

Economic Analysis

Published by Applied | Economic | Strategies, LLC

July 19, 2012

Economic Analysis No. 2012-1

Proposed Rule On Affirmative Action Will Cost At Least \$5.9 Billion

Annual Recurring Cost Will Be \$2.6 Billion Per Year

On December 9, 2011, the U.S. Department of Labor's (DOL's or Department's) Office of Federal Contracts Compliance Programs (OFCCP) published a Notice of Proposed Rulemaking (NPRM) proposing to revise the regulations implementing the non-discrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended.¹ According to OFCCP, the total annual cost of the proposed rule is \$81.1 million, or \$473 per contractor establishment.² The cost estimate includes both one-time (first year only) costs of \$29.5 million (or \$172 per contractor establishment)" and recurring annual costs of \$51.6 (or \$301 per contractor establishment).³

However, OFCCP's cost estimate omitted a number of important requirements in the NPRM and under-estimated other requirements. This was noted by several commenters, including Goodwill Industries International, which said that "OFCCP is drastically underestimating the time and cost configurations and burden placed on contractors...."⁴ A more complete and accurate analysis of the proposed requirements suggests the cost of the NPRM will be at least \$5.9 billion the first year and at least \$2.6 billion per year in recurring costs, significantly higher than the \$100 million threshold that triggers a more detailed review of the regulatory burdens and potential alternatives required under the Unfunded Mandates Act.⁵ This report identifies some of the major errors and omissions in OFCCP's cost estimate and provides a more accurate assessment of the NPRM's costs.

Reading and Comprehending the New Rule Will Cost \$69.7 Million

OFCCP failed to include in its economic analysis the cost that covered contractors will incur to read, analyze, and comprehend the new rule. Familiarization costs should be part of any regulatory economic analysis because the existence of a new or modified rule is meaningless unless the regulated community knows and understands how its rights and responsibilities are altered by the rule. One commenter estimated that it would cost at least \$100.4 million for federal contractor establishments to read, analyze, and comprehend the new rule.⁶ Another commenter estimated that it would cost federal contractors at least \$39.1 million to familiarize themselves with the new requirements.⁷ Applied Economic Strategies estimates it will take 2 managers in each of the 171,275 covered contractor establishments four hours each at \$50.88 per hour to read, analyze and comprehend the new rule for a total cost of \$69.7 million in the first year.⁸

Modifying IT and HRIS Systems Will Cost At Least \$1.7 Billion

The proposed rule requires federal contractors to “ensure that its electronic or online job application systems are compatible with assistive technology commonly used by individuals with disabilities, such as screen reading and speech recognition software”⁹ and “ensure that its use of information and communication technology is accessible to applicants and employees with disabilities.”¹⁰ OFCCP did not provide any estimate of what it would cost federal contractors to bring their systems into compliance. One commenter said the one-time costs for such technology changes would reach hundreds of thousands of dollars per company.¹¹ Assuming that it will only cost an average \$50,000 per company to bring their systems into compliance and that only 25 percent of the companies will have to do so, the total first year costs for this one requirement would be at least \$646.5 million.¹²

Moreover, the inability of contractors to apply OFCCP’s Internet Applicant rule to individuals with disabilities and the requirement that contractors must consider individuals with disabilities for all available positions for which they may be qualified when the position they are applying for is unavailable will require almost all, if not all, federal contractors to make major modifications to their online job application systems and Human Resource Information Systems (HRIS).¹³ Although OFCCP, did not separately estimate a cost for the implied change to their Internet Applicant rule for individuals with disabilities, it did estimate the total one-time cost for complying with the NPRM’s provisions that fall outside the Paperwork Reduction Act to be \$18.969 million;¹⁴ presumably this estimate includes the cost for contractors to modify their HRIS systems.

