
EQUAL EMPLOYMENT
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July 3, 2008

VIA ELECTRONIC MAIL TO
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Hazel M. Bell
U.S. Department of Labor
Room S-3201
200 Constitution Avenue, NW
Washington, DC 20210

Re: **Comments of the Equal Employment Advisory Council on the
Office of Federal Contract Compliance Programs' Recordkeeping
and Reporting Requirements for Supply and Service Contractors
(OMB Number 1215-0072)**

Dear Ms. Bell:

The Equal Employment Advisory Council ("EEAC") welcomes the opportunity to file these brief written comments on the Office of Federal Contract Compliance Programs' ("OFCCP") *Recordkeeping and Reporting Requirements, Supply and Service — Scheduling Letter* (OMB Number 1215-0072). Our letter responds to the Department of Labor's ("DOL") invitation to participate in the Paperwork Reduction Act ("PRA") "preclearance" consultation program for this OFCCP information collection, notice of which was published in the *Federal Register* on May 6, 2008. 73 Fed. Reg. 25032.

OFCCP's May 6, 2008 *Federal Register* notice indicates that the agency intends to seek a three-year extension of its current "Supply and Service Scheduling Letter," which requires federal contractors to submit within 30 days their affirmative action programs ("AAP"), related AAP records, and other data (including sensitive compensation data) in response to an agency audit of a contractor's compliance. The PRA "Supporting Statement" related to OFCCP's extension request reveals that the agency is proposing only relatively minor changes to its scheduling letter. EEAC has no objection to these changes, nor do we have any objection to OFCCP's plans to seek a three-year extension of this information collection.

Statement of Interest

EEAC is the nation's largest nonprofit association of employers dedicated exclusively to the advancement of practical and effective programs to eliminate workplace discrimination.

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Founded in 1976, EEAC's membership now includes more than 300 of the nation's largest and most progressive private-sector companies that, collectively, employ more than 19 million workers in the U.S. alone.

All of EEAC's member companies are employers subject to the compliance, recordkeeping, and reporting requirements imposed by federal law and regulation prohibiting workplace discrimination and harassment. In addition, nearly all of our member companies are federal contractors subject to the compliance requirements imposed by Executive Order 11246, the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and their implementing regulations. Because these companies are subject to the extensive affirmative action recordkeeping and reporting requirements encompassed by the OFCCP information collection now under review, they have a significant interest in a system that minimizes reporting burdens while maximizing the quality and utility of the data collected.

EEAC's Comments and Recommendations

EEAC appreciates DOL providing this opportunity for interested parties to express their views on the burdens and utility of this information collection generally, and on the OFCCP's Supply and Service Scheduling Letter specifically. On balance, we believe that the scheduling letter in its current form — and in particular "Paragraph 11" of that letter — represents a reasonable compromise between compelling contractors to produce enough records and data enabling OFCCP to carry out its enforcement responsibilities, and minimizing the paperwork burdens imposed on contractors during the earliest stage of an OFCCP audit. We offer only the following comments and recommendations in response to two of the three minor scheduling letter changes proposed by OFCCP.

Electronic Data

EEAC appreciates OFCCP's attempt to streamline the compliance review process by adding language on page two of the scheduling letter encouraging contractors to submit their AAPs and supporting data in electronic format. However, we respectfully urge OFCCP to balance the interest of streamlining the audit process with the more compelling interest of protecting the confidentiality and privacy of contractors' sensitive data and records. More specifically, because data in electronic format are more readily subject to inadvertent dissemination or compromise than data in paper format, many contractors understandably will be reluctant to provide such data electronically. Indeed, several of our member companies have advised us that their policies prohibit or severely restrict the electronic distribution of sensitive human resources data and reports, and that the data and reports required by the scheduling letter would qualify under these policies.

We therefore respectfully urge OFCCP to modify the scheduling letter's language to emphasize that providing data in electronic format is optional, and that failure to provide data in electronic format will not subject the contractor to any adverse consequences.

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Compliance Coordination Option

EEAC also appreciates OFCCP's efforts to incorporate into its scheduling letter the "compliance coordination" option introduced with its *Voluntary Guidelines for Self-Evaluation of Compensation Practices for Compliance With Nondiscrimination Requirements of Executive Order 11246 With Respect to Systemic Compensation Discrimination*. 75 Fed. Reg. 35114 (June 16, 2006). Under this option, contractors are permitted to withhold the compensation data that otherwise must be provided to OFCCP in response to the scheduling letter, *provided* that they perform their own self-critical compensation analysis in a manner consistent with OFCCP's Voluntary Self-Evaluation Guidelines and make highly sensitive details and records of these self-critical analyses available to OFCCP. Upon review of these records, if OFCCP determines that the contractor's self-critical analysis reasonably comports with the substantive standards set forth in the Voluntary Self-Evaluation Guidelines, the contractor will be deemed in compliance with respect to its compensation-related obligations.

While we support OFCCP's plan to incorporate the "compliance coordination" option into its Scheduling Letter, the language OFCCP has proposed for doing so does not adequately explain the conditions under which such coordination is available, including the requirement that they make available to OFCCP highly sensitive details and records pertaining to their self-critical compensation analysis. Accordingly, we recommend that OFCCP revise its proposed "compliance coordination" language to clarify exactly what the contractor will be required to provide the agency to gain this coordination.

Conclusion

Thank you for the opportunity to present our views on this matter. Please do not hesitate to contact me or any member of the EEAC staff if we can be of further assistance.

Sincerely,



Jeffrey A. Norris
President

cc: Charles E. James, Sr., Deputy Assistant Secretary
Office of Federal Contract Compliance Programs