

**DEPARTMENT OF LABOR, OFCCP
OFCCP EQUAL PAY REPORT
EXECUTIVE ORDER 11246, AS AMENDED
CONTROL NUMBER: 1250-AA03
SUPPORTING STATEMENT**

This Information Collection Request is submitted for the ultimate purpose of obtaining OMB approval under the Paperwork Reduction Act for the information collection requirements contained in a proposed rule. As the agency anticipates public comment, OMB is requested to file comment on this ICR so that the Department of Labor may consider views received from the public.

A. JUSTIFICATION

The Office of Federal Contract Compliance Programs (OFCCP) administers two equal employment laws and an Executive Order prohibiting discrimination by Federal contractors based on race, color, religion, sex, sexual orientation, gender identity national origin, disability, and status as a protected veteran.¹ Additionally, these laws require Federal contractors to take affirmative action to achieve equal employment opportunity.

- Executive Order 11246, as amended (EO 11246);
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503); and
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA).

EO 11246 prohibits employment discrimination based on race, color, religion, sex, sexual orientation, gender identity or national origin and requires affirmative action.² EO 11246 applies to Federal contractors and subcontractors, and to federally assisted construction contractors and subcontractors holding a federally assisted construction contract or subcontract of more than \$10,000, or Federal Government contracts or subcontracts that have, or can reasonably expect to have, an aggregate total value exceeding \$10,000 in a 12-month period. EO 11246 also applies to Federal Government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds.

Section 503 prohibits employment discrimination based on disability, and requires Federal contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Its requirements apply to Federal contractors and subcontractors with a Federal Government contract or subcontract in excess of \$10,000.

¹ On July 21, 2014, the President signed Executive Order 13672 amending Executive Order 11246 to include nondiscrimination based on sexual orientation and gender identity. This Order requires that a regulation be prepared within 90 days of the date of the Order. Though the new Executive Order is effective immediately, the protections apply to contracts entered into on or after the effective date of the new DOL regulation.

² Ibid.

VEVRAA prohibits employment discrimination against protected veterans and requires Federal contractors and subcontractors to take affirmative action to employ and advance in employment protected veterans. Its requirements apply to Federal contractors and subcontractors with a Federal Government contract or subcontract of \$100,000 or more.

For the purposes of OFCCP’s recordkeeping and reporting requirements, the agency divides the obligations under these authorities into the information collection requests (ICR) listed in the table below. These divisions are based on distinct programs and related regulatory requirements.

OMB Number	Description
1250-0001	Construction Recordkeeping Requirements
1250-0002	Complaint Procedures
1250-0003	Supply and Service Program
1250-0004	VEVRAA Requirements
1250-0005	Section 503 Requirements
1250-0006	Functional Affirmative Action Program Agreement Procedures
1250-AA03	Equal Pay Report

Pursuant to the issuance of a final rule publishing revisions to the current EO 11246 implementing regulations at 41 CFR 60-1.7, this ICR seeks approval of a separate OMB Control Number that covers certain recordkeeping requirements and the annual submission of the Equal Pay Report. OFCCP promulgated the final rule and the information collection requirements contained therein in accordance with the Administrative Procedures Act.

1. LEGAL AND ADMINISTRATIVE REQUIREMENTS

On April 8, 2014, President Obama issued a Presidential Memorandum - Advancing Pay Equity through Compensation Data Collection. The Memorandum directed the Department of Labor to propose a rule that would require Federal contractors and subcontractors to submit summary compensation data paid to employees. The Equal Pay Report is a critical tool for eradicating compensation discrimination. It enables OFCCP to direct its enforcement resources toward entities for which reported data suggest potential violations. It supports a more effective enforcement of the prohibition against compensation discrimination through greater voluntary compliance and greater deterrence of noncompliant behaviors by contractors and subcontractors.