One commenter estimated that by not being able to apply the Internet Applicant rule, contractors will have to send out pre-offer self-identification invitations to the 359.5 million persons who express an interest in working for them every year over the Internet.¹⁵ In addition, for individuals who express an interest in a job through an online system and self-identify as having a disability and also request an accommodation, contractors will have to modify their online job application system and HRIS system to provide written confirmation of receipt of the requests by letter or email.¹⁶ One commenter estimated that the NPRM would require federal contractors to provide 57.5 million written receipt of the request confirmations each year and estimated that it would cost an average of \$50,000 for each contractor to make these changes for a first year one-time cost of \$1.11 billion.¹⁷ Another commenter who conducted a survey of more than 100 federal contractors found that it would take more than 560 hours per employer to design, build, test, and implement the systems, forms, and procedures required to comply with the pre-offer disability self-identification requirement.¹⁸ Assuming there are 51,716 employers who are federal contractors, this one requirement will cost at least \$1.1 billion.¹⁹

Preparing Written Explanations of Why Individuals With Disabilities Were Not Hired Will Cost At Least \$691.8 Million Every Year

The NPRM requires federal contractors to prepare and keep for each disabled job applicant who is not hired a written statement of the reasons for that decision.²⁰ Specifically, in each case where an applicant or employee who is an individual with a disability is rejected for employment or promotion or training, contractors must prepare a statement of the reason as well as a

description of any accommodation considered, and make these statements available to the applicant or employee upon request.²¹ OFCCP estimated this would take just 30 minutes per year per contractor establishment.²²

One commenter found that for 45 percent of federal contractors it would take a trained human resource professional an average of three hours to gather the required information and prepare an explanation for *each* discrete non-hiring decision.²³ Another commenter who surveyed federal contractors found that it would take 30 minutes *per vacancy*.²⁴ Yet another commenter estimated that federal contractors would have 359.5 million persons apply for jobs every year, and that if 16 percent of those applicants self-identified as disabled and one-half of them are hired and one-half are not hired, the NPRM would require federal contractors to prepare 28.8 million written explanations of why individuals with disabilities were not hired.²⁵ This one requirement could cost at least \$691.8 million every year.²⁶

Annually Reviewing All Physical and Mental Job Qualifications Will Cost \$1.1 Billion Per Year

The proposed rule requires federal contractors to annually review all physical and mental job qualification standards, document the methods used, and any actions taken in response.²⁷ The additional cost of this new requirement is not just the documentation. It is also the mandate that the review must be done every year instead of every two or three years, or whatever period the contractor currently puts in their affirmative action plan. OFCCP did not estimate any cost for this change to their regulations.²⁸

Some contractors have hundreds of job codes/descriptions and conducting an annual review of each job code or description would be enormously time consuming. Performing such a review requires the input of several people from within the company with significant expertise in job analysis including compensation and human resources. Smaller contractors will likely incur the cost of outside consultants to perform the review. One commenter estimated this requirement would cost federal contractors \$429.1 million per year.²⁹ Another commenter estimated it would cost \$1.69 billion per year.³⁰ An average of these two estimates suggests the cost of this requirement would be at least \$1.1 billion per year.

Annual Survey Of Employees Will Cost \$1.4 Billion To Set Up, \$19.7 Million To Conduct

The proposed rule requires federal contractors to annually invite each of its employees to anonymously self-identify themselves as a person with a disability using the language and manner prescribed by OFCCP.³¹ Although OFCCP estimated it will take federal contractors just 5 minutes to download the OFCCP prescribed survey and that employees with disabilities will have zero burden complying with the survey,³² it will take the average employee 1.5 minutes to read the 418 words in the prescribed survey.³³ One commenter estimated the opportunity cost of paying all employees for the time spent reading and responding to the survey will be \$16.9 million per year.³⁴ AES estimates that the opportunity cost to for the 27.3 million people who work for federal contractors to read and respond to the survey will be \$19.7 million per year.³⁵

Moreover, another commenter estimated that it would take more than 722 hours per employer to design, build, test, and implement the systems, forms, and procedures required to comply with the NPRM's annual anonymous survey of employee disability status requirement.³⁶ Further, this estimate does not include the time to develop an employee outreach strategy for the survey and the materials related to that strategy, as well as the legal review of the material and the time to deliver the material and address any questions or concerns that employees may have about the survey. Assuming that all of this will take just 722 hours per employer, AES estimates the first-year cost of implement the annual survey would be at least \$1.4 billion.³⁷

