

**U.S. Department of Labor
Office of Federal Contract Compliance Programs
Affirmative Action Program Verification Interface**

OMB Control No. 1250-New

A. Justification

The U.S. Department of Labor’s (DOL) Office of Federal Contract Compliance Programs (OFCCP) is requesting Office of Management and Budget (OMB) approval of a new information collection request (ICR). Following approval of this request, OFCCP will execute the Government Accountability Office (GAO) 2016 *Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance* report’s recommendation to collect and monitor Affirmative Action Programs (AAP) from covered¹ federal contractors and subcontractors² on a regular basis. This will be done through a new online platform referred to as the Affirmative Action Program Verification Interface (AAP-VI).

Contractors within OFCCP’s jurisdiction that meet certain contract dollar and employee thresholds have an obligation to develop and maintain AAPs. However, OFCCP does not have a method to regularly collect the AAPs that these contractors are required to develop and maintain outside of compliance evaluations and complaint investigations. According to the 2016 GAO report, OFCCP historically “conducts evaluations for about 2 percent of federal contractor establishments annually” through its compliance evaluations and complaint investigations.³

To address this low percentage, the 2016 GAO report recommended OFCCP “develop a mechanism to monitor AAPs from covered federal contractors on a regular basis. Such a mechanism could include electronically collecting AAPs and contractor certification of annual updates.”⁴ In response to the 2016 GAO report’s open recommendation, OFCCP developed AAP-VI, a data management capability that also supports the agency’s new compliance management system (CMS). OFCCP designed AAP-VI to increase contractor compliance by creating an annual certification process and to optimize the

¹ OFCCP’s jurisdictional thresholds are available at https://www.dol.gov/ofccp/posters/Infographics/files/JurisdnThresholds-7_ENGESQA508c.pdf (last accessed September 3, 2020).

² Hereinafter all references to “contractors” will include federal contractors and subcontractors unless otherwise stated.

³ Government Accountability Office, *Equal Employment Opportunity: Strengthening Oversight Could Improve Federal Contractor Nondiscrimination Compliance*, September 2016, available at <https://www.gao.gov/assets/680/679960.pdf> (last accessed September 3, 2020).

⁴ *Id.*

compliance review process by creating a tool for scheduled contractors to upload their AAPs electronically for OFCCP's review.

In addition to being responsive to the GAO report, AAP-VI supports the President's Management Agenda (PMA) and the Administration's mandate for all government entities to transition to electronic business processes and recordkeeping. Specifically, it supports two of the PMA's three drivers: *Modern Information Technology (IT)* and *Data, Accountability and Transparency*. AAP-VI is one part of OFCCP's plan to transition its compliance evaluation processes and recordkeeping to a fully electronic mode.

For several years, OFCCP has encouraged contractors to submit AAPs and other information electronically. Contractors typically maintain the information that OFCCP requests in an electronic format. AAP-VI is a logical extension to this best practice. OFCCP designed AAP-VI to work in coordination with its new CMS, integrating case files in the cloud to streamline operations and to enhance internal communication and collaboration nationwide. During a compliance evaluation, CMS allows users to execute case actions, edit templates, and enter case data to process cases more quickly. When a contractor uploads its AAP using AAP-VI it will be available to OFCCP staff conducting the compliance evaluation in CMS. This streamlined document management process increases government efficiency and further transitions OFCCP to electronic business processes and recordkeeping.

Contractors currently have the option to submit information to OFCCP via email or using a delivery, courier, or postal service. Unlike AAP-VI, OFCCP does not have control nor can it guarantee the security of a sender's email server or hand-delivery services. Any third-party email hosting provider can gain read-and-write access to data sent via their servers. Thus, enabling a direct connection between the contractor and AAP-VI vastly decreases the chances of data breach compared to email submissions.

