like settings, who permissibly maintain separate AAPs for different establishments, to submit responses to the scheduling letter for all locations within the same city without amending its regulations.

Among the more concerning changes proposed by OFCCP relates to its unilateral change in approach to "campus-like settings." OFCCP seeks to impermissibly expand the jurisdictional reach of a single audit, from one establishment's AAP — as has long been the process — to all locations within the same city. Nowhere do OFCCP's regulations use the term "city" to define the scope of an audit for establishment-based AAPs, and for good reasons. By creating a new geographical standard for asserting jurisdiction over contractor establishments, the OFCCP attempts to wipe out decades of established law and procedure.

First, OFCCP cannot alter the fundamental compliance requirements of federal contractors through sub-regulatory guidance which carries no force and effect of law. If the Agency believes that changes are needed to effectively audit campus-like settings, it must pursue

such change through the formal rulemaking process. Doing so would provide stakeholders within the contracting community with an opportunity to provide comments, concerns, and suggestions. Even more importantly, the rulemaking process would educate the OFCCP on the complex corporate structures of private companies, the unique distinctions they have from post-secondary institutions, how to best execute campus-wide reviews, and whether these reviews are warranted in all situations.

During a formal rulemaking process, OFCCP would be required to define the terms "campus-like setting" and "establishment," to eliminate the confusion that exists under the current regulatory structure. Indeed, OFCCP does not define "campus-like" settings. And OFCCP's current FAQs on the topic *allow, but do not require,* contractors to combine AAPs based on the inner-workings and relationships between the facilities. The FAQs do not suggest that the OFCCP may itself unilaterally combine establishments or facilities simply to expand its jurisdiction.

Second, under OFCCP's regulations, contractors are required to construct AAPs by establishment (unless a functional affirmative action program agreement is determined by the contractor and approved by the Agency). When a contractor's establishment is selected for audit, the contractor submits the AAP that covers the workforce for that location, with other related documents and support data. This establishment-based process would be wholly undermined by a non-regulatory use of "campus-like" judgments. This would effectively permit OFCCP to play a game of bait-and-switch, by conducting multiple audits based on a single scheduling letter.

Based on these concerns, OFCCP should withdraw its attempt to upend the current framework and pursue campus-wide "City" compliance reviews based on undefined terms and overbroad audit mechanisms.

B. Contractors should not be required to produce compensation data for non-employee workers provided by staffing agencies.

A key concern relating to OFCCP's proposed compensation request, under Itemized Listing 21, is the obligation to provide pay data for "employees provided by staffing agencies." OFCCP's justification statement says the purpose of this request is to "clarify that temporary employees include those provided by staffing agencies," and to "reduce the number of follow-up requests" the agency makes, to improve the efficiency of compliance reviews. However, there are critical issues that OFCCP fails to consider, which make this request both improper and problematic.

The threshold issue is that temporary workers are <u>not employees</u> of the federal contractor to whom they are assigned. The staffing agencies themselves – not the customer contractors – control employment decisions like hiring and pay for these workers. Federal contractors generally do not even know, or have access to, the year-end compensation data that OFCCP would require. Staffing agencies, like any other employer, may consider their compensation strategies to be non-public, proprietary information and thus desire to not have that information disclosed. At a minimum, gaining access to such data would require contractual amendments to

agreements in place with staffing agencies, followed by significant data collection efforts to comply with this request. While federal contractors engage in robust data collection efforts with respect to their own employees, it is not feasible or appropriate for them to collect the same information from another entity. It is important to note that the relationship between a federal contractor and a staffing agency is an arm's-length transaction for services, which maintains the corporate separateness of the parties. Further, requiring federal contractors to collect pay data, policies, and practices from staffing agencies would require contractors to defend not only their own pay practices and systems, for which they are responsible, but also those of another entity, for which they are not. A contractor does not have input or access to the compensation, hiring, promotion or termination practices of other employers. To require the collection of such data would significantly expand the administrative burdens on contractors if this change were to be required.

Moreover, OFCCP does not have jurisdiction over non-employee workers. Its AAP regulations explicitly and unambiguously encompass only contractor "employees." See 41 CFR Part 60-2. Specifically, stating that: "[e]ach *employee in the contractor's workforce* must be included in an affirmative action program." 41 CFR 60.2-1(d) (emphasis added) There is no mention of "non-employee workers" or "employees in another entity's workforce." Had OFCCP desired a broader jurisdictional reach, it would have promulgated different regulatory terminology. If it desires such a different and expansive regulatory reach, then its regulations must first be amended through a formal rulemaking process and not through a sleight of hand amendment via a PRA process.

