



July 2, 2026

VIA ELECTRONIC UPLOAD
FEDERAL RULEMAKING PORTAL

William F. Clark
Director, Office of Government-wide Acquisition Policy
Office of Acquisition Policy
Office of Government-wide Policy
1800 F Street, NW
Washington, DC 20405

Re: Information Collection; Addressing DEI Discrimination by Federal Contractors

Dear Director Clark:

The Institute for Workplace Equality (“The Institute”) submits the following comments in response to the invitation of the Office of Federal Procurement Policy, Office of Management and Budget (OMB), Department of Defense (DoD), General Services Administration (GSA) and National Aeronautics and Space Administration (NASA) on its Information Collection; Addressing DEI Discrimination by Federal Contractors published in the *Federal Register* on Wednesday, May 6, 2026.¹

BACKGROUND ON THE INSTITUTE FOR WORKPLACE EQUALITY

The Institute is a national, non-profit employer association based in Washington, D.C. The Institute’s mission includes the education of federal contractors and employers regarding their equal employment opportunity responsibilities. Members of The Institute are senior corporate leaders in EEO compliance, compensation, legal, and staffing functions who represent many of the nation’s largest and most sophisticated federal contractors. The Institute’s faculty members are recognized as leading practitioners in the field.²

¹ See, Information Collection; Addressing DEI Discrimination by Federal Contractors, May 6, 2026; available at <https://www.govinfo.gov/content/pkg/FR-2026-05-06/pdf/2026-08940.pdf>.

² The Institute faculty members include leading subject matter experts on federal contractors’ compliance and equal employment opportunity responsibilities. See The Institute’s website for additional information on the faculty, https://www.theinstitute4workplaceequality.org/our_bios/faculty.

INTRODUCTION

On March 26, 2026, President Trump issued Executive Order 14398, Addressing DEI Discrimination by Federal Contractors (“EO 14398” or the “Executive Order”).³ Section 5(a) of the Executive Order directed the Federal Acquisition Regulatory Council (“FAR Council”) to amend the FAR to add the clause specified in Section 3 of the Executive Order. In addition, Section 5(b) directed the FAR Council to issue class deviations and interim guidance to implement the clause in Section 3.

In response to the Executive Order, on April 17, 2026, the procurement officials of OMB, DoD, GSA and NASA issued a memorandum (“the memo”) to Chief Acquisition Officers, Senior Procurement Executives, Defense Acquisition Regulations Council and Civilian Agency Acquisition Council, providing guidance on agency implementation of the Executive Order.⁴ The memo directs federal agencies to use the new clause from EO 14398 as FAR Clause 52.222-90, in new contracts beginning April 24, 2026 and to modify existing contracts by July 24, 2026.⁵

The memo⁶ also states that the FAR Council will seek clearance from OMB under the Paperwork Reduction Act for information collections related to FAR Clause 52.222-90 which will provide clearance for all contracting agencies using the clause under which contractors must:

- Furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting officer, for purposes of ascertaining compliance with the clause (FAR 52.222-90(b)(2)),
- Report any subcontractor’s known or reasonably knowable conduct that may violate the clause to the contracting officer and take any appropriate remedial actions directed by the contracting officer (FAR 52.222-90(b)(4); and
- Inform the contracting officer if a subcontractor sued the contractor and the suit puts at issue, in any way, the validity of the clause (FAR 52.222-90(b)(5)).

In response to the memo, the Office of Federal Procurement Policy, DoD, GSA and NASA published notice and request for comments for an information collection in the May 6, 2026 *Federal Register* with the comments due by July 6, 2026.⁷

³ Executive Order 14398, Addressing DEI Discrimination by Federal Contractors, 91 *Fed. Reg.* 16147, March 31, 2026; available at <https://www.govinfo.gov/content/pkg/FR-2026-03-31/pdf/2026-06286.pdf>.

⁴ Agency Implementation of Executive Order 14398, Addressing DEI Discrimination by Federal Contractor, Memorandum for Chief Acquisition Officers, April 17, 2026; available at https://acquisition.gov/sites/default/files/page_file_uploads/FAR%20Council%20Guidance%20to%20Implement%20EO%2014398.pdf.

⁵ Memorandum for Chief Acquisition Officers, p. 2.

⁶ Memorandum for Chief Acquisition Officers, p. 3.

⁷ Information Collection; Addressing DEI Discrimination by Federal Contractors, May 6, 2026; available at <https://www.govinfo.gov/content/pkg/FR-2026-05-06/pdf/2026-08940.pdf>.

