



College and University Professional  
Association for Human Resources

October 28, 2011

**VIA E-MAIL: OIRA\_submission@omb.eop.gov**

Office of Information and Regulatory Affairs  
Attn: OMB Desk Officer for the Department of Labor, OFCCP  
Office of Management and Budget  
Room 10235  
Washington, D.C. 20503

**Re: OMB Control No. 1250-0003: Comment on the Office of Federal Contract Compliance Programs' Proposed Changes to the Compliance Review Scheduling Letter and Itemized Listing by the Society for Human Resource Management and the College and University Professional Association for Human Resources**

To Whom It May Concern:

The Society for Human Resource Management (SHRM) and the College and University Professional Association for Human Resources (CUPA-HR) appreciate this opportunity to provide comments on the Information Collection Request titled, "Office of Federal Contract Compliance Programs Recordkeeping and Reporting Requirements – Supply and Service." These comments were prepared on behalf of SHRM and CUPA-HR by Jackson Lewis LLP.<sup>1</sup>

**STATEMENT OF INTEREST**

SHRM is the world's largest association devoted to human resource management. Representing more than 250,000 members in over 140 countries, the Society serves the needs of HR professionals and advances the interests of the HR profession. Founded in 1948, SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China and India.

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<sup>1</sup> For more than 50 years, Jackson Lewis has placed a high premium on preventive strategies and positive solutions in the practice of workplace law. With over 650 employment law practitioners in 46 offices nationwide, the firm partners with employers to devise policies and procedures promoting constructive employee relations and limiting disputes. Jackson Lewis has a robust affirmative action compliance practice. The Firm prepares more than 1700 affirmative action plans every year and regularly represents federal contractors during OFCCP compliance audits.

CUPA-HR serves as the voice of human resources in higher education, representing more than 11,000 HR professionals at over 1,700 colleges and universities across the country, including 90 percent of all U.S. doctoral institutions, 70 percent of all master's institutions, more than half of all bachelor's institutions and nearly 500 two-year and specialized institutions. Higher education employs 3.3 million workers nationwide, with colleges and universities in all 50 states.

SHRM and CUPA-HR strongly support nondiscrimination in employment and believe that employment decisions should be based on an individual's qualifications and ability to perform a job, not on characteristics that have no bearing on job performance. As associations, we regularly seek to promote effective practices for advancing equal employment opportunity for all. Many of SHRM's and CUPA-HR's members are federal contractors subject to Executive Order 11246, which prohibits discrimination on the basis of race, color, national origin, religion, and sex, Section 503 of the Rehabilitation Act of 1973 (Section 503), which prohibits discrimination on the basis of disability, and the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), which prohibits discrimination on the basis of protected veteran status. As such, our members strongly support the mission of the Office of Federal Contract Compliance Programs (OFCCP), and the agency's desire to ensure that federal contractors practice equal employment opportunity. However, we urge the Office of Management and Budget (OMB) to give careful consideration to our comments below, which are intended to ensure the OFCCP is able to collect the data it needs to review organizational practices while minimizing the burden imposed on the federal contracting community through such a large-scale Information Collection Request.

### **COMMENTS ON THE OFCCP'S PROPOSED REVISIONS TO THE SUPPLY AND SERVICE INFORMATION COLLECTION REQUEST**

The OFCCP first published the proposed Information Collection Request in the Federal Register on May 12, 2011. *See* 92 FR 27670. Among other items, the Information Collection Request includes revisions to the agency's Scheduling Letter and Itemized Listing (collectively referred to herein as the Scheduling Letter), which is used by the OFCCP to initiate a compliance evaluation of federal contractors covered by Executive Order 11246, Section 503 and VEVRAA. Because of the nature of its use, the OMB considers the Scheduling Letter a reporting requirement subject to the Paperwork Reduction Act (PRA).

The agency's May 12 Federal Register notice included the following proposed revisions to the Scheduling Letter:

- A new requirement that federal contractors submit to the OFCCP in response to the Scheduling Letter employment leave policies, including, but not limited to, sick leave, medical leave, personal leave, leave for pregnancy, leave for pregnancy-related conditions, leave for religious holidays and observances, Family Medical Leave, and other leaves of absence, and policies on accommodations for religious beliefs and observances. The OFCCP estimates that this new requirement will result in a .02 hours overall burden hours increase.