Training Employees and New Hires Will Cost \$459.5 Million Per Year

The proposed rule requires federal contractors to: (1) discuss their affirmative action policy thoroughly in any employee orientation and management training programs and (2) train all personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes to ensure all of the commitments in the contractor's affirmative action program are implemented.³⁸ OFCCP's preliminary cost estimates related to these proposed training provisions are incomplete and incorrect because they do not account for the opportunity cost of paying new employees for the additional time spent in orientation programs or for the cost of paying managers for the additional time spent in management training programs, or for the opportunity cost of paying all personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes for the additional time spent in training programs to be informed of the new written reasonable accommodation procedures. Moreover, OFCCP likely underestimates the amount of time it will take for contractors to "thoroughly" discuss their affirmative action policy in orientation and training programs.

One commenter estimated that it would cost \$172.0 million per year to pay employees for the all the additional time spent in the required training.³⁹ Another commenter estimated that it would cost \$641.8 million per year.⁴⁰ Yet another commenter estimated these training requirements would cost federal contractors \$564.8 million per year.⁴¹ An average of these three estimates suggests the cost of the training and orientation requirements in the NPRM could be at least \$459.5 million per year.

Annual Data Collection Requirements Will Cost \$204.7 Million Per Year

The NPRM requires federal contractors to track, analyze and record ten disability-related affirmative action data items pertaining to applicants and hires on an annual basis, six of which are entirely new requirements.⁴² This includes, but is not limited to: the number of referrals of individuals with disabilities the contractor received from employment service delivery systems and other referral organizations; the number of applicants who self-identified as individuals with disabilities; and the number of applicants with disabilities that are hired. OFCCP estimated that it would take 60 minutes per year for a contractor establishment to compile, tabulate and record the six new data items for a total cost of \$6.5 million per year.⁴³

Using survey data from 100 federal contractors, two commenters estimated that it would take an average of 3,755 hours per employer, or 17.8 hours per establishment, to comply with the new data collection requirements, or \$204.7 million per year.⁴⁴

Written Reasonable Accommodation Policies Will Cost \$158.0 Million

The NPRM would for the first time require federal contractors to create and implement a written policy for processing reasonable accommodation requests.⁴⁵ Although OFCCP estimated that 90 percent of all federal contractor establishments will have to develop written policies, they assumed it would only take an average of 2 hours to do, and another 30 minutes per year to comply with the recurring recordkeeping burdens associated with processing reasonable accommodation requests.⁴⁶ However, one commenter who conducted a survey of over 100 federal contractors estimated that it will take an average of 15 hours per contractor establishment to comply with the requirements, or \$158.0 million.⁴⁷

New Linkage Agreements Will Cost At Least \$63.0 Million

The proposed rule requires federal contractors to enter into three different linkage agreements with: (1) either the local State Vocational Rehabilitation Service Agency office or a local Employment Network organization listed in the Social Security Administration's Ticket to Work Employment Network Directory; (2) with a DOL-funded recruitment or training service for individuals with disabilities; and (3) with a veteran organization, local disability group or private recruitment source.⁴⁸ To assist contractors, OFCCP states that it will provide a sample linkage agreement on its webpage and nationwide assistance from OFCCP compliance officers.⁴⁹

OFCCP estimates that 30 percent of federal contractor establishments, or 51,383, will accept OFCCP assistance to help set up their linkage agreements and it will take these contractors on average 1.5 hours to establish one new linkage agreement.⁵⁰ For the remaining 119,892 contractors, OFCCP estimates that establishing a new linkage agreement will take an average of 5.5 hours.⁵¹

However, OFCCP did not correctly estimate the first-year cost of establishing these linkage agreements. The formula that OFCCP mistakenly used for its first-year costs is the formula for estimating the recurring cost of updating, not establishing, two of the linkage agreements.⁵² Using OFCCP's methodology and correcting for their errors yields a first year cost of \$63.0, and a recurring annual cost of \$31.0 million.⁵³ However, one commenter that conducted a survey of more than 100 federal contractors found that 35 percent of contractor establishments would take 10 hours to set up each new linkage agreement.⁵⁴ Assuming that it will take 10 hours to set up each new linkage agreement for contractors that do it on their own, utilizing OFCCP's methodology yields a first year cost of \$151.2 million.⁵⁵

