

ROFFMAN HORVITZ, PLC
LEGAL COUNSELING
FEDERAL CONTRACT COMPLIANCE & EMPLOYMENT DATA ANALYTICS

February 12, 2024

Ms. 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 20210

Re: OFCCP Information Collection, OMB Control No. 1250-0012, Collecting Unique Entity Identifiers in the OFCCP Contractor Portal

Dear Ms. Williams:

We are writing on behalf of Roffman Horvitz, PLC and its clients, to comment on OFCCP's Proposed Information Collection regarding collection of a Unique Entity Identifier in the OFCCP Contractor Portal.

Roffman Horvitz is a boutique law firm founded by the former shareholders and OFCCP compliance practice group managers at the nation's largest employment law firm. Our team focuses on assisting federal contractor employers to comply with Executive Order 11246, Section 503 of the Rehabilitation Act, and the Vietnam Era Veterans Readjustment Assistance Act of 1974 (VEVRAA) and OFCCP's implementing regulations. The firm's client base ranges from Fortune 100 companies to small-business owners.

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OFCCP is proposing the following update to the Contractor Portal:

- Requiring the user to enter the Unique Entity ID (UEI) for the Parent Company and Establishment. OFCCP uses the UEI to identify businesses and other entities that do business with the Federal Government. The UEI has replaced the Data Universal Numbering System (DUNS) number, which the Federal Government stopped issuing in April 2022.¹⁴

¹⁴ See "DUNS to Unique Entity ID (SAM) Transition," available at <https://sam.gov/content/duns-uei>. The Contractor Portal will continue to ask for the DUNS number to account for contractors who may still be transitioning to UEIs. [Footnote is original to OFCCP's ICR].

To allow for IT updates to the system, OFCCP is requesting to use the current approved ICR up to 90 days after OMB approves the new collection.

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Our concern stems from the entities that are subject to OFCCP's jurisdiction, and which must certify in OFCCP's contractor portal, but are not "registered" in SAM – the System for Award Management.

SAM allows organizations to obtain a Unique Entity Identifier (UEI) in one of two ways: by registering to do business with the federal government or creating a profile.

Banks, credit unions, organizations that sell to AAFES, and many first-tier subcontractors are not required to register in SAM, but many such organizations are covered by OFCCP's jurisdiction. In order for them to comply with OFCCP's proposal to enter the UEI for the Parent Company and Establishment (emphasis added), there is a lot of time and legwork that goes into that profile-creation process, none of which is being accounted for in OFCCP's burden statement. The process of creating a profile in SAM to obtain a UEI is complicated. The organization needs to assemble or track down a lot of corporate-entity-type documents to prove that the organization is lawfully able to do business in the US, and then that information needs to be uploaded to SAM and validated.

Perhaps it was presumed from the footnote that OFCCP will not require a UEI for the 2024 certification cycle – because OFCCP says that it will continue to ask for the DUNS number to account for contractors who may still be transitioning to UEIs – but that was not clear from the proposal. As we read the proposal and the footnote, they appear to contradict one another. We are not clear on how OFCCP will require users to identify the UEI while at the same time continuing to ask for the DUNS number. On the one hand, it seems mandatory; on the other hand, it seems permissive.

We are concerned that if OFCCP makes the submission of the UEI mandatory for the 2024 certification cycle, it will significantly impede many organizations' ability to certify timely. We have two suggestions.

First, OFCCP could change the word "and" to "or."

Requiring the user to enter the Unique Entity ID (UEI) for the Parent Company ~~and~~ or Establishment.

Doing so will enable an organization, including those that have approved FAAPs, to enter ONLY the UEI of a parent company and not require it for each establishment.

Alternatively, OFCCP could mimic what EEOC did for its 2022 reporting cycle (reports that were due on or before December 5, 2023). EEOC made the reporting of the UEI permissive in its first reporting cycle, and it allowed government contractor organizations that did not know their UEI to write UNAVAILABLE in the cell.

If OFCCP anticipates configuring the portal to require the UEI prior to June 30, 2024, perhaps OFCCP could instead configure the portal to enable an organization to write UNAVAILABLE at the establishment level, but still require a UEI at the Parent Level.

If OFCCP intends to make submission of the UEI mandatory for 2024, we think that contractor organizations need more than 90 calendar days in which to obtain a UEI, and we strongly

encourage OFCCP to develop a UEI fact sheet or include UEI links in the FAQs it developed for the contractor portal.

If it is highly improbable that the Contractor Portal will be revised in time to require the UEI for the 2024 certification cycle, we simply encourage OFCCP to release UEI FAQs very early to give contractors ample lead time to obtain their UEIs, and OFCCP should explain how that will work for FAAP certification, too.

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Thank you for the opportunity to comment on OFCCP's proposal to require the UEI in the Contractor Portal.

Respectfully submitted,

Roffman Horvitz, PLC

cc: Alissa A. Horvitz
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