- Increased reporting of information related to any collective bargaining agreements to include submission of all documents prepared by a federal contractor that implement, explain, or elaborate on the provisions of a collective bargaining agreement. The OFCCP estimates that this proposal will not change a federal contractor's burden hours.
- Revised language to clarify the time period for affirmative action plan reporting requirements. The OFCCP estimates that this proposal will not change a federal contractor's burden hours.
- A new requirement that federal contractors report personnel activity by five or seven separate racial and ethnic categories rather than the current two categories and that federal contractors report such data in two different ways (by job group and job title) versus the one currently required. The OFCCP estimates that this new requirement will require additional start-up costs and will require two additional burden hours per federal contractor afterwards.
- A new requirement that federal contractors report compensation information by individual employee rather than in an aggregated format. The agency's proposal requires that federal contractors provide documentation and policies related to compensation practices, data regarding hours worked for each individual, and information regarding bonuses, incentives, commissions, merits increases, locality pay, and overtime. The proposal also expands the categories of individuals for whom this information should be reported to include contract, per diem and day laborers. Finally, the proposal requires that such data be submitted as it existed on February 1, regardless of the federal contractor's affirmative action plan year. The OFCCP estimates that this more detailed reporting requirement will reduce, not increase, a federal contractor's burden hours.
- A new requirement that federal contractors submit copies of the Veterans' Employment Report Vets-100 or Vets-100A as well as records of accommodations granted under Section 503 and Section 4212. The OFCCP estimates that this new reporting requirement will not change a federal contractor's burden hours.

Over 70% of the comments received by the OFCCP in response to its notice soliciting public comments on the proposed revisions to the Scheduling Letter were not supportive of the agency's proposal. Nonetheless, the OFCCP has forged ahead with its request to revise the Scheduling Letter, making only a handful of minor changes to its May 12, 2011 proposal before submitting the proposed Information Collection Request to the OMB. The agency justifies its decision by arguing that the "benefits associated with receiving improved data from federal contractors and the net reduction of 1.34 hours in the total burden hours spent by federal contractors in supplying OFCCP with the data are the 'best most innovative and least burdensome tasks for achieving regulatory ends.'" *See* OFCCP's Final Supply and Service Supporting Statement, Note to Reviewer, at p. 18-19. SHRM and CUPA-HR respectfully submit that the agency's burden estimate woefully underestimates the actual burden to a federal contractor to respond to the proposed Scheduling Letter and that the agency has not satisfied its

burden of showing that the benefits of the proposed reporting requirement outweigh these substantial burdens.<sup>2</sup>

## **I. Comments on the OFCCP'S Total Burden Analysis**

The PRA is intended to “ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government” and to “improve the quality and use of Federal information to strengthen decisionmaking, accountability, and openness in Government and society.” 44 U.S.C. § 3501. Before requiring or requesting information from the public, the PRA requires Federal agencies (1) to seek public comment on proposed collections and (2) to submit proposed collections for review and approval by the OMB. A central goal of OMB review is to help agencies strike a balance between collecting information necessary to fulfill their statutory missions and guarding against unnecessary or duplicative information that imposes unjustified costs on the American public. In this regard, the OMB evaluates whether the collection of information by the agency:

- is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- minimizes the Federal information collection burden, with particular emphasis on those individuals and entities most adversely affected; and
- maximizes the practical utility of and public benefit from information collected by or for the Federal Government.

*See* April 10, 2010 Memorandum of OMB Administrator Cass R. Sunstein to the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, available online at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf); *see also* 44 U.S.C. §§ 3504, 3508. We respectfully submit that the OFCCP's proposed Information Collection Request does not strike the appropriate balance between the agency's fulfillment of its mission and the burden, both in terms of cost and hours, imposed on federal contractors in responding to the proposed Scheduling Letter.

