

August 8, 2024

Via [www.reginfo.gov](http://www.reginfo.gov)

Office of Information and Regulatory Affairs  
Attn: OMB Desk Officer for DOL-OFCCP  
Office of Management and Budget  
725 17th Street NW  
Washington, DC 20503

**Re: Comments of the Center for Workplace Compliance (CWC) in Response to the Proposed Reinstatement of the Monthly Employment Utilization Report (Form CC-257)**

Dear OMB Desk Officer:

The Center for Workplace Compliance (CWC) welcomes the opportunity to submit comments on the Office of Federal Contract Compliance Programs' (OFCCP's) proposal to reinstate the Monthly Employment Utilization Report (Form CC-257), as published in the *Federal Register* on July 9, 2024.<sup>1</sup>

We respectfully submit that the burdens associated with Form CC-257 outweigh any nominal benefit. Filing monthly reports with headcount and hours-worked data would be a costly, time-intensive process for both OFCCP and contractors, requiring personnel and resources across the country. Meanwhile, OFCCP has at its disposal the information it needs to identify which projects are active so that it can schedule compliance evaluations. Last week, the White House Office of Management and Budget (OMB) approved the Construction Contract Award Notification Requirement Form (CC-314),<sup>2</sup> which will provide OFCCP with important information such as when a construction project starts and ends, the contract's dollar amount, and the contracting agency.

Therefore, CWC respectfully submits that OFCCP already has the information it needs to "improve its process for neutrally scheduling contractors for compliance evaluations," and we do not support its reinstatement. However, we recognize that OFCCP may disagree with our position, and recommend that if OMB decides to approve the form, it should be modified as described below.

**Statement of Interest**

Founded in 1976, the Center for Workplace Compliance (CWC)<sup>3</sup> is the nation's leading nonprofit association of employers dedicated exclusively to helping its member employers better understand and manage their workplace compliance requirements and risks. Its membership includes approximately 200 major U.S. employers, collectively providing employment to millions of workers. CWC's directors and officers include many of the industry's leading experts in the fields of fair employment, workplace compliance, and risk management. Their combined experience gives CWC a unique depth of understanding

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<sup>1</sup> 89 Fed. Reg. 56432 (July 9, 2024).

<sup>2</sup> OMB Control No: 1250-0001, "OFCCP Construction Recordkeeping and Reporting Requirements," available at [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202405-1250-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202405-1250-001) (July 31, 2024).

<sup>3</sup> Formerly the Equal Employment Advisory Council (EEAC).

of the practical, as well as legal, considerations relevant to the proper interpretation and application of workplace rules and regulations.

Nearly all CWC members are federal contractors and subcontractors subject to the nondiscrimination and affirmative action requirements of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973 (Section 503), Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), and their implementing regulations. As major federal contractors and subcontractors, CWC's members have a significant interest in ensuring that OFCCP's programs, policies, and initiatives efficiently and effectively accomplish their underlying policy objectives.

## **Background**

OFCCP's regulations distinguish between "construction contractors" and "supply-and-service contractors," considering the fluid and temporary nature of construction projects.<sup>4</sup> Covered construction contractors are further divided into two types: those that have contracts directly with the federal government, and those that have federally assisted contracts that, while not made directly with the federal government, involve federal dollars.<sup>5</sup>

OFCCP requires all covered federal construction contractors – whether they have direct or federally assisted contracts – to refrain from discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and to take 16 specific affirmative action steps designed to ensure equal employment opportunity.<sup>6</sup> Construction contractors with direct federal contracts must also comply with OFCCP's regulations under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) and Section 503 of the Rehabilitation Act of 1973 (Section 503).<sup>7</sup> These regulations prohibit discrimination and require affirmative action regarding protected veterans and individuals with disabilities.

## **OFCCP Already Has the Information It Needs to Schedule Compliance Evaluations**

According to the Supporting Statement accompanying OFCCP's announcement, Form CC-257 will help the agency "improve its process for neutrally scheduling contractors for compliance evaluations" by providing information such as when projects are active. We respectfully submit, however, that OFCCP already has access to this information and OFCCP can accomplish its goals without Form CC-257.