This information collection request supports a final rule revising the regulations implementing EO 11246 at 41 CFR 60-1.7. These regulations set forth the reports and other required information required of prime contractors, first tier subcontractors, subcontractors on federal or federally assisted construction projects, bidders, and prospective prime contractors. OFCCP discusses the specific sections of the revised part 60-1.7, which include these information collection requirements below.

Section 60-1.7(b) outlines the requirement that contractors and subcontractors submit the Equal Pay Report to OFCCP. Subsection (2) identifies which contractors and subcontractors must file the Equal Pay Report. Subsection (3) identifies how and when contractors and

subcontractors file the report and provides a hardship exemption for those contractors that are not able to file the report in the manner (online) preferred by OFCCP.

Section 1.7(c) describes the recordkeeping obligations related to the Equal Pay Report.

Section 1.7(d)(1) outlines the requirements for bidders and prospective prime contractors regarding certification of compliance with the Equal Pay Report filing requirements.

Section 1.7(e) describes the sanctions for failing to file the Equal Pay Report. Contractors that do not file a report, do not file the report in a timely manner, file inaccurate reports, certifications or representations may be subject to the sanctions set forth in paragraph (6) of the Equal Opportunity Clause in 41 CFR 60-1.4(a) and (b).

2. USE OF MATERIALS

The Equal Pay Report is a critical tool for eradicating compensation discrimination. It enables OFCCP to direct its enforcement resources toward entities for which reported data suggest potential violations. It supports a more effective enforcement of the prohibition against compensation discrimination through greater voluntary compliance and greater deterrence of noncompliant behaviors by contractors and subcontractors.

Section 1.7(c) describes contractors' recordkeeping obligations related to the Equal Pay Report. During a compliance evaluation, OFCCP reviews contractor compensation practices to determine if the practices discriminate against a particular sex/gender, race, or ethnicity.

Section 1.7(d)(1) outlines the requirements for bidders and prospective prime contractors regarding their self-certification of compliance made in the General Services Administration's System for Award Management (SAM). In SAM, entities receiving Federal contracts and grants must certify their compliance with the Equal Pay Report for the most recent reporting period. Contracting officers can use this information when awarding Federal contracts and subcontracts.

3. IMPROVED INFORMATION TECHNOLOGY

The Equal Pay Report is an electronic form filed through a web-based data tool. Based on the Equal Employment Opportunity Commission's (EEOC) estimates of its online filing of the EEO-1 Report, OFCCP assumes that 99 percent of contractors will file their Equal Pay Report using the web-based data tool thus reducing the burden of filing this report. Upon approval of the paper based form and the build out of the Web portal, a non-material request will be submitted to obtain OMB approval of that option. The Web portal will ask for the same information as the paper based form.

4. DESCRIPTION OF EFFORTS TO IDENTIFY DUPLICATION

The reporting and recordkeeping requirements in this request result exclusively from the implementation of EO11246. This authority uniquely empowers the Secretary of Labor, and by a Secretary's Order, OFCCP, to require collection, analysis, and reporting of data and other information in connection with the enforcement of the laws and regulations requiring Federal

contractors to take affirmative action and to ensure equal employment opportunity. No duplication of effort exists because no other Government agencies have these specific data collection requirements. In developing its Equal Pay Report, OFCCP has used standardized requirements (e.g., EEOC's EEO-1 Report).

While contractors maintain salary information in the normal course of business, the Equal Pay Report is a comprehensive document that uniquely combines demographic and salary data to meet the requirements of OFCCP's regulations. This document is not available from any other source. Therefore, no duplication of effort exists.

5. MINIMIZING BURDEN ON SMALL ORGANIZATIONS

OFCCP minimizes the information collection and recordkeeping burden on a significant number of small businesses by exempting contractors and subcontractors that do not file EEO-1 Reports and those that do not have more than 100 employees. These contractors and subcontractors must also have a contract that covers a period of at least 30 days.