As an initial matter, we ask the OMB to keep in mind that the Scheduling Letter is but the first step in the agency's multi-faceted compliance evaluation process. We appreciate that the OFCCP would like to gather as much data as possible at the beginning of its process. However, the agency's desire to gather such information must be balanced against the significant burdens imposed by such a wide-ranging Information Collection Request. We do not believe that the

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<sup>2</sup> The OFCCP's Information Collection Request seeks OMB approval for a total of 11,949,346 hours in combined recordkeeping, reporting and third party disclosure burden hours for compliance with Executive Order 11246, Section 503, and VEVRAA by supply and service contractors. In addition to a burden estimate related to responding to the Scheduling Letter, the agency's burden estimate includes estimated recordkeeping burdens for developing, updating and maintaining an affirmative action plan, and for other activities required by law. This comment focuses only on the agency's proposed changes to the Scheduling Letter, and its estimate of the associated burdens.

agency has met its burden of demonstrating that the proposed Information Collection Request does not request unnecessary or duplicative information that imposes unjustified costs on the American public.

We also take issue with the agency's reliance on certain "societal benefits" it believes will result from finalizing the proposed changes to the Scheduling Letter. Without otherwise quantifying the benefits or describing how the agency concluded that these benefits would be best achieved through the proposed Information Collection Request, the OFCCP identifies the following "societal benefits":

- inclusion of more qualified workers in the nation's workforce,
- ability to provide America's returning veterans and wounded warriors meaningful employment opportunities as they transition from the military,
- opportunity to develop a workforce that reflects the diversity of the nation, and
- strengthening of our ability to compete effectively in a global economy based on the diversity and skill of America's workforce."

*See* Note to Reviewer at p. 19.

While these societal benefits are certainly worthy aspirational goals, the agency fails to explain how its proposed Information Collection Request would achieve these results. The OFCCP provides no evidence that would substantiate its claims in this regard, nor does it explain why the proposed Information Collection Request is the best, most innovative and least burdensome way to achieve such goals. The agency also does not discuss whether other alternatives might achieve the same results, or whether the currently-approved Scheduling Letter would adequately serve the same purpose. Finally, the agency fails to identify any other specific benefits that would result from the revised Scheduling Letter, making it difficult for the public to comment on whether the agency has adequately balanced the benefits associated with its proposed reporting requirement against the anticipated burdens.

To a greater degree, SHRM and CUPA-HR have serious concerns that the OFCCP has significantly underestimated the burden of its proposed revisions to the Scheduling Letter on federal contractors. Despite all of the new data reporting requirements discussed above, the OFCCP estimates that the burden on federal contractors will actually decrease from 28.35 hours to 27.01 hours. *See* Note to Reviewer at p. 19. SHRM and CUPA-HR respectfully disagree with the OFCCP's conclusion and request that the OMB independently evaluate the benefits and burdens of the OFCCP's revised Scheduling Letter to ensure that the least amount of burden is placed on federal contractors to achieve the agency's regulatory objectives.

When doing so, OMB should keep in mind that most federal contractors spend significantly more time than the current estimated time of 28.35 hours compiling the information required by the current Scheduling Letter. In fact, in our experience, it takes many federal contractors more than 40 hours to respond to the current Scheduling Letter. Some of our members report that they currently spend more than 100 hours. SHRM and CUPA-HR believe that the time expended to respond to the proposed Scheduling Letter will necessarily surpass

current effort levels. We estimate that a federal contractor's submission in response to the proposed Scheduling Letter would likely increase in length by 25% or more. Accordingly, using even this simple yardstick, it is hard to imagine how the burden imposed on federal contractors will actually be less. This is especially true given the fact some of the proposed requests will require federal contractors to develop new systems, implement new processes and revise existing data collection methods, while others will require federal contractors to collect, manually enter, and synthesize information from multiple sources.

SHRM and CUPA-HR also request that the OMB give serious consideration to the amount of time and money federal contractors will need to spend creating new systems and processes in order to capture and provide the new data components. When doing so, the OMB should keep in mind that many federal contractors may have only one individual dedicated to affirmative action compliance, if any at all. In addition, while many federal contractors have Human Resources Information Systems (HRIS) that allow the contractor to electronically track and maintain personnel activity records, many do not. For those who do not, the new data components will need to be gathered and synthesized manually. Even those federal contractors with existing electronic HRIS will need to update those systems in order to be able to respond to the proposed Scheduling Letter.