Far from improving the efficiency of an audit, this change would embroil contractors into protracted disputes regarding the terms of their separate business relationships. Given the burdens and practical challenges this data collection request would create, OFCCP should not require federal contractors to collect pay data for non-employee workers of staffing agencies.

C. Contractors should not be required to provide two years of compensation data absent adverse indicators justifying the request.

Proposed Itemized Listing 21 presents another key concern: the requirement that contractors provide two years of individual, employee-level compensation data in the initial submission. The first and most obvious problem is the increased burden it would impose on contractors based on nothing more than OFCCP's desire for more data.

OFCCP attempts to justify this expansive change by calling its current approach — wherein it only requests additional pay data if it perceives indicia of discrimination — inefficient. In actuality, the current approach is much more efficient than that proposed. Currently, the OFCCP runs an analysis of contractor compensation and, if compensation is adequately and proportionately explained for all employees, the pay review concludes. The Agency is then free to either close the audit or move on to focus on other audit areas. OFCCP presently only devotes additional government staff and resources to an expanded review of pay if there is some basis for it to believe that further review would be fruitful (i.e, if there is an

unexplained statistical indicator). To do otherwise would be a waste of resources given that there would be no preliminary findings that could lead to a determination of discriminatory pay practices. Now, however, if the PRA data reporting request is approved, the Agency would either: (1) analyze two years of pay data in every instance — creating an unnecessary burden of analysis for those instances where there is no indicator of a pay disparity; or (2) only analyze the additional year of data in instances where a preliminary indicator is found — creating an unnecessary burden of production on the contractor. This does far more than double the work involved. It is far more time-consuming to analyze multiple years of pay data than it is to review compensation at a single point in time (as is presently done). This is because there are scores of complex changes that have occurred during the longer period, including changes to the employee population, positions, titles, levels, and pay, not to mention potential changes to the contractor's compensation policies, systems, philosophy, and strategy.

The Agency's proposal to require additional pay data in a contractor's initial submission is thus the opposite of efficient, and would impose a significant increase in burden on contractors with no justification for doing so.

Another rationale proffered by the OFCCP is similarly flawed. It claims that collecting two years of pay data will "benefit employees who may have been subject to pay discrimination that OFCCP is able to remedy and will provide OFCCP with more information to determine which cases are worth pursuing for further investigation." However, as noted above, the OFCCP's current approach already allows it to investigate pay discrimination and seek relief for employees in a more reasonable and targeted manner. The Agency is essentially trying to move from a strategic triage system, which deploys resources where they are most needed and most likely to be of use, to a broad-brush fishing expedition without establishing a factual predicate. The cost-benefit analysis, in terms of burden to contractors versus its usefulness to OFCCP, does not permit this expansion under the PRA.

D. OFCCP Regulation 60-2.17(b)(3) and repeated OFCCP policy statements do not require a contractor to perform a complex statistical compensation analysis.

Under Itemized Listing 22, OFCCP proposes a new requirement whereby contractors must submit documentation to show it has satisfied its obligation to evaluate "compensation system(s) to determine whether there are gender-, race-, or ethnicity-based disparities," as part of the contractor's "in-depth analyses of its total employment process" required by 41 CFR 60-2.17(b)(3). Documentation pursuant to this request must show:

1. When the compensation analysis was completed;

2. The number of employees the compensation analysis included and the number and categories of employees the compensation analysis excluded;

3. Which forms of compensation were analyzed and, where applicable, how the different forms of compensation were separated or combined for analysis (e.g., base pay alone, base pay combined with bonuses, etc.);

4. That compensation was analyzed by gender, race, and ethnicity; and

5. The method of analysis employed by the contractor (e.g., multiple regression analysis, decomposition regression analysis, meta-analytic tests of z-scores, compa-ratio regression analysis, rank-sums tests, career-stall analysis, average pay ratio, cohort analysis, etc.).

OFCCP suggests that requesting this information at the beginning of an audit will result in "a more efficient analysis of a contractor's compensation," rather than waiting to request such information after initial analyses reveal pay disparities. OFCCP is again exceeding its regulatory reach. The regulations do not define what the required "evaluation" or "analyses" entail. For instance, a contractor might examine its compensation structure, review its policies, and interview employees, to confirm its pay decisions are legitimate, non-discriminatory, and job-related. This proposed information request, however, presumes that some analytical methodology is required (see (5) above). This presents a clear disconnect between what the regulations now require, on the one hand, and what OFCCP now wants to demand from contractors, on the other.