Listing All Job Openings With State Employment Agencies Will Cost \$51.5 Million Per Year

The proposed regulation requires federal contractors to list all job openings with the Employment One-Stop Career Center nearest to each contractor establishment in the manner and format required by the appropriate One-Stop.⁵⁶ OFCCP did not estimate any cost for this change to their regulations.⁵⁷

One commenter estimated that this would cost federal contractors \$45.6 million per year,⁵⁸ while another commenter estimated that this would cost \$57.4 million per year.⁵⁹ An average of these two estimates suggests the cost of the training and orientation requirements in the NPRM could be at least \$51.5 million per year.

Annual Assessment of Outreach and Recruitment Efforts Will Cost \$47.2 Million Per Year

The proposed rule requires federal contractors, on an annual basis, to review the outreach and recruitment efforts they have taken over the previous twelve months and evaluate their effectiveness in identifying and recruiting qualified individuals with disabilities.⁶⁰ Contractors must also document each evaluation, including at a minimum the criteria they used to evaluate the effectiveness of each effort and the contractor's conclusion as to whether each effort was effective.⁶¹ If a contractor concludes the totality of its efforts were not effective in identifying and recruiting qualified individuals with disabilities, they must identify and implement alternative efforts listed in the NPRM.⁶² OFCCP estimated that these requirements would take each contractor establishment just 40 minutes per year.⁶³

One commenter estimated that these requirements would cost up to \$54.0 million per year,⁶⁴ while another commenter estimated that it would cost to \$40.3 million per year.⁶⁵ An average of these two estimates suggests the cost of these requirements in the NPRM would \$47.2 million per year.

Conclusion

Although the NPRM will cost at least \$5.9 billion in the first year and at least \$2.6 billion in recurring annual costs, OFCCP does not qualitatively or quantitatively describe or estimate how the proposed mandates will lower the unemployment rate or increase the labor force participation rate of persons with disabilities. Moreover, the high compliance costs of the individual provisions in the NPRM points to the necessity for OFCCP to carefully consider the costs of the proposed strategy in comparison to the costs of alternatives that could yield similar benefits. It is conceivable that the costs and inefficiencies of the NPRM will actually harm the interests of disabled workers and all other workers by slowing the hiring process. Given the high compliance costs and the many unknown ramifications of the proposed rule, OFCCP should suspend the rulemaking and conduct further research, including surveys of potentially affected employers, to accurately and fully explore the costs and benefits of each contemplated element of its proposed regulatory strategy and lower cost alternatives.

¹ Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities, 76 Fed. Reg. 77056 *et seq.* (proposed Dec. 9, 2011) (to be codified at 41 C.F.R. pt. 60-741) (hereinafter Affirmative Action NPRM).

² Affirmative Action NPRM, 76 Fed. Reg. 77076.

³ *Id.*

⁴ Goodwill Industries International, Inc., Re: RIN 1250-AA02 - Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Protected Veterans; Proposed Rule, February 21, 2012, available at: <http://www.regulations.gov/#!documentDetail;D=OFCCP-2010-0001-0507>.

⁵ Under the Unfunded Mandate Act (2 U.S.C. §1501 et seq (1995)), if a proposed rule may cost the private sector \$100 million or more in any one year, an agency must consider a reasonable number of regulatory alternatives and select the least costly, least burdensome, or most cost-effective option that achieves the objectives of the rule, or explain why the agency did not make such a choice.