OFCCP designed AAP-VI to be in compliance with the Federal Information Security Modernization Act of 2002 and the strict access controls and standards established by the National Institute of Standards and Technology (NIST). In its publication NIST SP 800-53, NIST details the security protocols and standards with which all federal agencies must comply. External access to AAP-VI is controlled via a multi-layered process. The first process requires the use of two-factor authentication via Login.gov, before initial entry to AAP-VI is granted. Login.gov encrypts the sensitive personal information of each user separately using a unique value generated from each user's password. This encryption method works like a safe deposit box in a bank vault. Only the user has the key, can open the box to reveal the contents, knows the password, and can decrypt their information. The second layer requires the user to enter company-specific information of which only the company representative, OFCCP, and the Equal Employment Opportunity Commission know.

AAP-VI's web portal is built on a Drupal platform. Drupal is fast becoming the go-to content management system for government agencies due to its built-in security modules, including the following:

- Security Kit that deals with any issue or attack concerning HTML injection;
- Login Security that denies full access to the content;
- Password Policy that requires passwords to be more complicated;
- Website Captcha and Secure Login that enable safe login procedures and prevent user data theft; and
- XSS Protection module that protects the website from XSS attacks.

Though OFCCP staff would be able to access uploaded AAPs in CMS, internal access to AAP-VI is not offered agency-wide and is limited to fewer than 10 agency staff who are directly assigned to administer and support the interface. Internal agency staff are required to use their Personal Identification Verification card in order to access the interface. Any data is secured using approved and compliant cryptographic mechanisms and algorithms to secure data transmitted, processed, and stored by the interface, according to NIST Federal Information Processing Standards which are verified by the Office of the Chief Information Officer.

1. Legal and Administrative Requirements

OFCCP administers and enforces the three equal employment opportunity laws listed below, which prohibit employment discrimination and set affirmative action requirements for contractors that meet OFCCP's jurisdictional thresholds.⁵

- Executive Order 11246, as amended (EO 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

Executive Order 11246

EO 11246 prohibits contractors from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, and national origin and requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. Additionally, it prohibits contractors from taking adverse employment actions against applicants and employees for inquiring about, discussing, or disclosing information about their pay or the pay of their co-workers, subject to certain limitations. EO 11246 applies to contractors (including federally assisted construction contractors) holding a government contract in excess of \$10,000, or government contracts 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 government

⁵ OFCCP promulgated regulations implementing these programs consistent with the Administrative Procedure Act. OFCCP's regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60. See 41 CFR 60, <https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=b686ff45080d69713c00bf18b651cc37&mc=true&tpl=/ecfrbrowse/Title41/41chapter60.tpl> (last accessed September 3, 2020).

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 and notes in any amount.

Furthermore, EO 11246 section 202(6) stipulates that contractors will furnish all information and reports required by EO 11246 for the Secretary of Labor and will permit access to books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with EO 11246 and its regulations.

41 CFR Part 60-1 – Obligations of Contractors and Subcontractors

This part prescribes the nondiscrimination and general affirmative action requirements under EO 11246 and contains recordkeeping, reporting, and third-party disclosure requirements.

41 CFR Part 60-2 – Affirmative Action Programs

This part prescribes the scope, application, purpose, and contents of AAPs under EO 11246.

Section 60-2.1 requires the development and maintenance of an AAP under EO 11246. This section requires each non-construction contractor with 50 or more employees to develop an AAP for each of its establishments if the contractor meets any of the following criteria:

- has a contract of \$50,000 or more;
- has government bills of lading which in any 12-month period total or can reasonably be expected to total \$50,000 or more;
- serves as a depository of government funds in any amount; or
- is a financial institution that is an issuing and paying agent for U.S. savings bonds and savings notes in any amount.

Contractors are required to develop AAPs within 120 days from the commencement of a contract and must update the AAPs annually.

Sections 60-2.10 and 60-2.32 provide that contractors must maintain and make available to OFCCP documentation of their compliance with the Executive Order, including specifically contractors' AAPs.

