



June 7, 2019

**VIA ELECTRONIC UPLOAD**  
**FEDERAL RULEMAKING PORTAL**

Harvey D. Fort  
Acting Director  
Division of Policy and Program Development  
Office of Federal Contract Compliance Programs  
200 Constitution Avenue NW  
Room C-3325  
Washington, DC 20210

**RE: Letter of Comment from The Institute for Workplace Equality Regarding Proposed New Information Collection Requirements (OMB No. 1250-XXXX)**

Dear Acting Director Fort:

The Institute for Workplace Equality (“IWE” or “The Institute”) submits the following Comment in response to the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (“OFCCP” or the “Agency”) invitation for comments regarding the agency’s proposed New Information Collection Requirement published in the *Federal Register* on April 8, 2019.<sup>1</sup>

**The Institute for Workplace Equality Background**

The Institute, formerly known as The OFCCP Institute, is a national non-profit employer association based in Washington, D.C. The Institute’s mission includes the education of federal contractors as to their affirmative action, diversity and equal employment opportunity responsibilities. Members of The Institute are senior corporate leaders in EEO compliance, compensation, legal and staffing functions representing many of the nation’s largest and most sophisticated federal contractors.

The Institute recognizes the responsibility of all employers, including contractors, to create a nondiscriminatory workplace. We applaud and support all efforts to make the workplace free from all forms of discrimination. To that end, we agree that OFCCP has a proper and important role in well-designed and effective enforcement efforts.

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<sup>1</sup> See, Construction Compliance Check Letters, Office of Management and Budget Control No. 1250-XXXX (April 8, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-04-08/pdf/2019-06894.pdf>.

## **Overview of Construction Compliance Check Letters**

The OFCCP has proposed two new compliance check letters for construction contractors—one for direct federal contracts, and one for federally assisted construction projects.<sup>2</sup> The agency has stated that while “construction contractors currently undergo compliance reviews, which are lengthier and more involved than a compliance check,” OFCCP “seeks to gain the option to conduct other types of compliance evaluations.”<sup>3</sup>

### **1. The proposed Construction Compliance Check Letters will be as burdensome to construction contractors as a compliance evaluation.**

The OFCCP under Director Leen has focused on making the activities of the agency more transparent and more efficient. However, the proposed construction compliance check letters are as burdensome as a compliance review.

The current compliance check scheduling letter for supply and service contractors<sup>4</sup> only requires contractors to provide the following:

- AAP results for the preceding year (41 CFR §§ 60-1.12(b); 60-300.44(f)(4) and 300.80; 60-741.44(f)(4) and 741-80).
- Examples of job advertisements, including listings with state employment services (41 CFR § 60-1.12(a), § 60-300.80 and § 60-741.80).
- Examples of accommodations made for persons with disabilities (41 CFR § 60-1.12(a), § 60-300.80 and § 60-741.80).

The proposed construction compliance check letter for direct contracts would require construction contractors to provide in addition to the items outlined above in the current compliance check letter the following additional data:<sup>5</sup>

- Personnel records that list construction trade employment activity (applicants, hires, promotions, layoffs, recalls, voluntary terminations, and involuntary terminations), including the name, job classification, gender, race and/or ethnic designation for each employee or applicant (41 CFR § 60-1.12(a) and (c)).
- Payroll records for all construction trade employees working in the (*as appropriate insert either 1) the name(s) of Standard Metropolitan Statistical Area(s) (SMSA) or 2) the name of*

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<sup>2</sup> Note to Reviewer-Supporting Statement Supply and Service Program, OMB No. 1250-XXXX, fn. 8 (April 8, 2019) available at <https://www.regulations.gov/document?D=OFCCP-2019-0001-0002>.

<sup>3</sup> *Id.*

<sup>4</sup> Compliance Check Scheduling Letter, OFCCP Website, <https://www.dol.gov/ofccp/ComplianceChecks/SchedulingLetter.html>.

<sup>5</sup> See, Construction Compliance Check Letters, Office of Management and Budget Control No. 1250-XXXX (April 8, 2019), available at <https://www.regulations.gov/document?D=OFCCP-2019-0001-0004>.

*the Economic Area(s) (EA))* during the specified review period. The payroll records should be submitted by project and include each employee's name or ID, gender, race/ethnicity, hire date, trade(s), total hours worked in each trade, overtime hours worked in each trade, wage rate(s) for each trade, apprenticeship status, and employment type (e.g., full-time, part-time, temporary, contract, per diem, day labor) (41 CFR § 60-1.12(a) and (c)).

- A copy of your current Section 503 AAP prepared in accordance with the requirements of 41 CFR § 60-741.40 through § 60-741.47.
- A copy of your current VEVRAA AAP prepared in accordance with the requirements of 41 CFR § 60-300.40 through § 60-300.45.
- Documentation of the computations or comparisons described in 41 CFR § 60-300.44(k) and § 60-741.44(k).
- Documentation of the most recently adopted hiring benchmark (41 CFR § 60-300.45(c)).

While the federally assisted construction compliance check letter is somewhat less burdensome,<sup>6</sup> it is unclear why the OFCCP would require construction contractors to provide more information under construction compliance checks than is required from supply and service contractors.

**2. The Institute recommends that OFCCP use the same compliance check letter for construction contractors as for supply and service contractors.**

Instead of burdening construction contractors with the proposed excessive data collection, The Institute recommends that the agency simply modify the current compliance check letter for use with construction contractors rather than demand this burdensome level of data. If the agency finds issues based on its compliance check letter, it has the option to request additional data from construction contractors just as it does from supply and service contractors.

**Conclusion**

The Institute recommends the OFCCP reassess its proposal to impose on construction contractors the excessive burden of the proposed construction compliance check letters in light of the agency's focus on transparency and efficiency and President Trump's push for deregulation.

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<sup>6</sup> <sup>6</sup> See, Construction Compliance Check Letters, Office of Management and Budget Control No. 1250-XXXX (April 8, 2019), available at <https://www.regulations.gov/document?D=OFCCP-2019-0001-0003>.

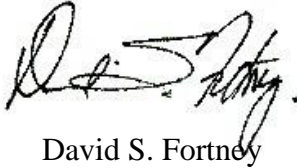
Mr. Harvey Fort  
June 7, 2019  
Page 4

Thank you in advance for your consideration and we appreciate your time to address The Institute's concerns. We are as always happy to provide any additional information you may need or to answer any questions you may have.

Respectfully,



David B. Cohen



David S. Fortney



Mickey Silberman