Under 41 C.F.R. 60-4.2(c), federal agency contracting officers are required to provide written notice to OFCCP within 10 working days of award of a contract. This information includes the contractor's name, address, employer identification number, contract number, dollar value, estimated starting and completing dates, and the geographical area where the contract is performed. Also, last week, OMB approved the Construction Contract Award Requirement Form (CC-314), requiring contractors to notify OFCCP of new awards that exceed \$10,000.<sup>8</sup> Contractors must provide the contract amount, contracting agency name,

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<sup>4</sup> 41 C.F.R. § 60-2 establishes the affirmative action obligations for non-construction (supply and service) contractors, while 41 C.F.R. § 60-4 establishes obligations for construction contractors.

<sup>5</sup> 41 C.F.R. §§ 60-1.3, 60-4.

<sup>6</sup> 41 C.F.R. §§ 60-4.3.

<sup>7</sup> 41 CFR §§ 60-300, 60-741. OFCCP maintains current thresholds for covered contractors at <https://www.dol.gov/ofccp/taguides/jurisdiction.htm>.

<sup>8</sup> OMB Control No: 1250-0001.

and the start and end dates for the project. Therefore, OFCCP has the information required to identify which projects are active and schedule compliance evaluations. The agency should consult the resources at its disposal instead of requiring construction contractors to report this information.

### **The Burdens of Completing Form CC–257 Outweigh Any Nominal Benefit**

Apart from the fact that OFCCP already has the qualitative information required for the agency to schedule compliance evaluations and enforce its regulations, as articulated above, we submit that collecting and reporting data using Form CC–257 will be overly burdensome. OFCCP estimates 9,982 total respondents, averaging 1.5 hours per response. Reporting headcount and hours-worked data by race, ethnicity, sex, and construction trade for every Standard Metropolitan Statistical Area or Economic Area will take significant time and resources, far more than 1.5 hours per response.

In the 60-day proposal, and also in the 30-day Supporting Statement, OFCCP argues that the agency already accounts for this burden in another information collection, which OMB approved last week.<sup>9</sup> This is incorrect. Construction contractors have an obligation to maintain personnel and employment activity data, as well as the data in Form CC–314. However, contractors have no obligation to create a written monthly report with headcount and hours-worked data. We maintain that construction contractors do not have the personnel and infrastructure in place to submit monthly written reports. After discussing the issue with our members, we estimate the burden associated with this collection is approximately 8-16 hours, depending on the size of the contractor.

We also question OFCCP’s ability to review monthly reports, considering the agency abandoned the form decades ago. OFCCP discontinued the Monthly Utilization Report on December 8, 1995, noting it offered little utility in exchange for a high cost to both the agency and contractors.<sup>10</sup> An electronic format may expedite the process, but the time and resources required to review and respond to monthly reports make the exercise impracticable.

### **Recommended Modifications to Form CC–257**

In the 60-day comment period, we recommended that the reporting requirement be annual instead of monthly if OFCCP were to move forward with reinstating Form CC–257. OFCCP responded that the agency requires a more frequent report to capture seasonal work changes. We maintain that the agency should still consider alternative reporting periods. If yearly reporting is not sufficient, we suggest quarterly reporting, which will capture the seasonal changes identified by OFCCP.

We also recommend that the “foreperson” category be excluded from the report, as “foreperson” is not a construction trade subject to evaluation. OFCCP’s regulations list “foreman” twice, but only in lists of “onsite supervisory personnel” obligated to oversee anti-harassment, anti-discrimination, and affirmative action practices at 41 CFR 60-4.3(a)(7).

OFCCP responded to our comment by noting that forepersons may perform work incidental to construction work. OFCCP then rationalized that collecting and reporting data on forepersons would benefit contractors. With all due respect, we doubt any construction contractor will use data reported on Form CC–257 as part of its own self-critical workforce analysis and are not aware of evidence that contractors used

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<sup>9</sup> OMB Control No: 1250-0001.

<sup>10</sup> 60 Fed. Reg. 63061 (Dec. 8, 1995).

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previous Form CC-257 data for such purposes prior to the form's rescission. Contractors should not be required to include forepersons as a classification on Form CC-257.

### **Conclusion**

CWC appreciates the opportunity to offer these comments regarding OFCCP's proposal. Please do not hesitate to contact me if CWC can provide further assistance as you consider these important issues.

Sincerely,

A handwritten signature in black ink, reading "Gabrielle Lattery". The signature is written in a cursive, flowing style.

Gabrielle Lattery  
Counsel, Center for Workplace Compliance