VEVRAA

VEVRAA prohibits contractors from discriminating against protected veterans, namely, disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans. VEVRAA also requires contractors to take affirmative action to employ, and advance in employment, qualified protected

veterans. Its requirements apply to contractors with a government contract of \$150,000 or more.⁶

41 CFR Part 60-300 – Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans

This part establishes the nondiscrimination and affirmative action requirements under VEVRAA. OFCCP discusses specific sections of this part below.

Section 60-300.40 requires each contractor with 50 or more employees and a contract of \$150,000 or more to develop a VEVRAA AAP for each establishment within 120 days of the commencement of a contract.⁷ This section also requires contractors to review and update their AAP annually and to submit their AAP to OFCCP upon request.⁸

Section 60-300.44 identifies the required elements of an AAP.

Section 503

Section 503 prohibits contractors from discriminating against applicants and employees based on disability and requires contractors to take affirmative action to employ, and advance in employment, qualified individuals with disabilities. Section 503 applies to contractors with a government contract in excess of \$15,000.⁹

41 CFR Part 60-741 – Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Individuals with Disabilities

This part establishes the affirmative action and nondiscrimination obligations under Section 503. OFCCP discusses specific sections of this part below.

Section 60-741.40 requires each contractor with 50 or more employees and a contract of \$50,000 or more to develop a Section 503 AAP for each establishment within 120 days of the commencement of a contract.¹⁰ This section also requires contractors to review and update their AAP annually and to submit their AAP to OFCCP upon request.¹¹

⁶ Effective October 1, 2015, the coverage threshold under VEVRAA increased from \$100,000 to \$150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

⁷ OFCCP covers the AAP recordkeeping burden for VEVRAA under OMB Control No. 1250-0004.

⁸ *See* 41 CFR 60-300.40(c) and (d).

⁹ Effective October 1, 2010, the coverage threshold under Section 503 increased from \$10,000 to \$15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 FR 53129 (Aug. 30, 2010).

¹⁰ OFCCP covers the AAP recordkeeping requirements for Section 503 under OMB Control No. 1250-0005.

¹¹ *See* 41 CFR 60-741.40(b)(3) and (c).

Section 60-741.44 identifies the required elements of an AAP.

Platform Interface

AAP-VI will consist of five user interface sections. OFCCP will send an email invitation to every known federal contractor establishment within its jurisdiction that meets its AAP submission thresholds. The agency will also post a notice on its website about the annual certification and the AAP submission requirements for scheduled contractors. The notice will contain AAP-VI registration instructions for contractors and subcontractors, in the event that OFCCP does not have their email address. The term “users” in this section refers to designated employees at each federal contractor’s headquarters or establishment who are tasked with AAP compliance. OFCCP will allow contractors to determine how many users to authorize internally to access AAP-VI based on their unique company structure. The five user interface sections include the following:

1. Login.gov;
2. Contractor Verification;
3. Account Profile;
4. AAP Upload; and
5. Annual Certification.

Login.gov

Each designated user will be prompted to log in or create an account via the Login.gov connection within the AAP-VI system. The designated user will be granted access to the AAP-VI system once Login.gov has validated the user through its two-factor authentication process.

Contractor Verification

After opening the link in the aforementioned email, contractors will log in through Login.gov and subsequently authorize their user role. The system will confirm authorization once users enter their unique company identifier, which will be confirmed against AAP-VI database records. Users will also have the option to enter the system as a new user, whereby contractor verification is replaced with the creation of a new record.

Account Profile

From “Contractor Verification” or from new record creation, users will confirm their populated contractor information is correct. The contractor information generally includes EEO-1 information on Establishment Name, Parent Name, Unit Number, Headquarter Number, Establishment Address, Establishment Status, EIN, DUNS, NAICS, Employee Count, and contact information (Name, Title, Phone, Email). Upon confirmation of this information, users will be shown a list of their contractor establishments.

AAP Upload

If OFCCP schedules a contractor for a compliance evaluation, the designated user for that contractor will select the scheduled establishment(s), functional business unit, or corporate headquarters and upload the applicable AAP(s).

