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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, D.C. 20210

**Re: National Industry Liaison Group's Comment on Construction Compliance Review
Scheduling Letter & Itemized Listing**

Dear Ms. Williams:

The National Industry Liaison Group (NILG) welcomes the opportunity to comment on the Notice published in the February 26, 2024 edition of the *Federal Register* regarding the Proposed Renewal of the Approval of Information Collection Requirements.

By way of background, the NILG was created over thirty years ago as a forum for the Office of Federal Contract Compliance Programs 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, 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.

The proposed changes to the Itemized Listing would significantly increase the burden on construction contractors.

The OFCCP proposes dramatic changes to the Itemized Listing for construction contractor that would increase the burden on contractors exponentially.

For example, Item 2 would require much more detailed compensation information for each employee, including:

- Trade or supervision, inspection, or onsite function
- Regular hours worked in each trade
- Regular rate of pay
- Total regular pay
- Overtime hours worked in each trade
- Overtime rate of pay
- Total overtime pay
- Bonus or other pay
- Time period covered by for the pay and hours worked

The OFCCP appears to overlook the complexity of the information it seeks to collect. Construction workers often fill multiple roles at multiple sites at any point in time. Therefore, to comply with this requirement, the contractor must not only track each worker in minute detail, but also then compile the information specific to the construction project under review. This would entail a substantial amount of time for most contractors. The OFCCP appears to assume that contractors can easily extract these data points from a database, but such an assumption hits far from the mark. Contractors would either need additional systems or programs or personnel to perform the necessarily calculations. Regardless, this is not a simple or easy undertaking, and the burden it presents outweighs any purported benefit to the agency.

In addition, Item 3 would require construction contractors to provide detailed logs of applicants, hires, promotions, layoffs, recalls, and terminations, including such components as name, race/ethnicity, gender, applicable date, job title, etc. It is important to note that this proposal would require construction contractors to provide much more information than the OFCCP mandates of supply and service contractors, who generally submit employment activity counts by job group. The NILG submits that it is inappropriate to place a greater burden on construction contractors than is currently placed on other contractors. The mandate to submit actual logs is unsupported; the submission of counts by trade should more than sufficiently satisfy the OFCCP's purported need for this information.

Item 16 would require construction contractors to identify all tests and selection procedures used in the hiring process, along with evidence that the tests and selection procedures were validated. With this request, the OFCCP would be putting the cart before the horse because this

information is not necessary at the initial phase of a compliance evaluation. The Uniform Guidelines on Employee Selection Procedures provide that:

If . . . the *total selection process* does not have an adverse impact, the Federal enforcement agencies, in the exercise of their administrative and prosecutorial discretion, in usual circumstances, *will not expect a user to evaluate the individual components*, and will not take enforcement action based upon adverse impact of any component of that process, including the separate parts of a multipart selection procedure or any separate procedure that is used as an alternative method of selection.

41 C.F.R. § 60-3.4(C) (emphasis added).

Thus, it would only be in the unusual event where a contractor had unexplained adverse impact in its overall selection process that the OFCCP would have any justification for seeking this type of information. The OFCCP's statistics show that it finds discrimination in only approximately two percent of all compliance evaluations. In light of the extremely low likelihood that information of this nature would be relevant to the Agency, it is not practical for the OFCCP to request it at the outset of *every single* compliance evaluation. It places unnecessary burden on the contractor with no meaningful utility for the Agency. The OFCCP has the authority to pursue this information *if and when* an individual contractor's data and practices indicate relevance to that specific compliance evaluation. To require a wholesale submission of this information without such a basis, however, would slow down the process and lead to even longer compliance evaluations. Therefore, the NILG requests that this proposed item be removed in its entirety, as the OFCCP has not provided adequate support for its inclusion.

Conclusion

The NILG opposes the OFCCP's proposed changes to the Itemized Listing for construction contractors, as the additional burden imposed would be substantial. For those reasons, we respectfully request that the OFCCP reconsider its proposal.

We thank you for your consideration of our comments.

Respectfully submitted,

Anthony Kaylin

Anthony Kaylin
Chair, National Industry Liaison Group