On a number of separate occasions, in replying to comments on rulemaking, the OFCCP has made clear that it does not mandate any specific method of compliance, and has left contractors with significant discretion in determining how to comply with the regulations. For example, at 71 Federal Register 35114 at 35119, the OFCCP stated: "OFCCP agrees that the contractor need not have relied on quantitative or statistical techniques to comply with 41 CFR 60-2.17(b)(3), as OFCCP has repeatedly noted that the contractor has the discretion to comply by using any self-evaluation technique it deems appropriate." And, 78 Federal Register 13508 at 13517 says: "contractors may continue to choose a self-evaluation method appropriate to assess potential pay disparities among their workforce. OFCCP will not be mandating any specific methodology." Similarly, at 81 Federal Register 39107 at 39125, the OFCCP explained that: "Because the regulation does not specify any particular analysis method that contractors must follow to comply with this regulation, contractors have substantial discretion to decide how to evaluate their compensation systems."

Considering that Section 60-2.17(b)(3) provides contractors with flexibility as to how to evaluate their compensation systems, OFCCP should eliminate the rigid requirements contained in subitems 1 thru 5 of proposed Itemized Listing 22.

E. Providing expanded employment transactions data for promotions and terminations during the desk audit phase, absent preliminary indicators of discrimination, is inefficient and unnecessary.

A new Itemized Listing 20(c) and 20(d) would require contractors to submit additional data fields when constructing its promotion and termination summary counts. Item 20(c) would require contractors to identify whether a promotion is "competitive" or "non-competitive," and to include data components such as previous supervisor, current supervisor, previous compensation, and current compensation. Item 20(d) would require contractors to break down the number of terminations by reason for termination (e.g., retirement, resignation, conduct, etc.) and to provide the gender and race/ethnicity information for each. Although OFCCP states that the reason for these expanded requests is to conduct a "thorough and timely desk audit" and "promote the timely and efficient exchange of information," in actuality, expanding the data elements for promotions and terminations will do neither, and is problematic for several reasons.

First, the additional data requested is not required by OFCCP's regulations. Under 41 CFR 60-2.17(b)(2), contractors are required to conduct an in-depth analysis of personnel activity, including promotions and terminations, to determine whether there are selection disparities. Contractors are also required to develop and implement an auditing system that, among other things, monitors records of all personnel activity, including promotions and terminations to ensure the nondiscriminatory policy is carried out. 41 CFR 60-2.17(d)(1). There is no requirement to analyze promotions by supervisor, or by specific promotion type. There is no requirement to separately examine different reasons for termination. While it may be a contractor's prerogative to collect these additional fields, and run analyses based on them, there is no regulatory requirement to do so.

Notably, OFCCP's recordkeeping obligation does not require contractors to <u>create any specific</u> records, only that records, once made, be maintained for a certain period. 41 CFR 60-1.12. If the Agency does not require a contractor to even have such records, it cannot require them to be produced as a threshold matter at the start of an audit.

An additional but equally important concern is the burden this requirement would pose to contractors. The additional data fields that OFCCP requests may not be housed in one centralized system, such as a contractor's HRIS. Details, like an employee's supervisor at the time of a particular promotion, may require manual collection from personnel files. If contractors are required to retrieve these data points from multiple sources, that will lead to delays in responding to the initial desk audit requests, again leading to inefficiencies.

In addition, current AAP software is not set up to include this level of detail in promotion and/or termination reports. Contractors may need to revise not only their own internal HRIS, but also their contracts with third-party vendors. The vendors, in turn, need time to re-program their software, run testing, and train users. All of these changes point to the significant increase in burden while doing nothing to maximize the benefit as required under the PRA requirements.

F. In requesting information about AI selection procedures up-front, OFCCP creates a presumption of adverse impact that does not exist, and uses unclear and ambiguous terminology further confusing what information is actually being requested.

