

February 12, 2024

Via Federal eRulemaking Portal: www.regulations.gov

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

Re: Center for Workplace Compliance's Comments on the Office of Federal Contract Compliance Programs' Proposed Reauthorization of the Contractor Portal (OMB Control Number 1250-0012)

Dear Ms. Williams:

The Center for Workplace Compliance (CWC) appreciates the opportunity to submit these comments regarding the Office of Federal Contract Compliance Programs' (OFCCP) proposed Information Collection Request (ICR), *Contractor Portal*, notice of which was published in the *Federal Register* on December 12, 2023.¹

According to the supporting statement accompanying OFCCP's announcement, the agency intends to ask the White House Office of Management and Budget (OMB) for approval to renew the agency's "Contractor Portal," formerly known as the Affirmative Action Program Verification Interface (AAP-VI), an online tool that allows covered federal contractors and subcontractors to certify annually that they have developed and maintained affirmative action programs (AAPs) in accordance with OFCCP's regulations. According to OFCCP, the agency intends to retain the existing Contractor Portal requirements, but with one significant addition: filers will now be required to enter the Unique Entity ID (UEI) for their parent company and each of the company's establishments.

As detailed below, however, we caution OFCCP on requiring the use of UEIs, as they do not represent an effective or efficient means of identifying unique contracting entities. Contractors' experience complying with a similar requirement imposed by the U.S. Equal Employment Opportunity Commission (EEOC) for filing EEO-1 Reports confirms this conclusion.

We also disagree with OFCCP's estimate that existing contractors will spend, on average, 0.13 hours (or 8 minutes) to "login into the system, input new information/verify previous information, and certify." Below we offer a number of practical considerations OFCCP should weigh before proceeding, which would improve the utility of the Contractor Portal and allow the agency to better account for the burdens associated with compliance.

¹ 88 Fed. Reg. 86,158 (December 12, 2023).

Statement of Interest

CWC² is the nation's leading nonprofit association of employers dedicated exclusively to helping its members develop practical and effective programs for ensuring workplace compliance, including full compliance with the nondiscrimination and affirmative action requirements applicable to federal contractors. Founded in 1976, CWC's membership includes approximately 200 major U.S. employers, collectively providing employment to millions of workers. CWC's directors and officers include many of industry's leading experts in the fields of fair employment, workplace compliance, and risk management. Their combined experience gives CWC a unique depth of understanding of the practical, as well as legal, considerations relevant to the proper interpretation and application of workplace rules and regulations.

Nearly all CWC members are federal contractors and subcontractors subject to the nondiscrimination and affirmative action requirements of Executive Order (E.O.) 11246, Section 503 of the Rehabilitation Act of 1973 (Section 503), Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and their implementing regulations. As major federal contractors and subcontractors, CWC's members have a significant interest in ensuring that OFCCP's programs, policies, and initiatives efficiently and effectively accomplish their underlying policy objectives.

OFCCP Underestimates the Burdens Imposed by the Contractor Portal

CWC disagrees with OFCCP's assessment that existing contractors will need to spend, on average, just *8 minutes* each filing cycle to "login into the system, input new information/verify previous information, and certify." We respectfully submit that this estimate does not account for the numerous changes the agency has made to the Contractor Portal since it was launched in early 2022.

When the Contractor Portal was launched, OFCCP pre-populated each contractor's establishment list with a subset of the organization's 2018 EEO-1 Reports. More specifically, the Portal contained each contractor's "Type 3" establishment, covering its principal or headquarters office, along with "Type 4" establishments, for each establishment employing 50 or more persons. At the time, it was believed that users simply had to login, verify and/or update the establishment listing, and certify.

This belief, however, was quickly proven incorrect, as the task of inputting new information and/or verifying previous information became increasingly complex, due in no small part to an updated User Guide and a growing (and sometimes conflicting) list of frequently asked questions (FAQs). As it stands today, complying with the Contractor Portal requires reviewing changes to a 52-page User Guide (last updated in September of 2023, after the 2023 filing cycle), and over *sixty* FAQs.