6. CONSEQUENCES TO FEDERAL PROGRAMS IF THIS INFORMATION IS COLLECTED LESS FREQUENTLY

The Equal Pay Report is an annual reporting requirement. Less frequent collection could negatively affect OFCCP's civil rights enforcement activities because the agency would not have access to the most current data. The data from the Equal Pay Report informs OFCCP's compliance evaluation selection process that typically occurs twice year. Receiving this report less frequently may result in less accurate data, thus limiting OFCCP's accuracy and ability in prioritizing its enforcement efforts.

7. SPECIAL CIRCUMSTANCES FOR THE COLLECTION OF INFORMATION

There are no special circumstances for the collection of this information.

8. CONSULTATION OUTSIDE THE AGENCY

Concurrent with the submission of this ICR, OFCCP published a Notice of Proposed Rulemaking (NPRM) on August 8, 2014 in the *Federal Register* seeking public comment on the proposals related to the Equal Pay Report. OFCCP is asking commenters to send their views on the ICR to the agency in the same way as all other comments. The NPRM also invited comments on the information collection requirements to be sent to the Office of Management and Budget within thirty (30) days of NPRM publication.

All OFCCP regulations containing recordkeeping or reporting requirements are published in the *Federal Register* for public comment before agency adoption. In addition, OFCCP maintains an ongoing dialogue, through compliance assistance, with contractor groups on a number of compliance issues, among which include reporting and recordkeeping.

Assuming OMB files a comment on this ICR that asks the agency to consider comments sent in response to the NPRM, comments received from the public would be addressed under this paragraph for an ICR submitted at the Final Rule stage.

9. INCENTIVES

OFCCP provides neither payments nor gifts to respondents.

10. ASSURANCE OF CONFIDENTIALITY

Respondents are informed that no express assurance of confidentiality is provided, and OFCCP recognizes that contractors that submit the required information may view it as extremely sensitive information. OFCCP will evaluate all information pursuant to the public inspection and disclosure provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR Part 70. The Equal Pay Report includes information that DOL regulations provide that a contractor affected by a FOIA disclosure request be notified in writing and no decision to disclose information is made until the contractor has an opportunity to submit objections to the release of the information.

Furthermore, the Equal Pay Report involves collecting summarized data. OFCCP does not require contractors to provide individual employee-level data in this report. Although OFCCP may publish aggregate information (e.g., benchmarks) based on data collected in the report, the publication will be in such a manner that it does not reveal specific contractor data.

11. SENSITIVE QUESTIONS

This ICR does not collect information of a personal nature, such as marital status, religious beliefs, or other matters commonly considered private.

12. Estimate of Information Collection Burden

The following is a summary of the methodology used by OFCCP for the calculation of the information collection burden requirements the Equal Pay Report.

Covered Federal contractors and subcontractors with a contract or subcontract valued at \$50,000 or more and have more than 100 employees, that are required to file either an EEO-1, and have a contractor or subcontract that covers a period of at least 30 days will be required to file the proposed Equal Pay Report. In addition, OFCCP is also interested in amending the regulation by adding the requirement that employers who file the Department of Education's Integrated Postsecondary Education Data System (IPEDS) report, have more than 100 employees, a contract, subcontract, or purchase order amounting to \$50,000 or more that covers a period of at least 30 days also file OFCCP's Equal Pay Report. OFCCP believes that the proposed new provisions may affect 21,251 Federal contractors. This estimate includes 21,224 contractor companies or 67,578 contractor establishments that filed EEO-1 Reports.³ Additionally, OFCCP includes an estimate of 27 postsecondary educational institutions that filed IPEDs reports.⁴

³ Estimates based on number of contractors and contractor establishments with more than 100 employees who filed EEO-1 reports for 2012 and answered "Yes" to Question 3.