Annual Certification

On an annual basis, each user will use AAP-VI to select one of the below responses to fulfill its annual certification requirement.

1. Entity has developed and maintained affirmative action programs at each establishment, as applicable, or for each functional or business unit. *See* 41 CFR Chapter 60.
2. Entity has been party to a qualifying federal contract or subcontract for 120 days or more and has not developed and maintained affirmative action programs at each establishment, as applicable. *See* 41 CFR Chapter 60.
3. Entity became a covered federal contractor or subcontractor within the past 120 days and therefore has not yet developed applicable affirmative action programs. *See* 41 CFR Chapter 60.

Existing contractors will have 90 days to comply with the certification requirement once it takes effect. New contractors and existing contractors who become subject to AAP requirements after the effective date will have 90 days after they have developed their AAP(s).¹²

During the 90-day period, OFCCP will provide compliance assistance to contractors upon request. Contractors will not be penalized in any way for requesting assistance.

After the initial certification year, OFCCP will set a date by which all existing contractors must renew their annual certification.

2. Use of Collected Material

OFCCP will use the material collected in this ICR to evaluate AAPs submitted by scheduled contractors under its jurisdiction and to verify that contractors are annually certifying their compliance with federal contracting obligations.

3. Use of Information Technology

In general, under OFCCP's regulations, each covered contractor develops its own methods for collecting and maintaining information. Contractors have the option to use methods that best suit their needs as long as they can provide OFCCP with the information needed as a part of the AAP.

¹² Once a contractor becomes subject to OFCCP's AAP requirements, it has 120 days to develop its AAP(s). *See* 41 CFR 60-2.1(c), 41 CFR 60-300.40(b), and 41 CFR 60-741.40(b)(2). The 90-day timeframe for annual certification begins after the contractor develops its AAP(s).

OFCCP will require scheduled contractors to submit their AAPs electronically using AAP-VI. Pursuant to the Government Paperwork Elimination Act (GPEA), government agencies must provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable.¹³ OFCCP fulfills the GPEA requirements by facilitating electronic transmission of contractors' documentation. As noted above OFCCP believes that AAP-VI provides a more secure means of AAP transmittal than email.

4. Describe Efforts to Identify Duplication

This collection represents a partial duplication. The General Services Administration (GSA) collects and maintains responses to questions similar to those in the "Annual Certification" section above from all entities holding federal contracts, regarding whether the contractor has properly developed and maintained AAPs at its establishments.¹⁴ OFCCP contacted GSA to initiate the process of sharing the certification data that GSA collects using the System for Award Management (SAM), but the two agencies were not able to come to an agreement on sharing this data. Therefore, OFCCP will collect the data through AAP-VI, as described in this ICR.

To eliminate duplication of effort, DOL recommends that GSA remove its affirmative action compliance question from the SAM portal. In the spirit of inter-governmental cooperation, DOL would share an AAP verification data file with GSA.

Additionally, the current SAM system does not allow for comprehensive and informative reports. Even though GSA is upgrading its platform, the new platform will lack the capability to produce a comprehensive report that assists OFCCP in its compliance oversight. This ICR would allow OFCCP, the agency responsible for ensuring compliance with federal contractor AAP requirements, to run a comprehensive and informative report identifying the AAP status of covered federal contractors.

5. Impact on Small Business

OFCCP minimizes the information collection and recordkeeping burden on a significant number of small businesses, as listed below.

¹³ Government Paperwork Elimination Act (Public Law 105-277, 1998), <https://www.gpo.gov/fdsys/pkg/PLAW-105publ277/pdf/PLAW-105publ277.pdf> (last accessed September 3, 2020).

¹⁴ The GSA question reads as follows: Please choose one of the following statements that applies to [Legal Business Name]. (FAR 52.222-25, FAR 52.212-3)

- [Legal Business Name] has developed and has on file affirmative action programs required by Secretary of Labor regulations.
- [Legal Business Name] does not have developed and does not have on file affirmative action programs required by Secretary of Labor regulations.
- [Legal Business Name] has not had previous contracts subject to the written affirmative action programs requirements of Secretary of Labor regulations.

