

April 23, 2024

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

Submitted electronically via regulations.gov

RE: USDOL, OFCCP, Monthly Employment Utilization Report
Proposal to Update and Reinstate Form CC-257
Previous OMB Control Number: 1215-0163

Dear Ms. Williams,

The National Taskforce on Tradeswomen's Issues ("Tradeswomen's Taskforce") and our research partner, the Institute for Women's Policy Research (IWPR), and the additional undersigned national, state, and local organizations write to strongly endorse the U.S. Department of Labor's (DOL) Office of Federal Contract Compliance Programs (OFCCP) request of the Office of Management and Budget (OMB) to reinstate (with changes) the Monthly Employment Utilization Report (CC-257).¹ The CC-257 is a form that covered Federal construction contractors and subcontractors ("contractors") previously submitted to OFCCP on a monthly basis and that included information on employee work hours by race/ethnicity, gender, and trade in the covered area. OFCCP administers and enforces Executive Order 11246, as amended (E.O. 11246), the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), Section 503 of the Rehabilitation Act of 1973, as amended (Section 503), and their implementing regulations at 41 CFR Chapter 60. The requested action is critical to the effective enforcement of OFCCP's responsibilities for federally funded construction projects.

Founded in 2011, the Tradeswomen's Taskforce seeks to unite local, regional and national experts and advocates to support tradeswomen in achieving access, opportunity, and equity in the construction industry and other nontraditional skilled trades occupations. The Tradeswomen's Taskforce's (TWTF) work includes a federal public policy platform and national advocacy initiatives aimed at improving, enforcing, funding, and promoting best practices in apprenticeship, training, workforce development, career tech, nontraditional employment, and job site equity.

TWTF and our tradeswomen partners have been engaged and are particularly concerned with the OFCCP's oversight and enforcement of Executive Order 11246. As noted in the OFCCPs justification, "E.O. 11246 prohibits contractors from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, or national origin and requires contractors to take affirmative action to ensure that equal opportunity is

¹ The CC-257 was previously authorized under OMB Control Number 1215-0163. As of December 8, 1995, OFCCP no longer required contractors to submit the form. *See* 60 FR 63061 (Dec. 8, 1995).

provided in all aspects of their employment. . . . OFCCP does not require construction contractors that meet certain contract amounts and employee count thresholds to develop an affirmative action program (AAP). Rather, construction contractors must take certain affirmative steps required by OFCCP's regulations. The E.O. 11246 requirements apply to contractors (including federally assisted construction contractors) holding a Government contract in excess of \$10,000, or Government contracts that have, or can reasonably expect to have, an aggregate total value exceeding \$10,000 in a 12-month period.”²

Although women comprise nearly half of the labor force, and despite having secured a firm foothold in the construction industry in the 1980's due in part to the implementation and oversight of EO 11246 by the OFCCP, women continue to be severely under-represented in the construction industry. In fiscal year 2023, women represented less than five percent of registered apprentices in the construction industry (and construction industry apprenticeships made up 11 percent of all active female apprentices, or around 10,250 women.)³

EO 11246 mandates that contractors make efforts to increase the utilization of people of color as well as women on federally funded projects. Journey level numbers mirror the apprenticeship numbers for women and with lagging participation of people of color, all genders, based on workforce data: “Women and people of color are underrepresented in the construction industry and especially in the higher-paid, higher-skilled trades. Despite a significant increase in women's employment in construction over the past 10 years, today women make up just 11% of all workers in the construction industry—a figure that includes office and clerical positions—and only about 4% of workers in the trades. Black workers were nearly 13% of the U.S. labor force in 2022 but less than 7% of the construction workforce. Asian workers also make up a very small percentage of the construction workforce (2.1%) compared to their share of the overall labor force (6.7%). In addition, Black and Hispanic or Latino workers and women are disproportionately concentrated in lower-paying construction jobs.”⁴

Further key finding from the EEOC report notes that this general under representation is not accidental in nature: “Discrimination based on sex, race, and national origin persists and contributes to the underrepresentation of women and workers of color in construction. Discrimination in recruitment, apprenticeships, and hiring blocks access to good-paying construction careers while unequal treatment in the terms and conditions of employment—including training, hours, and work assignments—hinders advancement and pushes many women and workers of color out of the industry.”⁵

The inclusion of women in the construction workforce is a key component to open the opportunity for women in blue collar careers to earn sustainable wages for themselves and their households. “Construction and other skilled, non-traditional trades provide women with wages

² 41 CFR 60-1.5.

³ U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey (2023)*, <https://www.bls.gov/cps/cpsaat11.htm>; Apprenticeship USA, Data and Statistics: Interactive Apprenticeship Data, <https://www.apprenticeship.gov/data-and-statistics>.

⁴ Equal Employment Opportunities Commission Report, *Building for the Future: Advancing Equal Employment Opportunity in the Construction Industry*, May 2023, p 5.