⁴ The number of postsecondary educational institutions included in this NPRM is based on OFCCP's average number of compliance evaluations at postsecondary institutions over a four-year period (2010 through 2013).

a. Information Collection

Proposed section 60-1.7(b)(1) through (3)(ii) requires covered Federal contractors and subcontractors to submit to OFCCP on an annual basis a report summarizing compensation paid to employees aggregated by gender, race, ethnicity, and job categories. OFCCP estimates that 99 percent of contractors will file the proposed report using the web-based data tool while 1 percent will be granted a hardship exemption and will file the report in another manner. The estimated burden hours for those, filing using the web-based data tool is 401,574 hours (66,929 x 6 hours = 401,574 hours). The estimated burden hours for those, not using the web-based data tool is 5,408 hours (676 x 8 hours = 5,408 hours). The estimated total burden for this provision is 406,982 hours, which accounts for those contractors who use a web-based data tool to file the report and those granted a hardship exemption to electronic filing.

Section 60-1.7(b)(3)(iii) proposes to require contractors that cannot file using the web-based data tool to request a hardship exemption from OFCCP's director. Contractors that request such an exemption must write to the director acknowledging the responsibility, explaining their circumstances and requesting the exemption. OFCCP estimates it would take a contractor 30 minutes to prepare the request, including the time required to print, copy, and send the document. The estimated total burden for this provision is 338 hours (676 x 0.5 hours = 338 hours).

Section 60-1.7(c) requires contractors to maintain the records related to its submission of the proposed Equal Pay Report. OFCCP believes contractors will save a copy of the report either electronically or manually. Maintaining records is an existing requirement under OFCCP's regulations (section 60-1.12(a)). Any additional burden associated with maintaining this report is included in the estimate of burden above.

Section 60-1.7(d)(1)(iv) requires bidders or prospective prime contractors or proposed subcontractors to certify compliance with the reporting requirements if applicable. The General Services Administration maintains the System for Award Management (SAM), which consolidated eight Federal procurement systems and the catalog of Federal domestic assistance into one database. Companies that want to do business with the Federal government are required register in SAM. As a part of the registration, these companies self-certify their compliance with OFCCP's current requirements. Thus, compliance with the proposed requirements, bidders and prospective prime contractors will check one additional box when registering and self-certifying in SAM. OFCCP believes that there is no additional burden associated with responding to one additional question in the registration process. Thus, OFCCP estimates that there is no additional burden associated with this certification.

Section 60-1.7(e) details the sanctions for failing to file the Equal Pay Report. Contractors that do not file a report, do not file the report in a timely manner, file inaccurate reports, certifications or representations may be subject to the sanctions set forth in paragraph (6) of the Equal Opportunity Clause in 41 CFR 60-1.4(a) and (b). OFCCP believes that there is no additional burden associated with these sanctions.

These are the same sanctions for other EO 11246 violations. Thus, no additional burden is assumed.

b. Summary of Burden Hours and Time Value

The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication “Employer Costs for Employee Compensation” (December 2013), which lists total compensation for management, professional, and related occupations as \$51.58 per hour and for administrative support as \$24.23 per hour. OFCCP estimates that 25 percent of the burden hours will be management, professional, and related occupations engaged in reviewing and approving reports and 75 percent will be administrative support engaged in identifying data and completing reports.

Table 1—Summary of Recurring Burden Hours

Table 1: Recurring Burden		
Section	Burden Hours	Time Value
60-1.7(b)(1) (complete compensation report)	406,982	\$12,643,913
60-1.7(b)(2) (who must file)	0	0
60-1.7(b)(3)(i) (when to file)	0	0
60-1.7(b)(3)(ii) (electronic filing)	0	0
60-1.7(b)(3)(iii) (electronic exemption)	338	\$10,501
60-1.7(b)(4) (publication of aggregate compensation data)	0	0
60-1.7(c) (recordkeeping)	0	0
60-1.7(d) (certification of filing)	0	0
60-1.7(d)(2) (recordkeeping requirement)	0	0
60-1.7(e) (sanctions)	0	0
Total Recurring Burden	407,320	\$12,654,414