- Contractors with fewer than 50 employees are exempt from the AAP requirement, and would have no additional burden under this information collection.
- The portal will require minimal resources from contractors, and OFCCP will ensure that it is easy to use and accessible for small contractors.

6. Consequences of Less Frequent Collection

The 2016 GAO report indicated that OFCCP historically conducted compliance evaluations and collected AAPs annually for about two percent of all contractors in its jurisdiction.¹⁵ Due to this limitation, GAO stated that OFCCP is unable to determine the extent to which all contractors are complying with equal employment opportunity requirements. Instead, the report pointed out that OFCCP relies on contractors to comply with equal employment opportunity requirements, and some contractors may not be completing certain required activities.¹⁶

Without the data collection being proposed in this ICR, OFCCP will continue to lack the ability and resources to ensure AAP compliance by all contractors.

7. Special Circumstances

This collection is consistent with the guidelines in 5 CFR 1320.6.

8. Consultation Outside the Agency

Pursuant to the Paperwork Reduction Act of 1995, as amended (PRA), OFCCP invites the public to submit comments on this proposed information collection. The comments the agency receives will be addressed under this paragraph during a subsequent 30-day public comment period. Although OFCCP believes that the process detailed above provides the most effective compromise between the needs of the agency and the needs of the contractors, the agency seeks input on the following alternate options:

- Option 1: All contractors would be required to certify annually. Contractors who are scheduled for a compliance evaluation will submit their AAPs as they currently do, via email or a delivery service. The total burden in the first year is 46,759 hours at a monetary cost of \$3,359,634. The annual burden in subsequent years is 12,041 hours at a monetary cost of \$865,146.
- Option 2: All contractors would be required to certify and upload their AAPs on an annual basis. The total burden in the first year is 70,139 hours at a monetary cost of \$5,039,487. The annual burden in subsequent years is 35,421 hours at a monetary cost of \$2,544,999.

¹⁵ GAO Report, at 15.

¹⁶ *Id.*

- Option 3: All contractors would be required to certify every two years. Contractors who are scheduled for a compliance evaluation will submit their AAPs as they currently do, via email or a delivery service. The total burden in the first year is 41,914 hours at a monetary cost of \$3,011,521. The annual burden in subsequent years is 7,196 hours at a monetary cost of \$517,033.

9. Gifts or Payments

No payment or gift will be provided to participants.

10. Confidentiality of Information

In the case of a Freedom of Information Act (FOIA) request, OFCCP will evaluate all information pursuant to the public inspection and disclosure provisions of FOIA, 5 U.S.C. 552, and DOL’s implementing regulations at 29 CFR Part 70. OFCCP notifies in writing those contractors whose records are subject to a FOIA request. OFCCP makes no decision to disclose the information until contractors have an opportunity to submit objections to its release.

As described in section 1, the contractor verification steps will protect contractors’ information from fraudulent activity. Using the unique identifiers described, a third party cannot impersonate the contractor and submit or modify any of the information contained in AAP-VI.

11. Questions of Sensitive Nature

No sensitive questions are involved.

12. Information Collection Hour Burden

This ICR carries only a reporting burden that applies to all three laws enforced by OFCCP. The recordkeeping burden for the information collected is covered in three other ICRs: Supply and Service Scheduling Letter (OMB Control No. 1250-0003), Section 503 Recordkeeping (OMB Control No. 1250-0005), and VEVRAA Recordkeeping (OMB Control No. 1250-0004). The burden for this ICR is broken down below:

- One-time burden for all users who are existing federal contractors: Users will go to Login.gov to certify their status using a two-factor authentication and verify their account profile. It will take the user .3 hours to complete these tasks. The total burden for existing contractors is 35,069 hours (.3 hours x 116,898 contractor establishments).¹⁷

¹⁷ OFCCP obtained the number of supply and service contractor establishments from the most recent EEO-1 Report data available, which is from 2018. A contractor establishment can have as many users as it deems necessary, but this burden accounts only for a single required user for each establishment.