The OFCCP's burden estimate seriously discounts this component of a federal contractor's burden by arguing that federal contractors are already required to maintain the information being requested in the proposed Scheduling Letter. *See* Note to Reviewer at p. 36. However, there is a significant difference between maintaining a record and having the capability to produce reports that capture that data in a synthesized format, whether it be electronically or manually. Many of our members likely will need to purchase new or modify existing software or programs to ensure the ability to respond to the proposed changes. The cost of making such changes is highly variable, and likely would depend on the federal contractor's existing systems capability, the federal contractor's agreements with its systems provider, the type of modification required, and various other factors. However, in all cases, modifying existing software or purchasing new software has a cost associated with it. The burden is even greater on federal contractors who do not have the resources to capture such data electronically, particularly at a time when human resource capabilities are already stretched thin. These contractors will have to manually compile the data on an annual basis.

OFCCP's burden estimate also assumes that the data required to respond to the proposed Scheduling Letter is generally maintained in existing HRIS systems, such that federal contractors will only need to develop or modify existing queries of personnel tracking systems. *See* Note to Reviewer at p. 47. Our members report that this assumption is false for several of the data items requested by the proposed Scheduling Letter. For example, many federal contractors do not currently maintain information regarding accommodations provided to employees in their personnel tracking systems. Instead, as required by law, these records are maintained in confidential medical files for each individual. In order to provide the data required by the proposed Scheduling Letter, federal contractors will have to undertake a multi-step process of creating a mechanism for inputting such data into their existing HRIS system; actually inputting the data into the system, and finally developing a query to compile the inputted data for submission to the OFCCP. The amount of time and money required to develop a method for

responding to this proposed request, and others, is a real and substantial concern for federal contractors.

## **II. Comments on Specific Proposed Revisions to the Scheduling Letter**

Our members also are concerned that the OFCCP has seriously underestimated the amount of time it will take to respond to specific portions of the proposed Scheduling Letter. Our comments related to each newly-proposed reporting burden are outlined below, in the order in which they are discussed by the OFCCP.

### **Proposed Item 8: Employee Leave Policies**

Proposed Item 8 requires that federal contractors submit employment leave policies to the OFCCP, including, but not limited to, sick leave, medical leave, personal leave, leave for pregnancy, leave for pregnancy-related conditions, leave for religious holidays and observances, Family Medical Leave, and other leaves of absence; and policies on accommodations for religious beliefs and observances. The OFCCP estimates that this new requirement will result in a .02 hours overall burden hours increase because it estimates that 1% of federal contractors will need two hours to prepare a religious accommodation policy. *See* Note to Reviewer at p. 43.

As an initial matter, we note that the agency's burden calculation, which focuses solely on the burden associated with creating a religious accommodation policy for a small number of federal contractors, conflicts with other statements in the agency's proposal which state that federal contractors will not have to create policies where none exist. In addition, we believe that far more than 1% of the federal contracting community currently may not have a specific policy regarding the provision of religious accommodations. The OFCCP's burden estimate also does not include an estimate of how much time it will take federal contractors to compile the other information requested in proposed Item 8. By including no additional burden hours to submit employee leave policies other than a religious accommodation policy, the OFCCP fails to take into account the time required to review policy manuals and handbooks, benefits materials, and related documents to gather the requested leave policies. We believe that proposed Item 8 will add an additional 5-10 hours to a federal contractor's reporting obligations.

Furthermore, we question whether the collection of these policies will shed any light whatsoever on whether a federal contractor has complied with its obligations to provide equal employment opportunity and to take affirmative action. The OFCCP asserts that a review of these policies will enable it to "identify indicators of discrimination that might otherwise go undetected." *See* Note to Reviewer, at p. 20. However, as the OFCCP itself acknowledges, it does not have the authority to enforce the Family Medical Leave Act (FMLA). Furthermore, precisely because the agency does not have enforcement responsibility under the FMLA, the OFCCP's compliance officers have no expertise in evaluating the substance of such policies. Accordingly, we fail to see how a review of a federal contractor's FMLA policy will inform a compliance officer's evaluation of the federal contractor's employment practices that are within the OFCCP's jurisdiction. Accordingly, we urge the OMB to reassess whether these policies should be requested as part of the proposed Information Collection Request.