Initial or Start-up Activities

For purposes of this estimate, OFCCP assumes that the initial start-up work will occur at the company level. The start-up costs include modifying a contractor company’s existing human resources information and payroll systems in order to generate the information needed for the Equal Pay Report. Thus, OFCCP estimates it will take an average of 30 hours to have a professional make the needed systems modifications. The modifications include writing code, developing queries, and creating a standard report that matches the employee demographic and job information to their W-2 wages and hours worked. The report will also summarize the data. Assuming all contractor companies will need to make changes to their existing human resources and payroll system, OFCCP believes that the burden for making the modifications is 637,530 hours (21,251 contractor companies x

30 hours = 637,530 hours). The estimated costs for these modifications are based on data from the Bureau of Labor Statistics in the publication “Employer Costs for Employee Compensation” (December 2013), which lists total compensation for a professional as \$47.22 per hour. Thus OFCCP estimates the costs for these modifications is \$30,104,167 (637,530 hours x \$47.22 per hour = \$30,104,167) or \$1,417 per contractor company. Annualized over three years the burden equates to 212,510 hours and \$10,034,722.

Familiarization with Information Collection Requirements

OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for new information collection requirements the estimated time it takes for contractors and subcontractors to review and understand the instructions for compliance. In order to minimize the burden, OFCCP will publish compliance assistance materials including, but not limited to, fact sheets and “Frequently Asked Questions.” OFCCP will also host webinars for the contractor community that will describe the new requirements and conduct listening sessions to identify any specific challenges contractors believe they face, or may face, when complying with the requirements.

OFCCP estimates it will take a minimum of 1 hour to have a management professional at each establishment either read compliance assistance materials provided by OFCCP or participate in an OFCCP webinar to learn more about the new requirements. The estimated cost of this burden is based on data from the Bureau of Labor Statistics in the publication “Employer Costs for Employee Compensation” (December 2013) which lists total compensation for management professionals at \$51.58. Therefore, the estimated burden for rule familiarization is 67,605 hours (67,605 contractor establishments x 1 hour = 67,605 hours). We calculate the total estimated cost as \$3,487,066 (67,605 hours x \$51.58/hour = \$3,487,066) or \$52 per establishment. Annualized over three years the burden equates to 22,535 hours and \$1,162,355.

Table 2—Total Annual Time Burden Summary

Activity	Burden Hours	Time Value
Recurring Activities	407,320	\$12,654,414
Initial/Start-Up Activities	212,510	\$10,034,722
Familiarization	67,605	\$1,162,355
Total	687,435	\$23,851,491

13. Annual Operations and Maintenance Cost Burden to Respondents

OFCCP estimates that contractors will have operations and maintenance costs associated with this collection. Those costs are associated with contractors that request exemption from electronic filing.

Section 60-1.7(b)(1) Equal Pay Report: OFCCP estimates that 67,605 contractor establishments will respond annually and 99 percent of them will do so electronically. Contractors using the web-based data tool will not incur copying and mailing costs. However, to account for the estimated 1 percent of contractors filing without using the web-

based data tool for some reason (e.g., no access, compatibility, etc.), OFCCP is estimating their printing, copying, and mailing costs. OFCCP estimates an average copying cost of \$0.08 per page based on an informal market survey of companies providing copying services. OFCCP estimates a contractor establishment will print the two-page report and copy those pages for a total of four pages per contractor establishment. The estimated cost for printing and copying would be \$216 (676 contractor establishments x 4 pages x \$0.08 per page = \$216). OFCCP estimates that the contractor will submit the report by sending it registered mail and estimates the cost to be \$3,887 (676 contractor establishments x \$5.75 = \$3,887). The total estimated operations and maintenance cost for the Equal Pay Report would be \$4,103.