⁶ Equal Employment Advisory Council, Comments of the Equal Employment Advisory Council on the Office of Federal Contract Compliance Programs' Notice of Proposed Rulemaking Pertaining to Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities (RIN 1250-AA02), February 21, 2012, available at: <http://www.regulations.gov/#!documentDetail;D=OFCCP-2010-0001-0398>. (hereinafter EEAC Comments)

⁷ Chamber of Commerce of the United States, RIN 1250-AA02; Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities, February 21, 2012, available at: <http://www.regulations.gov/#!documentDetail;D=OFCCP-2010-0001-0427>. (hereinafter U.S. Chamber Comments)

⁸ Two management/professional employees * 4 hours each * 171,275 contractor establishments (Affirmative Action NPRM, 76 Fed. Reg. at 77075) * \$50.88 per hour (Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2012, Table 9) = \$69.7 million.

⁹ Affirmative Action NPRM, 76 Fed. Reg. at 77096.

¹⁰ *Id.* at 77095.

¹¹ Center for Corporate Equality, Re: Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities (RIN 1250-AA02), February 21, 2012, available at: <http://www.regulations.gov/#!documentDetail;D=OFCCP-2010-0001-0506>. (hereinafter CCE Comments)

¹² Assuming an average \$50,000 per company (AES assumption) * 51,716 federal contractor companies (U.S. Chamber Comments) * .25 (AES assumption) = \$646.5 million.

¹³ Affirmative Action NPRM, 76 Fed. Reg. at 77097. See also EEAC Comments and CCE Comments.

¹⁴ Affirmative Action NPRM, 76 Fed. Reg. at 77076.

¹⁵ HR Policy Association, Re: Affirmative Action and Non-Discrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities RIN 1250-AA02, February 21, 2012, available at: <http://www.regulations.gov/#!documentDetail;D=OFCCP-2010-0001-0391>. (hereinafter HR Policy Comments)

¹⁶ Affirmative Action NPRM, 76 Fed. Reg. at 77098.

¹⁷ HR Policy Comments.

¹⁸ EEAC Comments.

¹⁹ Assuming that it will take 560 hours per employer to design, build, test, and implement the systems, forms, and procedures required to comply with the pre-offer disability self-identification requirement (EEAC Comments), and that 52 percent of those hours will be performed by management/professional employees who are compensated at \$50.88 per hour and 48 percent of those hours will be performed by administrative support employees who are compensated at \$23.37 per hour (Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2012, Table 9; the 52/48 percent split from OFCCP, Affirmative Action NPRM, 76 Fed. Reg. 77083), and that there are 51,716 employers who are federal contractors (U.S. Chamber Comments), the total cost will be \$1.091 billion.

²⁰ Affirmative Action NPRM, 76 Fed. Reg. 77095.

²¹ *Id.* at 77095.

²² *Id.* at 77082.

²³ EEAC Comments.

²⁴ CCE Comments.

²⁵ HR Policy Comments.

²⁶ *Id.*

²⁷ Affirmative Action NPRM, 76 Fed. Reg. at 77095. Although there is some obligation to do this now, it is only required to be done periodically at the discretion of the contractor, and OFCCP notes in the NPRM that “contractors inconsistently interpret what constitutes ‘periodic’ review.” (Affirmative Action NPRM, 76 Fed. Reg. at 77064) OFCCP then proceeds to incorrectly assume that “the proposed change [to annually review all physical and mental job qualification standards] would merely require that the contractor document the review it has already been required to perform” when in fact the reason contractors only periodically conduct these types of reviews is because it is incredibly costly to do for every job on an annual basis. (Affirmative Action NPRM, 76 Fed. Reg. at 77064)

²⁸ Affirmative Action NPRM, 76 Fed. Reg. at 77079. OFCCP estimated this requirement would have no cost because the proposed requirement was also included in its proposed regulation regarding veterans’ affirmative action programs and its cost was accounted for there. However, this treatment is incorrect because the proposed veterans rule has not yet been promulgated as a final rule and it is improper for OFCCP to assume in advance that the veterans’ rule will be finalized as proposed. Accordingly, specific compliance cost burdens for this item should be considered in conjunction with the current rule.

²⁹ U.S. Chamber Comments.

³⁰ EEAC Comments.

³¹ Affirmative Action NPRM, 76 Fed. Reg. at 77094.

³² *Id.* at 77078 and 77082.