### **Proposed Item 9: Documents Related to Collective Bargaining Agreements**

Proposed Item 9 requires increased reporting of information related to any collective bargaining agreements including submission of all documents prepared by a federal contractor that implement, explain, or elaborate on the provisions of a collective bargaining agreement. The OFCCP estimates that this proposal will not change a federal contractor's burden hours. *See Note to Reviewer at p. 43.*

In our view, this proposed request is extremely broad and could entail a search and review of a wide variety of documents. We respectfully request that the OMB require the OFCCP to clarify the scope of the items being requested by proposed Item 9. The OMB also should independently evaluate whether the collection of such data is necessary to the OFCCP's enforcement mission or duplicative of other data collections, such as those required by the Department of Labor's Office of Labor-Management Standards. Furthermore, in light of the broad nature of the current language, we do not believe that it is realistic to estimate that compiling and submitting all such responsive documents adds no further burden hours. We believe that this proposal would add 10 or more hours to each federal contractor's response time.

### **Proposed Item 11: Employment Activity**

Proposed Item 11 requires that federal contractors report personnel activity by five or seven separate racial and ethnic categories rather than the current two categories and that federal contractors report such data in two different ways (by job group and job title) versus the one currently required. Without any explanation of the basis for its calculation, the OFCCP estimates that this new requirement will increase a federal contractor's burden hours by only two additional burden hours. *See Note to Reviewer at p. 44.*

SHRM and CUPA-HR strongly disagree with OFCCP's burden estimate for this proposed reporting obligation. At the very least, the burden estimate for this proposal should be double the current burden estimate because the agency's proposal requires federal contractors to submit personnel activity in two different formats versus the current single format requirement. Importantly, the data to be reported in the two alternate formats is not overlapping. Accordingly, the OMB should reject any argument by the OFCCP that reporting in two formats will not be at least double the work. In addition, Proposed Item 11 requires that a federal contractor report such information using five or seven racial/ethnic categories, which is more than two to three times the current reporting categories.

Even the smallest federal contractors often have between 7-15 job groups and 100-500 job titles in their affirmative action plans. Large federal contractors may have more than 30 job groups and more than a thousand individual job titles. Accordingly, reporting personnel activity by job title is significantly more burdensome than reporting such information by job group. For very small federal contractors with few job titles, an additional 2 hours may be accurate. However, for the majority of our members, reporting personnel activity by job title and sub-minority group likely will increase the time to respond to the proposed Scheduling Letter by 10-15 hours.

In addition to the increased amount of time it will take federal contractors to collect and organize data in these two different manners, it is concerning to our member organizations that the OFCCP will require them to turn over data in a format that is not an accurate reflection of the actual practices employed within their organizations. In their daily practices, our member organizations compile and analyze data either by job title *or* by job group. By collecting data in a fashion not typically utilized by an employer, OFCCP will be conducting analyses that are meaningless and inaccurate. As a result, SHRM and CUPA-HR urge the OMB to reassess OFCCP's proposed requirement that federal contractors submit personnel activity data by both job group and job titles.

Our members also are concerned about the requirement that they report employment activity by sub-minority groups. Providing personnel activity in this more granular format will necessarily lead to smaller groupings of employees. Our members are concerned that statistical analyses of such small groupings of applicants or employees will lead to indicators of discrimination (and thus further investigation by the OFCCP) where none should exist. We question whether such detailed employment activity data is needed in every compliance evaluation, or whether such data should be requested only after preliminary reporting by minority versus non-minority status reveals a potential problem area, as is the case now.

Our members also question whether the benefits are outweighed by the burden imposed by proposed Item 11(b) and Item 11(c), which would require federal contractors to submit data reflecting the "actual pool" of candidates who applied or were considered for promotions and who were considered for termination. Promotion pool information is not regularly or easily collected or tracked by the current versions of most personnel tracking systems. In order to comply with this request, therefore, federal contractors will need to reconfigure their HRIS systems and employ personnel to identify and input this individualized pool information. Both of these are costly, and burdensome, tasks. With respect to termination data, in our experience, nearly all terminations (other than those conducted as part of a group termination, such as a reduction in force) are individualized events, such that there would be no pool of employees considered. Providing a "pool of one" is not meaningful for purposes of analysis. In light of this reality, we suggest that proposed Item 11(c) be limited to situations where federal contractors consider a group of individuals for termination.