⁵ Equal Employment Opportunities Commission Report, *Building for the Future: Advancing Equal Employment Opportunity in the Construction Industry*, May 2023, p 5.

that provide economic security. Over the course of her lifetime, a woman working as an electrician will make more than \$1 million more than her counterpart working in a traditionally female-dominated job, such as a childcare worker or service worker.”⁶

TWTF has a particular interest in construction workforce equity for all women and particularly women of color who suffer the largest pay equity gap. Supporting blue collar women into high wage trades careers is central to its mission. Further, we note that OFCCP also oversees other important mandates regarding workforce inclusion on federally funded projects, that is VEVRAA and Section 503. The reinstatement of the monthly collection of the updated CC-257 forms will also improve the Agency’s capacity to fulfill these obligations and track equity for Veterans and people with disabilities where federal funds are being expended on construction projects.

TWTF submits these comments with the knowledge that reliable and timely data are key to effective policy and programmatic approaches that will increase women’s access to careers in construction and ensure non-discrimination on federally funded projects. OFCCP explains the special circumstances that construction projects present for workforce reporting and oversight that are quite different from the service and supply contractors funded through federal dollars. “Monthly CC-257 reporting is necessary, as jobs in the construction industry are often temporary and project-based. The construction workforce within a project is frequently dynamic, with specific trades changing as the project progresses. Less frequent reporting would not capture the changing workforce composition in each phase of a project. Additionally, the work can be seasonal and subject to significant variations in demand. With monthly reporting, OFCCP can review projects while there is current employment activity (e.g., hiring, assignment, and pay), and better ensure that contractors are taking corrective measures to ensure equal employment opportunity on their projects. Contractors can also use the monthly reports to proactively monitor their equal employment opportunity efforts and take corrective measures while the project is ongoing if they find obstacles to equal employment opportunity.”⁷

Every skilled crafts employee in the field, except for supervision, is an hourly employee, typically hired and laid off on one day’s notice or less. Due to this extremely transitive nature of a contractor’s workforce, tracking a construction contractor’s hiring on these jobs is only practicable through regular reporting while a project is ongoing. The experience of construction projects meeting and exceeding federal goals for the gender and racial/ethnic distribution of construction work hours suggest that monthly reporting and reviewing of workforce data is crucial for identifying problems and ensuring that overall project. TWTF partner organizations have independent experience with the complexities of workforce compliance on construction projects and the necessity of regular “real-time” reporting. For example, TWTF partner organizations Tradeswomen Inc. (TWI) and Equal Rights Advocates (ERA) actively participated in an OFCCP Megaproject in San Francisco (50 UN Plaza, a \$60 million remodel to the General Services Administration offices, 2011-2014) as part of the community engagement. Working diligently with OFCCP and the project contractor staff, TWI and ERA were able to establish a

⁶ Debbie Reed, et al., Mathematica Policy Research, *An Effectiveness Assessment and Cost-Benefit Analysis of Registered Apprenticeship in 10 States* (July 25, 2012), https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_10.pdf.

⁷ OFCCP 2024-0001-002, CC-257 Supporting Statement, p.13, www.regulations.gov

reliable monthly reporting process that included the necessary workforce utilization data similar to the fields included in the proposed updated CC-257. Through the Megaproject community meetings with the general contractor, major subcontractors, other community groups, and the union locals providing the skilled trades workforce, the project came in above the 6.9% female participation.⁸ Other TWTF partner organizations provide recent examples of how frequent data reviews make a difference to performance on gender and racial equity.⁹

“Further, OFCCP also plans to use the collected information to improve its scheduling and compliance evaluation process. As discussed above, a less frequent collection will lead to outdated information on the workforce and the contractor’s employment activity. Having more current data will help OFCCP focus its resources on active projects, where OFCCP can have the most impact.”¹⁰ Monthly collection of Construction project data will benefit OFCCP oversight to improve its scheduling and compliance evaluation process. OFCCP will be more aware of the various crafts and fluctuations of the workforce on active projects. “The collected information will also help inform compliance assistance activities and help the agency track the progress and effectiveness of its outreach efforts and Megaproject Program. Having monthly reports ensures OFCCP has current information on the projects to carry out these activities.”¹¹

Regular data reporting will also improve the retention of women and other non-traditional populations on federal jobsites. In pinpointing projects and contractors with below average outcomes, OFCCP can also identify other contractor practices that affect retention of workers.