³³ The average American adult reads prose text at 250 to 300 words per minute. See http://en.wikipedia.org/wiki/Words_per_minute#Reading_and_comprehension (418 words divided by 275 words per minute equals 1.5 minutes).

³⁴ HR Policy Comments.

³⁵ According to OFCCP, “Almost 25 percent of the American workforce is composed of individuals who work for federal contractors and subcontractors.” (FY 2013 Congressional Budget Justification for OFCCP, <http://www.dol.gov/dol/budget/2013/PDF/CBJ-2013-V2-10.pdf>) This means that almost 27.3 million employees who work for federal contractors will have to read and respond to the annual survey. (Bureau of Labor Statistics, 109.254 million private sector employees in 2011 * .25 = 27.3 million employees) 27.3 million employees * 1.5 minutes = 40.97 million minutes or 682,838 hours. 682,838 hours * \$28.78 (Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2012, Table 9) = \$19.7 million per year.

³⁶ EEAC Comments.

³⁷ Assuming that it will take 722 hours per employer to to design, build, test, and implement the systems, forms, and procedures required to comply with the NPRM’s annual anonymous survey of employee disability status requirement (EEAC Comments), and that 52 percent of those hours will be performed by management/professional employees who are compensated at \$50.88 per hour and 48 percent of those hours will be performed by administrative support employees who are compensated at \$23.37 per hour (Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2012, Table 9; the 52/48 percent split from OFCCP, Affirmative Action NPRM, 76 Fed. Reg. 77083), and that there are 51,716 employers who are federal contractors (U.S. Chamber Comments), the total cost will be \$1.091 billion.

³⁸ Affirmative Action NPRM, 76 Fed. Reg. at 77097. OFCCP estimates that contractors will have a one-time preparation burden of 20 minutes and a recurring burden of 5 minutes for actually presenting the additional information at the employee orientation and management training programs. (Affirmative Action NPRM, 76 Fed. Reg. at 77075) OFCCP also estimates that contractors would have a one-time development burden of 40 minutes and a recurring presentation burden of 20 minutes for training all personnel involved in the recruitment, screening, selection, promotion, disciplinary and related processes shall to ensure that the commitments in the contractor’s affirmative action program are implemented. (Affirmative Action NPRM, 76 Fed. Reg. at 77076)

³⁹ HR Policy Comments.

⁴⁰ U.S. Chamber Comments.

⁴¹ EEAC Comments.

⁴² Affirmative Action NPRM, 76 Fed. Reg. at 77097-98.

⁴³ Affirmative Action NPRM, 76 Fed. Reg. at 77083. The \$6.5 million estimate from Applied Economic Strategies using OFCCP cost methodology. Specifically, assuming that it will take 171,275 hours (Affirmative Action NPRM, 76 Fed. Reg. at 77083), and that 52 percent of those hours will be performed by management/professional employees who are compensated at \$50.88 per hour and 48 percent of those hours will be performed by administrative support employees who are compensated at \$23.37 per hour (Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2012, Table 9; the 52/48 percent split from OFCCP, Affirmative Action NPRM, 76 Fed. Reg. 77083), the cost will be \$6.45 million.

⁴⁴ U.S. Chamber Comments and EEAC Comments.

⁴⁵ Affirmative Action NPRM, 76 Fed. Reg. at 77098.

⁴⁶ *Id.* at 77081.

⁴⁷ EEAC Comments.

⁴⁸ Affirmative Action NPRM, 76 Fed. Reg. at 77096.

⁴⁹ *Id.* at 77080.

⁵⁰ Affirmative Action NPRM, 76 Fed. Reg. at 77080.