CWC members report to us that they spend, on average, between 1 to 2 business days (or 8 to 16 total hours) each year to "login into the system, input new information/verify previous information, and certify." This time is spent:

- Reading OFCCP's User Guide and FAQs and checking for changes or updates;
- Consulting with in-house staff and legal counsel on interpreting and implementing the FAQs;
- Manually adding establishments with fewer than 50 employees;

² Formerly the Equal Employment Advisory Council (EEAC).

- Updating establishment names, addresses, headcounts, and EEO-1 Unit IDs;
- Contacting the Contractor Portal help desk to resolve instances in which an EEO-1 Unit ID does not exist or has already been taken by another contractor (the Contractor Portal only recognizes the first six digits of the seven-digit EEO-1 Unit ID);
- Emailing a “bulk upload” file to the Contractor Portal help desk (for those organizations that elect to use this option);
- Selecting “Assign Closed Status” for those establishments that have closed or are no longer required to maintain an AAP; and
- Completing the certification by following the prompts on the certification page.

This number fluctuates, of course, based on the size and complexity of the organization. We respectfully submit, however, that there is not a single CWC member that can complete all of the above in 8 minutes.

Recommended Technical Updates to Reduce Burden

Some, but not all, of the burdens referenced above could be mitigated by improvements to the Contractor Portal itself. For example, these could include, but are in no way limited to:

- Modifying the Contractor Portal in a manner that will avoid issues pertaining to the Unit ID assigned to each establishment, such as:
 - Allowing the Contractor Portal to auto-assign Unit IDs;
 - Making Unit ID an optional field; or
 - Updating the system to ensure that the Contractor Portal will accept the full seven-digit Unit IDs that contractors use in the annual EEO-1 filing.
- Broadening the pool of contractors who are eligible to utilize the Contractor Portal’s “bulk upload” option by lowering the minimum threshold from 100 to 25 establishments;
- Updating the Contractor Portal to directly accept uploads from all contractors, regardless of size;
- When making manual updates to establishments, returning the user to the same page they were on, rather than automatically looping the user back to the first page of establishments; and
- Ensuring that Unique Entity IDs (UEIs) will be an optional field (for the reasons summarized below).

CWC respectfully recommends considering these and other important updates. If there is interest from the agency, CWC is more than happy to coordinate a meeting between OFCCP and its stakeholders on this matter.

Unique Entity IDs Are Ineffective Company Identifiers

According to OFCCP’s attached supporting statement, filers will now be required to enter the Unique Entity ID (UEI) for their parent company and each of the company’s establishments. As OFCCP notes, the UEI “has replaced the Data Universal Numbering System (DUNS) number, which the Federal Government stopped issuing in April 2022.” While we understand the logic of shifting from DUNS to UEIs, CWC urges OFCCP to abandon this new requirement, as we learned firsthand that UEIs do not represent an effective or efficient means of identifying unique contracting entities.

Our opinion on this matter is heavily informed from the most recent EEO-1 filing cycle. For the 2022 EEO-1 Reports, the EEOC also required entities filing EEO-1 Reports to submit their UEI for any establishment that is a federal contractor. However, both the EEOC and the contractor community quickly learned that for many EEO-1 filers, there is nothing “unique” about the UEI.

Indeed, several CWC members advised us that after trying to find their respective UEIs, they encountered two issues: (1) they have no UEI, because even though they are a federal contractor or subcontractor subject to OFCCP jurisdiction, they were never required to register with the System for Award Management (SAM), which issues UEIs;³ or (2) they have *several* UEIs for a given legal entity, depending on when a federal contract was signed and the contracting agency in question. As a result, the EEOC had to quickly modify its EEO-1 online filing system and procedures to permit federal contractors to enter “UNAVAILABLE” for the UEI in cases where the UEI didn’t exist, or the contractor wasn’t sure which UEI to choose.

OFCCP will invariably encounter the exact same issue if it makes UEIs mandatory, which will result in further delays, FAQs, and help desk inquiries. Put simply, the universe of contractors that maintain a UEI with the System for Award Management is considerably smaller than the universe of contractors subject to OFCCP jurisdiction. CWC urges OFCCP to abandon this requirement.

Conclusion

CWC appreciates the opportunity to offer these comments regarding OFCCP’s proposal to extend the Contractor Portal. Please do not hesitate to contact me if CWC 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

³ This includes, for example, certain financial institutions and many federal subcontractors.