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Tina 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: National Industry Liaison Group's Comment on OFCCP's Proposed Renewal of the Approval of Information Collection Requirements
OMB No. 1250-0012**

Dear Ms. Williams:

The National Industry Liaison Group (NILG) welcomes the opportunity to comment on the Notice published in the December 12, 2023 edition of the *Federal Register* regarding the OFCCP's proposal to obtain approval from the Office of Management and Budget (OMB) for renewal of the information collection for its Contractor Portal interface (Notice).

By way of background, the NILG was created over thirty years ago as a forum for the Office of Federal Contract Compliance Programs (OFCCP or Agency) and federal contractors to work together towards equality in the workplace. Throughout the country, local Industry Liaison Groups ("ILGs") have formed to further this unique partnership of public and private sector cooperation to proactively advance workplace equal employment opportunity. The NILG Board is comprised of elected members representing the local ILGs from across the country. Over the years, the NILG and the ILGs, which are comprised of thousands of small, mid-size, and large employers across the country, have reached out to the OFCCP and other agencies, such as the U.S. Equal Employment Opportunity Commission (EEOC), with mutual goals of fostering a non-discriminatory workplace. Therefore, in response to the Notice, the NILG seeks to present the views of well over sixty local ILGs and their members.

We commend the OFCCP for, and share its commitment to, promoting equal employment opportunity and non-discrimination for applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, national origin, and veteran and disability status. In our comments below, we respectfully offer observations and suggestions designed to ensure the OFCCP is able to carry out its duty to review contractor practices and evaluate the opportunities

and treatment these individuals are afforded while, at the same time, balancing the contractor community's legitimate interest in ensuring the Agency receives data reflective of the employer's actual workplace policies and workforce and minimizing administrative burdens.

I. Problems with the Contractor Portal

The Notice fails to address the myriad of technical problems that contractors faced when attempting to comply with the OFCCP's existing Contractor Portal requirements. The platform is extremely cumbersome and is not user-friendly. During the past two years of the Contractor Portal's existence, contractors have expressed frustration to the NILG regarding these problems, as well as concerns with the OFCCP's responsiveness (or lack thereof) to requests for technical assistance. These concerns include:

- The OFCCP's Frequently Asked Questions (FAQs) are too superficial and fail to provide sufficient guidance beyond only the most basic information needed for certifying. They do not address multiple real-world practicalities that contractors face when attempting to certify.
- The OFCCP modifies its substantive FAQs with no notice or warning to contractors and no explanation regarding how contractors that complied with prior FAQs should respond. For example, in 2023, the OFCCP made a last-minute change to the FAQ regarding how contractors that had not previously filed EEO-1 Reports should comply. The OFCCP changed its existing guidance without notifying affected contractors; only contractors that happened to notice the change to the FAQs were even aware that the OFCCP had changed its instructions. Moreover, the OFCCP provided no indication whether contractors could continue to rely on the prior instructions or for how long.
- Contractors that registered for the Contractor Portal in the first year who experienced turnover in the position that managed the process were unable to access the Contractor Portal. Previously registered contractors could not access the Contractor Portal because the prior Admin User was no longer with the organization, and the OFCCP failed to respond to the contractor regarding updating the company's credentials. This caused contractors to miss the OFCCP's certification deadline. Moreover, contractors with July AAP dates – who would have been able to certify timely had access to the system been provided – were unable to certify after July 1, 2023 until they updated their AAPs. This created an inequity for those contractors who were impacted by the OFCCP's failure to respond to repeated requests for technical assistance.
- Many contractors were unable to comply with the OFCCP's instructions to update establishment information contained in the Contractor Portal, such as addresses and employee headcounts, because the system would not accept the changes contractors attempted to make.

- The OFCCP provides a bulk upload process for large contractors. However, in 2023, the OFCCP experienced technical difficulties with the process and failed to communicate this to contractors. Contractors were left in the dark, wondering whether and how the OFCCP would complete the bulk upload and if they would be able to complete the certification process in a timely manner. This caused considerable stress and angst for those contractors.
- Despite a considerable number of contractors experiencing technical difficulties with the Contractor Portal that were unable to obtain assistance from the OFCCP, the OFCCP provided no notice to contractors regarding how late certification would affect them. During the 2022 certification cycle, the OFCCP at least advised contractors that had a pending help desk ticket that they would not be counted as late. The OFCCP made no such announcement in 2023.
- The process does not provide for bulk closure of establishments.
- The process does not allow a contractor to update the contact information by company, and rather requires that it be done for each individual establishment, which can be very time-consuming.
- The process drops leading zeros, which are required for FEINs, DUNS, and presumably for UEIs, which results in an error.
- When a contractor updates an establishment, the platform reverts to the first page of establishments. This requires the contractor to page through multiple screens to return to the relevant establishment.

If the OFCCP desires to continue requiring contractors to use the Contractor Portal and certify compliance, the NILG strongly encourages the OFCCP to eliminate these time-consuming challenges to the process.

II. Proposed Update to the Contractor Portal

The OFCCP proposes to update the Contractor Portal certification process by requiring contractors to enter the Unique Entity ID (UEI) for each establishment. The NILG and contractors have insight into this proposed change because the EEOC, in the most recent EEO-1 Reporting cycle, implemented the same requirement for contractors. It was not an easy or seamless change for contractors, many of which experienced significant challenges obtaining this information. Fortunately, the EEOC allowed contractors to file their EEO-1 Reports without mandating provision of a UEI.

Although the UEI replaced the Data Universal Number System (DUNS), not every federal contractor or establishment has a UEI or can easily obtain one. The OFCCP's Notice does not address how contractors, such as financial institutions, or establishments, such as functional affirmative action plans (FAAPs), without a UEI should handle such a requirement. The OFCCP

must provide the option of leaving this information blank, or state “Unavailable” as allowed by the EEOC, if it moves forward with this proposed change.

III. Burden Estimates

The OFCCP woefully underestimates the time contractors must spend to certify compliance in the Contractor Portal. Given the technical limitations of the system and challenges faced by contractors, the time involved can be substantial. The OFCCP estimates that existing contractors will need only .13 hours to log into the Contractor Portal, input information regarding new establishments, update information on existing establishments, verify prior information, and certify.

It is noteworthy that the OFCCP currently has over sixty FAQs, with which contractors must read and refamiliarize themselves during each certification cycle. Simply reading the FAQs would take at least 30 minutes. The amount of time involved in developing the information needed to determine what existing establishments need updating and which establishments are new and must be added will vary significantly depending on the size of the contractor. For large contractors this could take several hours. The actual process of inputting the necessary information in the Contractor Portal can also take several hours, although the amount of time could be reduced if the system were designed in a more user-friendly fashion.

Based on feedback from the NILG’s constituents, we estimate that most contractors spend over ten hours completing all required steps for certification in the Contractor Portal. Contractors with fewer establishments will not generally need that much time, but the amount of time involved increases proportionately with the number of establishments that a contractor has. Thus, the OFCCP should substantially increase its estimated burden on the contractor community.

We thank the OFCCP in advance for its consideration of our comments and suggestions. If OFCCP should wish to discuss this request, please contact Cara Crotty, NILG Counsel at ccrotty@constangy.com.

Respectfully submitted,

Anthony Kaylin

Anthony Kaylin
Chair, National Industry Liaison Group