- Annual burden for users who are new federal contractors: New contractors will go to Login.gov to certify their status using a two-factor authentication and verify their account profile. OFCCP estimates that one percent of its contractor universe will be new to federal contracting each year. The total annual burden for users at new contractors is 351 hours (.3 hours x 1,169 new contractor establishments).¹⁸
- Annual burden for AAP Submission of scheduled contractors: Contractors scheduled for a compliance review, compliance check, or focused review will be required to upload their AAPs to the portal. The total annual burden for scheduled establishments is 1,000 hours (.2 hours x 5,000 contractor establishments).¹⁹
- Annual burden for annual certification for all contractor establishments: Every contractor will be required to access the portal annually to answer a certification question. The total annual burden is 11,690 hours (.1 hours x 116,898 contractor establishments).

The total burden for the first year is 47,759 hours (35,069 hours + 1,000 hours + 11,690 hours) at a monetary cost of \$3,431,484 (47,759 hours x \$71.85).²⁰ The annual burden for subsequent years is 13,041 hours (351 hours + 1,000 hours + 11,690 hours) at a monetary cost of \$936,996 (13,041 x \$71.85).²¹

13. Information Collection Cost Burden

OFCCP does not require a specific software, program, or format for the development, annual update, and maintenance of AAPs, nor will it for the online portal. As such, there is no cost burden associated with this information collection such as software purchasing or copying and mailing costs.

14. Cost to the Federal Government

There are three costs to the Federal Government regarding this ICR: (1) one-time development cost for Federal Government employees, (2) one-time contracted labor cost, annual AAP-VI site hosting, and operations and maintenance costs. The total cost to the Federal Government in the first year, including development of AAP-VI, is \$853,019. This cost includes OFCCP staff salaries ((10 hours*\$119.49) + (650 hours*\$119.49) + (30 hours*\$138.50)), the cost of contracted labor (\$370,000), and a \$400,000 site hosting

¹⁸ One percent of 116,898 = 1,169 new contractor establishments.

¹⁹ OFCCP estimates that it will schedule 2,500 compliance reviews, 1,000 compliance checks, and 1,500 focused reviews in the reauthorization of the Supply and Service Scheduling Letter (OMB Control No. 1250-0003), which received approval in April 2020.

²⁰ Bureau of Labor Statistics, Occupational Employment Statistics, Occupational Employment and Wages, May 2019, https://www.bls.gov/oes/current/oes_nat.htm (last accessed September 3, 2020). \$45.94 per hour for Management Analysts and \$62.29 per hour for Human Resource Managers. The calculation uses an 80/20 split between Management Analysts and Human Resource Managers, which equals \$49.21. BLS Employer Costs for Employee Compensation, <https://www.bls.gov/news.release/ecec.toc.htm> (last accessed September 3, 2020). Fringe benefit and overhead costs are 46 percent of wages. \$49.21 x 1.46 = \$71.85.

²¹ *Id.*

and maintenance cost. The total cost to the Federal Government in subsequent years is \$400,000 for site hosting, operations, and maintenance. The average annual cost to the Federal Government is \$551,006.²²

15. Program Changes or Burden Adjustments

This is a new information collection.

16. Publication of Data for Statistical Use

There will be no publication of statistical analysis related to this collection.

17. Approval Not to Display the Expiration Date

OFCCP is not seeking approval not to display the expiration date of this collection.

18. Exceptions to the Certification Statement

OFCCP is not seeking exceptions to the certification statement of this collection.

B. Collections of Information Employing Statistical Methods

As represented in this ICR, AAP-VI does not employ the use of statistical methods.

²² $(\$853,019 + \$400,000 + \$400,000) / 3 = \$551,006.$