



August 25, 2004

Office of Information and Regulatory Affairs  
Attn: OMB Desk Officer for the Employment Standards Administration  
Office of Management and Budget  
Room 10235  
Washington, DC 20503

**RE: OFCCP Recordkeeping and Reporting Requirements, Supply and Service—Scheduling Letter (OMB Number: 1215-0072)**

This letter responds to the invitation for written comments on the request to the Office of Management and Budget (OMB) for an extension to the approval of the Office of Federal Contract Compliance Programs' (OFCCP) Supply and Service Scheduling Letter (Scheduling Letter).

**Background - Maly Consulting LLC**

Maly Consulting (originally founded as Maly & Associates in 1986) is a management consulting firm located in San Rafael, California. We specialize in the analysis and reporting of human resource data, affirmative action compliance, and OFCCP audits. The majority of our clients are federal government contractors and range in scope from large, multi-national corporations to smaller organizations of 100+ employees nationwide. We assist clients in understanding and complying with the federal regulations for affirmative action, including Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, and Section 503 of the Rehabilitation Act of 1973. Our firm has analyzed data for and developed thousands of Affirmative Action Programs (AAPs) over the 18 years that we have been in business. We have assisted many clients with compiling their data for OFCCP audits, EEO-1 reports, VETS-100 reports, and EO Surveys. We are keenly aware of the high costs and organizational burdens imposed on our clients by vague and unnecessary requests for data.

**Focus of Our Comments**

The Employment Standards Administration's (ESA) original comment request in the Federal Register notice of March 24, 2004 identified four specific areas in which it was interested in receiving comments. A copy of our comment letter to that request is enclosed. However, we have a few additional comments to OFCCP's comment responses. In summary, we believe the ESA should rewrite the Scheduling Letter to reflect actual OFCCP information needs, to make clear the information being requested, and to promote alternative methods of submission.

### **Unnecessary and Burdensome Collection Requests**

In our original comment letter we discussed several areas where the OFCCP was collecting information that was unnecessary and burdensome. The following are comments to specific statements in section 8 - CONSULTATION OUTSIDE THE AGENCY presented beginning on page 16 in the ESA's supporting statement to the OMB.

**1. *Current EEO-1 reports allow OFCCP to get the clearest picture of the up-to-date employment trends at the contractor's facility.***

The Scheduling Letter itself requests EEO-1 reports from the last three years. If the goal is to collect up-to-date trends, what is the purpose of requesting data that may be close to four years old? In fact, we would also ask where the requirement is to keep reports beyond the one year statutory requirement (29 USC 1602) or at most the two year regulatory record keeping requirement (41 CFR 60-1.12, 60-250.80, and 60-741.80). If contractors are not required to maintain these records for more than two years then the OFCCP is requesting that contractors retrieve the third year EEO-1 report from the Government agencies that promulgate and collect that report, which includes the OFCCP, and send it back to the OFCCP.

**2. *OFCCP does not request EO Survey information and Scheduling Letter data from identical establishments in the same year; for that reason, it is not an additional burden.***

First, in 2003, the OFCCP specifically selected approximately 2,000 contractors of the 10,000 that received the EO Survey in 2002 for audits. Second, the burden is not solely in the repetition of data collection but in the creation of processes and storing of data to comply with different and sometimes contradictory definitions for the same employee transaction.

**3. *Every contractor has an obligation to periodically conduct internal audits of the effectiveness of its total affirmative action program. It does not seem unreasonable, or unduly burdensome to believe such audits are conducted on at least a semi-annual basis.***

The OFCCP asserts here that the request for an additional six months of data from contractors who are audited six months or more into their AAP year is not unduly burdensome. We would remind the OFCCP of its own difficulty in having data available that it collects as a member of the Joint Reporting Committee.<sup>1</sup> Although contractors are required to periodically measure the effectiveness of their AAPs, there is no specific requirement regarding what that schedule must be, what data must be used, and how AAP effectiveness should be measured (41 CFR 60-2.17(d)). In fact, the measurement of effectiveness requires neither the use of all of the data requested in the Scheduling Letter nor data in the format requested by the Scheduling Letter and we renew our argument that the collection of six months of additional data is an arbitrary and unnecessary burden.

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<sup>1</sup>"Data resulting from the EEO-1 annual filings is at least a year old by the time OFCCP receives it." - Page 19 of OFCCP's Supporting Statement.

### **Unclear Information Requests**

Although the ESA acknowledges that there is a need for additional guidance, we would recommend that changes to the Scheduling Letter would alleviate the need for external guidance.

1. *OFCCP will issue a Directive which describes the Item 11 request in more detail and outlines standards to govern OFCCP's analysis of compensation data during the desk audit and follow-up requests to the contractor for additional compensation information.*

We would simply suggest that revising the Scheduling Letter to make clear what compensation data is necessary for the desk audit would remove much of the need for a Directive. Also, the issuing of a Directive instead of incorporating text in the Scheduling Letter allows the OFCCP to avoid responding to the public comments that this review process is meant to encourage. That is, the Directive may have a substantial impact on the burden on contractors and should be subject to the same scrutiny and public discussion.

2. *OFCCP will provide examples of "any other information" in the new Directive discussed above.*

The OFCCP is speaking here of the request for additional information to help it understand contractors' compensation systems. Again, we believe that guidance would be more useful and less burdensome if it were included in the Scheduling Letter.

### **Promotion of Alternative Collection Methods**

The OFCCP is making great strides in automating and streamlining its processes and procedures. Our comments are intended as recommendations on how that agency might further their efforts.

1. *OFCCP is studying the EO Survey data so it is premature at this time to consider the changes to the Itemized Listing suggested by the commenters.*

Although there may be areas of controversy in how best to collect data, almost everyone will agree that electronic and online submission of data is more efficient than submission of mailed paper documents. The online filing system for the EO Survey shows that the OFCCP has the capacity to collect data in this format.

2. *OFCCP has fulfilled its GPEA [Government Paperwork Elimination Act] requirements by permitting electronic transmission, via e-mail or computer disk, of a contractor's AAP and supporting documentation. (Section 3 - IMPROVED INFORMATION TECHNOLOGY, page 15)*

To facilitate this method of information transmission, we would recommend that an e-mail address be provided in the Scheduling Letter. Additionally, the language of the Scheduling Letter could be changed to further promote this alternative. Specifically, although the option of electronic transmission is made available in the Scheduling Letter's Itemized Listing, it may be helpful to present the electronic transmission option in the body of the Scheduling Letter.

**Summary and Conclusion**

Our position is that changes to the Scheduling Letter would benefit both contractors and the OFCCP. We appreciate the opportunity to express our concerns and make recommendations.

Sincerely,

Edward Correro  
Consultant

ETC/AMM/SA/GS

Enclosure