Research on the construction industry highlights the diversity of practices and levels of compliance between contractors, suggesting that lack of compliance, harassment, and discrimination are not equally common across contractors. The Institute for Women’s Policy Research (2021) found that between a fifth and a quarter of women working in the construction trades report to always or frequently experience harassment and discrimination, including in layoffs and hiring; likewise, research on gender and racial diversity in construction apprenticeship programs highlights substantial differences in program performance on meeting basic gender equity goals.¹²

⁸ Effective OFCCP project monitoring changes lives. A TWI client, a black female ironworker first-year apprentice, started on the San Francisco GSA project and completed her apprenticeship on that project. She is still in the trades working as an inspector decades later. (TWI internal reports per Meg Vasey, Executive Director, 2009-2023)

⁹ See, for example, Massachusetts Gaming Commission, Built to Last: Best Practices for Diversity in the Construction Industry-The Massachusetts Casino Development Experience; <https://massgaming.com/wp-content/uploads/Built-to-Last-Best-Practices-for-Diversity-in-the-Construction-Industry.pdf>; additional examples from Massachusetts can be found at Policy Group for Tradeswomen’s Issues (<https://policygroupontradeswomen.org/>); another case study is the Minnesota Vikings Stadium, Jobs with Justice Jobs With Justice Education Fund and North America’s Building Trades Unions Tradeswomen Committee, 2016, Building Career Opportunities for Women and People of Color: Breakthroughs in Construction; https://www.jwj.org/wp-content/uploads/2016/12/JWJEDU_NABTU_Report_2016_OnlineVersion_small.pdf

See also separate comments submitted by Chicago Women in the Trades (CWIT)

¹⁰ OFCCP 2024-0001-002, CC-257 Supporting Statement, p.13, www.regulations.gov

¹¹ OFCCP 2024-0001-002, CC-257 Supporting Statement, pp.13-14, www.regulations.gov

¹² Ariane Hegewisch and Eve Mefferd, A Future Worth Building: What Tradeswomen Say about the Change They Need in the Construction Industry, 2021, Institute for Women’s Policy Research available at <https://iwpr.org/a-future-worth-building-report>. Ariane Hegewisch/, As Apprenticeships Expand, Breaking Down Occupational Segregation Is Key to Women’s Economic Success, 2024, Institute for Women’s Policy Research, available at <https://iwpr.org/as-apprenticeships-expand-breaking-down-occupational-segregation-is-key-to-womens-economic-success/>

The challenges and costs to contractors to make these submittals have dramatically decreased in the years since OFCCP paused the monthly collection of form CC-257. OFCCP includes a cost burden estimate in its justification submittal.¹³ It is important to note that in the intervening period since the pause in data collection, the entirety of company payroll systems have gone to electronic formats. Public agencies all require the electronic submission of contractor payrolls on their public works projects to meet their other invoicing, auditing, and workforce oversight requirements; similarly, union-contractor labor management trust benefit agreements have automated their monthly submittals using the same or similar standardized formats. These construction contractor formats already include most if not all the information cells provided for in the revised CC-257's. Setting up the CC-257 reporting formats for OFCCP monthly submittals will require some technical expertise to reorder the information but the ongoing costs and information gathering burden to the contractors are projected to be minimal. Similarly, the receipt and analysis of the submitted data will require some intake formatting on the part of OFCCP but once instituted, will allow for the effective and efficient review by staff.

In summary, TWTF, IWPR, and our Tradeswomen partner agencies believe that the reinstatement of monthly submittal of the updated Form CC-257 by OFCCP is a priority.

- Congress has spoken to (and the Executive Branch has endorsed) the priority of an inclusive workforce when federal funds are expended through the OFCCP mandates.
- Congress has funded and tasked the executive branch to launch and administer significant and long-term construction infrastructure projects for the benefit of the American people.
 - Inclusive workforce opportunities are a priority in this funding.¹⁴
- Data are key to all reporting and to tracking compliance, improvement, and enforcement of these priorities.
- More complete data and regular reporting will allow the Agency to distinguish between contractors in compliance and focus on potentially bad actors making for more effective and efficient compliance reviews.
- With the ubiquitous nature of electronic payroll data collection and submission of monthly reporting on public projects in general, the adaption necessary to automate the requirements of CC-257's will be minimal.

For these reasons we strongly endorse OFCCP's reinstatement and monthly collection of CC-257 forms.

If you have any questions about this comment, please contact Meg Vasey, Policy Committee Co-chair of the National Taskforce on Tradeswomen's Issues, at mdvasey@gmail.com and Jessica Ramey Stender, Policy Committee Co-chair of the National Taskforce on Tradeswomen's Issues and Policy Director & Deputy Legal Director of Equal Rights Advocates, at jstender@equalrights.org.

¹³ OFCCP 2024-0001-002, CC-257 Supporting Statement, pp. 15-17, www.regulations.gov

¹⁴ See, among multiple sources, National Grants Management Association, \$1.3 trillion Total amount of money allocated to infrastructure projects nationwide <https://www.ngma.org/infrastructure-funding-information>
See also https://www.whitehouse.gov/wp-content/uploads/2022/11/Advancing-Equitable-Workforce-Development-for-Infrastructure-Jobs_110122.pdf

Respectfully submitted,

National Taskforce on Tradeswomen's Issues

Institute for Women's Policy Research

Building Pathways

Chicago Women in Trades

Equal Rights Advocates

Heartland Women in Trades

JW Glasswork

National Partnership for Women and Families

Tradeswomen Sisterhood

West Virginia Women Work