



January 5, 2015

VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

Ms. Debra A. Carr
Director
Division of Policy, Planning and Program Development
Office of Federal Contract Compliance Programs
Room C-3325
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Rule Pertaining to the Requirement to Report Summary Data on Employee Compensation (RIN 1250-AA03)

Dear Ms. Carr:

let me thank you for the

rulemaking NPRM

). The NPRM requires government contractors to report summary data on employee compensation in a rulemaking NPRM in the *Federal Register* on August 8, 2014.

AGC is the leading association for the construction industry, representing more than 25,000 firms, including In addition, more than 10,400 service providers and suppliers are associated with AGC through a nationwide network of chapters. These firms, both union and open shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property. Many of these firms regularly perform construction services for government agencies under contracts covered by the laws enforced by OFCCP. Most are small and closely held businesses.

The proposed rule references compensation discrimination as the basis of the n(t)-2(y304C5,)-ompensation ds

1. Data do not support the need for such requirements;
2. Compensation is already regulated in the construction industry;
3. Construction contractors are actively increasing wages for *all* workers;
4. Private-sector tools already exist to help the agency and construction companies benchmark compensation by industry;

3. *Construction Contractors are Actively Increasing Wages for All Workers, Both Involuntarily and Voluntarily*

In addition to prevailing wage statutes, federal contractors are now subject to a special new minimum wage mandate pursuant to Executive Order 13658. The new law raises wages for a broad range of covered workers and will adjust annually for inflation. According to the Department web page

Raising wages will improve the quality and efficiency of services already protects workers and dictates against the need for the additional burdens placed on contractors by the present proposed rule.

Further, as OFCCP notes in the NPRM, Employers will not want to be identified as having pay standards that are

education, training, experience, industry accreditations, tenure, attitude and job assignment, to name a few. For example, two employees performing the same job may receive different rates of pay simply because one worker has more tenure than the other, or perhaps one has a four-year degree and the other one does not. In construction, job assignments are also considered when determining compensation for an employee. For example, two project managers may be compensated differently for the reasons indicated above, or because the value and responsibility of the contract he or she is managing may vary greatly. For example, it would not be uncommon to see a large difference in compensation between a project manager for a company who is responsible for an \$80 million project versus a project manager for the same company who is responsible for managing a \$5 million project.

6. National Wage Data are Useless for Benchmarking Purposes in Construction

Construction is not a uniform, national industry. Rather, the construction industry in the United States is highly fragmented, regionalized and project driven. As such, national wage data are useless for benchmarking purposes. For example, carpenter wage rates in the Northeast may differ greatly from carpenter wage rates in the Southeast based on the local and regional economy, the demand for construction work, seasonal and weather factors, and fragmentation of the industry. A highway construction worker in Maine may work fewer hours than a highway construction worker in Georgia simply because the construction season is shorter in Maine than in Georgia because of weather. Specifically, in highway construction, neither asphalt nor concrete may be transported or poured when the temperature falls below freezing. This climate impact could lead to a great discrepancy in the overall earnings of the same position in different regions within a year.

To further elucidate the uselessness of national compensation standards for the construction industry, consider an example of two workers in the same position and regional area who work in different segments of the construction industry—building construction and highway construction. A building construction worker in Maine could likely work for more months within a year than a highway construction worker also in Maine. The building worker and highway worker,

in many cases, receive higher compensation due to the increased level of responsibility when managing workers in a union environment.

7. Proprietary Company Information and Employee Privacy may be Compromised

released, how will the public know what data are used to establish the summary data? Theoretically, interested parties should be able to see raw data for the purposes of transparency, but that in itself creates concerns for contractors, particularly small contractors. For a business owner, revealing the structure of ones company, including how resources are allocated, is proprietary information.

AGC recently provided comments to OFCCP with regard to another new mandate that prohibits federal

Additional Clarification is Needed in the

contractors. However, the summary of the proposed rule contains language that asserts that federally assisted contractors are excluded from coverage by the rule. Specifically, footnote 102 states that:

(those who fall within the requirements for filing and EEO-1 Report). This would not, however, include federally assisted construction contractors. OFCCP intends to analyze Equal Pay Report data by industry; therefore, construction contractors will

AGC supports exclusion of federally assisted contractors and subcontractors, but kindly asks OFCCP to insert definitive language into the final rule that will clarify this decision rather than relegating the information to a footnote

affirmative action programs and/or

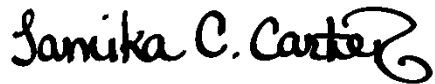
Conclusion

AGC does not believe new compensation reporting requirements for federal construction contractors are necessary or reasonable for the reasons stated in this letter.

While AGC does not support the need for new regulations or the required use of a new compensation data collection tool, AGC, again, understands that OFCCP is required to issue regulations as a result of a Presidential Memorandum. As OFCCP prepares to issue a final rule, AGC asks OFCCP to exempt the construction industry from the EPR requirements, or at least, work with WHD to use data already submitted by federal construction contractors

AGC welcomes the opportunity to provide additional information or support for the rulemaking process.

Sincerely,

A handwritten signature in black ink that reads "Tamika C. Carter". The signature is written in a cursive, flowing style with a large, decorative flourish at the end.

Tamika C. Carter
Director, Construction HR

cc: Janis C. Reyes, Assistant Chief Counsel
SBA Office of Advocacy
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