Section 60-1.7(b)(3)(iii) Hardship Exemption: OFCCP recognizes that some contractor establishments do not have automated HRIS or payroll systems or may have systems that would be incompatible with OFCCP’s web-based data tool. Contractors facing this challenge must annually request from OFCCP a hardship exemption to the electronic filing requirement. The request for exemption would be a one-page letter to the Director, OFCCP acknowledging the obligation to submit the report, explaining why the report cannot be submitted electronically and requesting exemption for that year’s filing. OFCCP estimates that 1 percent of its contractor establishment universe or 676 contractor establishments will request a hardship exemption to the electronic filing requirement. Therefore, OFCCP estimates that the cost for printing and copying the one page letter would be \$108 (676 contractor establishments x 2 pages x \$0.08 = \$108). In addition, OFCCP estimates the mailing cost would be \$331 (676 contractor establishments x 1 letter x \$0.49 per letter = \$331). The total estimated operations and maintenance cost for the hardship exemption would be \$439.

Table 3—Operations and Maintenance Costs Summary

Section	Costs
60-1.7(b)(1) Equal Pay Report (copying and mailing)	\$4,103
60-1.7(b)(3)(iii) Hardship Exemption (copying and mailing)	\$439
60-1.7(d)(1)(iv) Bidders or Prospective Prime Contractors Certification	0
Total	\$4,542

14. Estimate of Cost to the Federal Government

OFCCP estimates that implementing the proposed Equal Pay Report will increase the costs related to staffing and replacing its existing case management and information system. In terms of staffing, OFCCP anticipates hiring four full-time positions at its National Office. These staff members will be involved in providing technical assistance to contractors completing the forms, managing the content of the online portal, reviewing exemption

requests, and analyzing data. OFCCP estimates the staffing costs to be \$359,696.⁵ (\$89,924 x 4 = \$359,924)

Additionally, as a part of an ongoing effort by the Department of Labor (DOL) to enhance services provided to Federal contractors, OFCCP anticipates that it will be upgrading its existing case management and information systems. OFCCP is proposing an increase of \$3.4 million to improve its information systems. This upgrade accomplishes several goals including updating OFCCP's current information system to support web-based features and accommodating the online submission of the Equal Pay Report. These enhancements will allow OFCCP to integrate with other Department of Labor Information Technology systems and will allow users greater security and ease of use. Therefore, OFCCP estimates the total cost to the Federal Government to be \$3,489,928. (\$359,924 staff costs + \$3,400,000). Annualized over three years the burden equates to \$1,493,257.

15. Reasons for Burden Changes

As stated above, on April 8, 2014 President Obama issued a Presidential Memorandum - Advancing Pay Equity through Compensation Data Collection. The Memorandum directed the Department of Labor to propose a rule that would require Federal contractors and subcontractors to submit summary compensation data paid to employees. The Equal Pay Report is a critical tool for eradicating compensation discrimination. It enables OFCCP to direct its enforcement resources toward entities for which reported data suggest potential violations. It supports a more effective enforcement of the prohibition against compensation discrimination through greater voluntary compliance and greater deterrence of noncompliant behaviors by contractors and subcontractors.

This is a new information collection in support of the new Executive Order 11246 regulation found at 41 CFR 60-1.7.

16. Statistical Uses and Publication of Data

OFCCP seeks permission to publish aggregate compensation data collected by the Equal Pay Report as statistical tables at the industry level.

17. Approval Not to Display the Expiration Date

OFCCP will display the expiration date.

18. Exceptions to the Certification Statement

There is no exception sought.

⁵ OFCCP believes that it will fill these positions at its National Office at the GS-13 level. Therefore, the estimate of wages is based on a GS-13, Step 1 for the Washington-Baltimore-Northern Virginia area, (2014 General Schedule Locality Pay Table, <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/DCB.pdf>, last accessed July 28, 2014.).

B. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.