### **Proposed Item 12: Compensation Data**

Proposed Item 12 requires that federal contractors report compensation information by individual employee rather than in an aggregated format. The agency's proposal also requires that federal contractors provide documentation and policies related to compensation practices, data regarding hours worked for each individual, and individualized information regarding bonuses, incentives, commissions, merits increases, locality pay, and overtime. The proposal expands the categories of individuals for whom this information should be reported to include contract, per diem and day laborers. Finally, the proposal requires that such data be submitted as it existed on February 1, regardless of the federal contractor's affirmative action plan year. The OFCCP estimates that this more detailed reporting requirement will reduce, not increase, a federal contractor's burden hours. *See Note to Reviewer at p. 44-45.*

SHRM and CUPA-HR members have great concern about the proposed requirement to provide separately detailed compensation information for all employees, including bonuses, commissions, incentives, locality pay, and overtime. Our members do not believe that reporting such information to the OFCCP will allow the agency a better means of evaluating whether a federal contractor has discriminatory pay practices. In our experience, data regarding pay raises and bonuses is not useful without data regarding employees' past performance or other factors that impact such salary increases. Similarly, commission data also is not informative without evidence regarding the performance of employees or the commission arrangement. Because employees often are able to choose whether to accept overtime opportunities, information regarding overtime also would not be useful to an initial examination of a federal contractor's pay practices.

These examples illustrate the difficulty in obtaining reliable compensation data using a generic information collection request. As the OFCCP knows from its own compliance evaluations, a proper, and legally defensible, compensation analysis only can be conducted by devising an appropriate evaluation model based on an understanding of an individual organization's compensation system, and the unique factors that play a role in establishing compensation at that organization. Given this reality, the OMB should weigh the burden associated with gathering the proposed compensation data in an information collection request format against the limited utility of such data without additional information.

Our members also have expressed substantial concerns about the confidentiality of the compensation data that the OFCCP proposes to collect. Compensation data of the nature OFCCP proposes to collect is especially sensitive and confidential, as it necessarily provides insight into an organization's competitive strategies, internal costs, and other valuable business details. Release of an organization's compensation information – through FOIA, by intentional misappropriation, or otherwise – poses potentially devastating consequences to companies. For this reason, we urge the OMB to not move forward with the implementation of this proposed collection request until appropriate data security safeguards are developed, tested, and perfected to ensure protection of employers' highly sensitive pay data.

In addition, our members question the wisdom of requiring that federal contractors submit compensation data for all employees as of February 1st, regardless of the date of the Scheduling Letter or the federal contractor's affirmative action plan year. Our members believe this approach, while perhaps creating uniformity, is wholly arbitrary in terms of affirmative action plan development. This is because a fixed reporting date does not coincide with most federal contractor's affirmative action plan year dates or even other compensation activities within the calendar year.

The OFCCP argues that the selection of February 1st was "not arbitrary, but was chosen because it is the date by which federal contractors would have completed their W-2's and other compensation data analysis for their employees, pursuant to the January 31 deadline mandated by the U.S. Internal Revenue Service (IRS)." *See* Note to Reviewer at p. 31. The agency's justification is misplaced. All employers must complete IRS reporting by the end of January for all individuals employed by it during the previous calendar year. The OFCCP's proposed Item 12 does not, however, seek to collect employee compensation information for the prior calendar

year. Instead, the OFCCP desires to utilize the proposed request to obtain pay data for federal contractor employees as of a specific point in time (i.e. February 1), regardless of whether those employees were employed during the calendar year covered by the most recent IRS reporting schedule. Thus, contrary to the agency's suggestion, compensation information prepared for IRS reporting requirements would afford contractors no benefit because the agency's request would be for a different universe of data.

As a result, federal contractors would have to run entirely new reports to capture compensation data from February 1st of the preceding year to February 1st of the current year. In addition, there will be individuals employed on February 1st who were not employed during the preceding calendar year. The prior year's W-2 information will be irrelevant for these individuals. Because the OFCCP's purported reason has no merit, provides no benefit whatsoever to the agency and significantly burdens federal contractors, we request that the OMB reevaluate the purpose of requiring federal contractors to submit compensation data as of February 1st and revise the Scheduling Letter to reflect a date coinciding with the federal contractor's affirmative action plan year (which would eliminate the need for multiple data runs).