Under Itemized Listing 19, OFCCP proposes a new requirement requesting documentation of a contractor's "policies and practices regarding all employment recruiting, screening and hiring mechanisms, including the use of artificial intelligence, algorithms, automated systems, or other technology-based selection procedures" – terms that are all undefined and subject to exceedingly broad interpretation. While we understand OFCCP's interest in the evolving area of advanced predictive technologies, the justification provided by the Agency fails to support why the collection of this information is necessary at the desk audit stage. The Agency ultimately states that because contractors are using automated technologies in hiring and recruitment processes more frequently, that these technologies "may" lead to bias or exclusion, and therefore must be submitted for review by OFCCP to determine if impediments to equal employment opportunity exist. This logic is fundamentally flawed.

Requiring this information up front in an audit creates a presumption that just because artificial intelligence or related technologies are used in employment selection decisions, then adverse impact or barriers to equal employment likely exist. Regardless of whether artificial intelligence technologies or human decision-making is being utilized to recruit, screen, or hire job candidates, OFCCP's investigatory process and stature as a neutral arbiter must remain the same. Meaning, OFCCP should investigate where the employment transaction data takes them. In instances where adverse impact indicators exist, OFCCP should request additional information and data to determine the cause of such indicators. However, absent any adverse impact indicators, OFCCP should move to the next stage of its review process. Thus, OFCCP should follow its well-established investigatory procedures and not request policies and practices on the use of artificial intelligence in employment selection decisions without first reviewing a contractor's employment transaction data to determine if such a request is warranted.

Another concern is that the language of this request is purposefully vague and ambiguous, and can be read to seek a host of materials to which OFCCP is not entitled at the outset of an audit. For instance, a validation study of an automated pre-employment assessment could constitute documentation of screening or hiring processes. And yet, the Uniform Guidelines on Employee Selection Procedures ("UGESP," 29 C.F.R. §1601 et seq.) specify that validation is not required unless, and until, a particular selection tool is shown to have adverse impact. 29 C.F.R. 1607.3(A). OFCCP would impermissibly hurdle this legal prerequisite in requiring contractors to provide validation studies before hiring activity has even been analyzed.

The request also fails to make a distinction between policies and practices actually implemented by the contractor and those being developed and considered. Thus, the request can be read as requiring the production of draft policies and practices as they pertain to a contractor's selection decision processes. However, draft policies and practices are not relevant and should have no bearing on the OFCCP's review of a given contractor. Only policies and practices actually utilized by a contractor should be in scope. Further, pursuant to its recordkeeping

obligations, OFCCP should also make clear that it is not imposing any requirement for contractors to create documentation related to recruiting, screening, or hiring. To the extent the request can be understood, it only seeks pre-existing records.

In addition to the issues addressed above, OFCCP fails to appreciate the time and cost burdens associated with gathering the documentation for this request. In all likelihood, the documents being requested will not only require the collaboration of several departments within an organization, but also coordinating information gathering with outside vendors that may be used as well. Especially given the broad and unclear direction of this request, contractors will be required to search all of its internal databases including its ATS and HRIS to ensure all proper avenues are being examined to locate this information. Depending on the size of the contractor under audit, the documentation requested could be for processes that range from several to hundreds. Not to mention that this documentation collection will also be taking place as a contractor is gathering and analyzing data, documents, and reports for the 25 other items OFCCP is requesting for the desk audit, and must be completed within a 30-day period.

Given OFCCP's lack of justification for this proposed request, the fact that no statistical analyses will be run on employment transactions data prior to this request being made, the ambiguity of the documentation being requested, and the cost and time constraints associated with responding to this request, OFCCP should not pursue this information at the desk audit stage of the compliance review.

IV. CONFIDENTIALITY

Contractors also have significant concerns with regard to confidentiality issues. The PRA requires that the requesting agency ensure that data collected will be treated with complete confidentiality. And yet, the Proposal merely conveys that "some" of the information contractors submit may be considered business confidential information or personally identifiable information. The Proposal then describes its approach with regard to personally identifiable information but provides no indication of how it intends to safeguard the highly sensitive nature of a contractor's confidential business information.

At the same time, it seeks more detailed information regarding its sensitive policy and practice issues including compensation policies and practices and the use of artificial intelligence, algorithms and other technology-based selection processes to name just a few. Again, all of this requested information would need to be provided to OFCCP without regard to whether there were any preliminary indications of discriminatory decision-making processes.

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In conclusion, based on these significant concerns with the OFCCP's Proposal, we respectfully request a complete withdrawal of the Proposal as the OFCCP has not met its burden under the Paperwork Reduction Act.

Very truly yours,

SEYFARTH SHAW LLP

/s/Annette Tyman