⁵¹ *Id.*

⁵² Specifically, beyond the first year OFCCP estimates that on average, a contractor will establish one new agreement and maintain two ongoing agreements in a given year, which would be 5.5 hours + .25 hours + .25 hours = 6 hours. If the contractor establishes linkage agreements with OFCCP's assistance, the agency estimates an annual average of 1.5 hours per contractor to establish a new linkage agreement and .25 hours to maintain each of the two ongoing linkage agreements, which would be 1.5 hours + .25 hours + .25 hours = 2 hours. Further, OFCCP mistakenly reduced the number of burden hours associated with this provision by one-third by incorrectly assuming that one-third of the hours were accounted for in its proposed regulation regarding veterans' affirmative action programs. However, this treatment is incorrect because the proposed veterans rule has not yet been promulgated as a final rule and it is improper for OFCCP to assume in advance that the veterans' rule will be finalized as proposed. Accordingly, specific compliance cost burdens for this item should be considered in conjunction with the current rule.

⁵³ Specifically, in the first year contractors will establish three new agreements and in recurring years contractors will establish one new agreement and maintain two ongoing agreements. First year costs are calculated as follows: 5.5 hours + 5.5 hours + 5.5 hours = 16.5 hours for 119,892 contractors that do not use OFCCP's assistance = 1,978,218 hours; and 1.5 hours + 1.5 hours + 1.5 hours = 4.5 hours for 51,383 contractors that establish linkage agreements with OFCCP's assistance = 231,224 hours; for total of 2,209,442 hours in the first year. (Affirmative Action NPRM, 76 Fed. Reg. at 77080, OFCCP methodology corrected for errors). Assuming that it will take 2,209,442 hours in the first year, and that 52 percent of those hours will be performed by management/professional employees who are compensated at \$50.88 per hour and 48 percent of those hours will be performed by administrative support employees who are compensated at \$23.37 per hour (Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2012, Table 9; the 52/48 percent split from OFCCP, Affirmative Action NPRM, 76 Fed. Reg. 77083), the cost will be \$63.0 million. Recurring annual costs are calculated as follows: 5.5 hours + .25 hours + .25 hours = 6 hours for 119,892 contractors that do not use OFCCP's assistance = 719,352 hours; and 1.5 hours + .25 hours + .25 hours = 2 hours for 51,383 contractors that establish linkage agreements with OFCCP's assistance = 102,766 hours; for total of 822,118 hours. Assuming that it will take 822,118 hours and that 52 percent of those hours will be performed by management/professional employees who are compensated at \$50.88 per hour and 48 percent of those hours will be performed by administrative support employees who are compensated at \$23.37 per hour, the annual recurring cost will be \$30.97 million.

⁵⁴ EEAC Comments.

⁵⁵ First year costs are calculated as follows: 10 hours + 10 hours + 10 hours = 30 hours for 119,892 contractors that do not use OFCCP's assistance = 3,596,760 hours; and 2.7 hours + 2.7 hours + 2.7 hours = 8.1 hours for 51,383 contractors that establish linkage agreements with OFCCP's assistance = 416,202 hours; for total of 4,012,962 hours in the first year. Assuming that it will take 4,012,962 hours in the first year, and that 52

percent of those hours will be performed by management/professional employees who are compensated at \$50.88 per hour and 48 percent of those hours will be performed by administrative support employees who are compensated at \$23.37 per hour (Bureau of Labor Statistics, Employer Costs for Employee Compensation, March 2012, Table 9; the 52/48 percent split from OFCCP, Affirmative Action NPRM, 76 Fed. Reg.77083), the cost will be \$151.2 million.

⁵⁶ Affirmative Action NPRM, 76 Fed. Reg. at 77096.

⁵⁷ Affirmative Action NPRM, 76 Fed. Reg. at 77079. OFCCP estimated this requirement would have no cost because the proposed requirement was also included in its proposed regulation regarding veterans' affirmative action programs and its cost was accounted for there. However, this treatment is incorrect because the proposed veterans rule has not yet been promulgated as a final rule and it is improper for OFCCP to assume in advance that the veterans' rule will be finalized as proposed. Accordingly, specific compliance cost burdens for this item should be considered in conjunction with the current rule.

⁵⁸ U.S. Chamber Comments.

⁵⁹ EEAC Comments.

⁶⁰ Affirmative Action NPRM, 76 Fed. Reg. at 77097.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Affirmative Action NPRM, 76 Fed. Reg. at 77075 and 77080.

⁶⁴ U.S. Chamber Comments.

⁶⁵ EEAC Comments.