In terms of the number of burden hours associated with proposed Item 12, it is important to note that the more detailed compensation data points the OFCCP proposes to collect, i.e. hours worked for each individual, and individualized information regarding bonuses, incentives, commissions, merits increases, locality pay, and overtime, are not traditionally collected or housed in a centralized database with the other required data components, *i.e.*, job title, EEO-1 category, job group, race, gender, and hire date. As a result, most federal contractors would be required to either develop or modify existing personnel tracking systems in order to input and then report this information or manually research, and manually add, the requested components to the data containing employees' base compensation information. For this reason, the OFCCP has grossly underestimated the burden and time associated with its proposed change.<sup>3</sup> Based on our members' collective experience in gathering the type of detailed compensation data required by proposed Item 12, we believe that it will take many federal contractors between 15-30 additional hours just to respond to this item alone.

### **Proposed Item 13: Section 503 & Section 4212 Compliance**

This proposed reporting item requires that federal contractors submit copies of the Veterans' Employment Report Vets-100 or Vets-100A, as well as records of accommodations granted under Section 503 and Section 4212. The OFCCP estimates that this new reporting requirement will not change a contractor's burden hours. *See* Note to Reviewer at p. 45.

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<sup>3</sup> Moreover, the agency's methodology for suggesting that a federal contractor's burden decreases from 5.23 hours to 3.36 hours is inherently flawed. The OFCCP relies on its previous estimate that it takes a federal contractor 5.23 burden hours to report compensation data and then subtracts the 1.87 burden hours that it estimates contractors spend responding to later data requests by the agency. *See* Note to Reviewer at p. 44-45. At the very least, because the agency is in effect combining its initial data request with follow-up data requests, the 1.87 burden hours should be *added to*, not subtracted from, the initial estimate.

Our members are particularly concerned about the implications of tracking and reporting accommodation requests – an obligation which is vastly different from the current regulatory requirement that federal contractors keep records of accommodations afforded to employees. Quite simply, just because contractors have a “record” of accommodation does not mean that providing these records to the agency in the manner required is not burdensome. It is one thing to record an employee’s requested accommodation. It is quite another to construct and maintain a comprehensive database of all accommodations to be synthesized and reported to the OFCCP.

Practically speaking, the vast majority of our members currently do not track accommodation requests in a manner that easily would allow reporting such information to the OFCCP. Requiring a federal contractor to provide records reflecting accommodations will necessitate the development of a universal process by which it can obtain this information from all of its locations, which will be burdensome and costly. Furthermore, this process likely would need to be automated into the organization’s HRIS system, thereby causing the federal contractor community additional time and expense.

Our members also have concerns about providing this type of information to the OFCCP, even in an aggregated format, particularly since employees themselves have a legitimate expectation that such information will not be widely shared or distributed. We also question the relevance of providing accommodation records to the OFCCP. The agency claims that such records will be used to evaluate whether a federal contractor has discriminated against an individual with a disability or a qualified veteran with a disability. In fact, these records suggest just the opposite. Given this, and the significant burden associated with reporting such information to the OFCCP, we request that the OMB reevaluate the utility of providing this data as part of the proposed Information Collection Request.

## **CONCLUSION**

SHRM and CUPA-HR understand and appreciate OFCCP’s desire to obtain as much data as possible during the initial stages of a compliance evaluation. However, under the PRA, the agency is required to rigorously evaluate its information collection requirements to ensure that it collects data from the public in the least burdensome way possible to achieve its regulatory objectives. We urge the OMB to work with the OFCCP to create a Scheduling Letter that achieves its goals without unduly burdening the federal contractor community. We also urge the OMB to keep in mind that the Scheduling Letter is but one part of the agency’s multi-faceted compliance evaluation process and question whether such a detailed and burdensome information collection requirement is required during the very first step of that process.

We appreciate the opportunity to submit these comments. If we can be of further assistance on this matter, please do not hesitate to contact us.

Respectfully submitted,



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