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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 Proposed Reinstatement of CC-257

Dear Ms. Williams:

The National Industry Liaison Group (NILG) welcomes the opportunity to comment on the Notice published in the February 23, 2024 edition of the *Federal Register* regarding the proposed reinstatement with change of the Monthly Employment Utilization Report (CC-257).

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.

I. The OFCCP underestimates the burden on contractors.

The OFCCP estimates that completing the CC-257 will take construction contractors 1.5 hours a month. This woefully underestimates the time needed and seems to assume that contractors can press a button and have the data neatly at their fingertips. This belief is far removed from reality. In actual fact, preparing the information regarding total hours worked by race, gender, and construction trade and covered area will take a significant amount of time. Most construction contractors do not have personnel dedicated to handle such tasks or the systems in place to perform the necessary calculations. Compliance for most construction contractors will entail the addition of personnel and/or systems to enable timely calculations and submissions. If the OFCCP moves forward with this proposal, it should therefore allow for at least six months lead time for construction contractors to prepare.

The Agency's burden estimates do not take into account that construction workers may fill multiple roles at multiple sites during a one-month reporting period. The proposed reporting requirement would place additional recordkeeping burdens on contractors – not only to ensure that each worker is tracked in minute detail – but also to have ability to accurately report by race, gender, and hours worked in each category every thirty days. This is a monumental undertaking that would increase the costs for construction contractors, and thus, the federal government and taxpayers.

Moreover, the OFCCP's justification for reinstating this defunct reporting requirement is flimsy. The Agency cites *only two examples* where it has found discrimination by a construction contractor. This does not indicate that discrimination is rampant across America's construction sites such that construction contractors should face such significant reporting requirements. The OFCCP's proposal would require ongoing, time-consuming, and expensive reporting, which vastly exceeds the type of reporting required of supply and service contractors. The proposal unfairly targets construction contractors and would place a significant burden on them – a burden that was not anticipated when they bid on the contract.

The NILG submits that the additional burden of the proposed reporting requirement far exceeds any added value and that the OFCCP should not move forward with this endeavor.

II. The OFCCP fails to address enforcement and non-compliance.

The OFCCP's Notice and Supporting Statement do not provide any insight regarding how the Agency will ensure compliance with the reporting requirement if it is reinstated. The NILG's constituents wonder how the OFCCP will determine what contractors were covered but failed to submit the report. Without such a mechanism, contractors that comply with the requirement will face additional burdens and costs that non-compliant contractors will not face. Similarly, the OFCCP should expressly state what consequences contractors will face for non-compliance. These are important issues that the Notice does not address, and the NILG respectfully requests that the OFCCP provide more specific details regarding how it will approach enforcement.

Moreover, construction contractors with existing contractors have not agreed to comply with this reporting requirement and therefore did not factor the costs associated with it into their

bids and construction costs. Thus, the NILG assumes that any new reporting requirement would only be effective on construction contractors with a contract clause that mandates compliance.

III. The OFCCP proposes to collect more information than is relevant for its purposes.

The OFCCP asserts that reinstituting CC-257 will provide relevant information that it can use in developing scheduling methodology for construction contractors, such as which contracts are active and current employee count. However, the proposed CC-257 form includes fields that are not relevant for this purpose. For example, it would require contractors to identify the federal funding agency. While prime contractors may know this information, subcontractors may not be privy or have ready access to it. Moreover, the OFCCP provides no basis for why it needs information regarding the funding agency. The OFCCP also would require respondents to provide the number of covered areas where work is being performed. This is superfluous information if the contractor is provided a separate report for each covered area. If contractors are forced to compile this information each month, this presents an opportunity for unnecessary errors, as the form may be copied over month after month and this number may inadvertently not be updated.

IV. The OFCCP fails to provide specificity regarding the reporting requirements.

The OFCCP proposes to require construction contractors to report the race/gender demographics and work hours by four different construction trades: foreperson, journey worker, apprentice, and trainee. However, the proposed form provides no definitions of these terms or any guidance to contractors regarding how to classify its employees within them. Without such instructions on the form, the agency cannot expect consistent or accurate information, which renders the entire reporting requirement spurious. Thus, if the OFCCP obtains approval to proceed with this reporting requirement, the NILG respectfully requests that it provide more explicit instructions and definitions.

In addition, neither OFCCP's proposed CC-257 form, nor its instructions, provide any guidance regarding how contractors should report non-binary employees. The agency assumes that all employees would be reported as male or female, which fails to reflect today's norms and standards. If the OFCCP is going to reinstitute this form with revisions, it could and should revise it to allow for the reporting of non-binary individuals. At the very least, the OFCCP's instructions should provide directions regarding how such employees are to be reported.

The OFCCP's proposed instructions also fail to address the exact reporting period. Although the CC-257 report would cover one month, at what point is the report due? The OFCCP, if moving forward with this proposal, must include very precise directions regarding the deadline for responding. For example, the agency should state that the report is due 28 days after the end of the preceding month.

V. The OFCCP should implement a reporting threshold.

The CC-257 reporting requirements would appear to apply to all covered construction contractors regardless of the number of hours worked on any given project. Due to the burdensome

nature of this proposed requirement as discussed above, the NILG respectfully requests that the OFCCP set an hour threshold per project below which reporting is not mandated. Without such a reasonable threshold, contractors could spend more time reporting than they do performing work on the construction project. The NILG submits that a threshold of at least 100 hours per project is appropriate.

VI. Conclusion

The NILG opposes the reinstatement of the defunct CC-257 form. The government abandoned the collection of this information many years ago for a variety of valid and legitimate reasons. The OFCCP's stated reasons for reinstituting it do not justify the massive burden that this would place on construction contractors. Any utility provided by the information is far outweighed by the costs associated with its revival. Accordingly, the NILG respectfully requests that the OFCCP reconsider its intentions and abandon its quest to demand such detailed reporting from construction contractors.

We thank you for your consideration of our comments.

Respectfully submitted,

Anthony Kaylin

Anthony Kaylin
Chair, National Industry Liaison Group