I. Proposed ICR Does Not Meet the Standards of the Paperwork Reduction Act

The opening statement of the Paperwork Reduction Act (“PRA” or the “Act”) states its main purpose is “...to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public...” Section 3501 of the PRA expands upon the purposes of the Act to include a number of provisions. The following excerpts from the PRA are most relevant to the FAR Council’s Information Collection Request (“ICR”):

- (1) *minimize the paperwork burden for* individuals, small businesses, educational and nonprofit institutions, *Federal contractors*, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government;
- (2) *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;
- (3) coordinate, integrate, and to the extent practicable and appropriate, make uniform federal information resources management policies and practices to *improve the productivity, efficiency, and effectiveness of Government programs, including the reduction of information collection burdens on the public* and the improvement of service delivery to the public; ...
- (5) *minimize the cost to the Federal Government* of the creation, collection, maintenance, use, dissemination, and disposition of information... (emphasis added)⁸

The PRA’s implementing regulations at 5 C.F.R. § 1320.5 further clarify the FAR Council’s obligation to minimize the burden on federal contractors, stating that OMB will approve a collection of information only where the Agency seeking the information “demonstrate[s] that it has taken every reasonable step to ensure that the proposed collection of information:

- (i) is the least burdensome necessary for the proper performance of the Agency’s functions to comply with legal requirements and achieve program objectives;
- (ii) is not duplicative of information otherwise accessible to the Agency; and
- (iii) has practical utility.”⁹

FAR Council’s proposal runs counter to each of the above cited relevant purposes of the PRA.

⁸ Paperwork Reduction Act of 1995, Public Law 104-13, Section 3501 (May 22, 1995).

⁹ 5 C.F.R. § 1320.5

A. The Institute cannot determine whether the proposed collection is necessary for the proper performance of the functions of Federal Government acquisitions

For both contractors and contracting agencies, many questions are left unanswered by the ICR. Federal contractors cannot determine if the proposed collection is necessary for the proper performance of the functions of Federal Government acquisitions if they do not know what and how such information will be collected from them by contracting agencies. Under Executive Order 11246, Section 503 and VEVRAA, OFCCP had the authority based on regulations to determine federal contractor compliance with those obligations, both by a formal complaint process as well as through compliance audits. The ICR does not establish what, if any, process contracting agencies will establish to collect the required information.

In order to determine whether the information is necessary for the proper performance of the functions of Federal Government acquisitions, the ICR needs to outline what information is to be collected, why it is being collected, and how it will be used to determine federal contractor compliance with EO 14398. Not only federal contractors, but also contracting agencies, that have not been required to collect this type of information from federal contractors for nearly 48 years, need more clarity on these issues before this ICR is approved.

B. The Institute cannot determine if the information will have practical utility

The Institute cannot determine whether the information proposed to be collected will be of practical utility because it is completely unclear based on the proposal what information will be collected. The proposal states the three requirements from EO 14398 and FAR Clause 52.222-90 – 1) that federal contractors furnish all information and reports including providing access to books, records and accounts required by the contracting agency pursuant to EO 14398; 2) that they report on any subcontractor's known or reasonably knowable conduct that may violate the clause to the contracting department or agency; and 3) that they inform the contracting agency or department if an subcontractor sues the contractor and the suit puts the validity of EO 14398 at issue in any way.

i. The requirement that federal contractors provide “all information and reports including providing access to books, records and accounts required by the contracting agency pursuant to EO 14398” does not provide either contractors or agencies with any information or description as to what contractors are required to provide or what agencies are required to seek. While the current language mirrors the language in EO 11246, in contrast to the current language, EO 11246 had regulations, a PRA approved scheduling letter, and a corresponding itemized listing that explained in detail what contractors were required to provide to U.S. Department of Labor when scheduled for a compliance review. The proposal language provides no such clarification, description, or detail. Consequently, we cannot offer comment as to whether this requirement provides “the least burdensome necessary” approach for the proper performance of an Agency's function related to assessing compliance with the relevant clause.

ii. The requirement that contractors report any known or reasonable knowable conduct that may violate the clause to the contracting agency is also unclear as to what contracting agencies will consider to be “any known or reasonable knowable conduct” that contractors must report. Without that clarity, contractors cannot determine whether providing such information will have “practical utility” to contracting agencies.

iii. Finally, the requirement to report any litigation by a subcontractor that might put the validity of EO 14398 at issue “in any way” is equally unclear and therefore will provide no practical utility to either contractors or contracting agencies.

In sum, based on the lack of clarity, description, or detail in the ICR, it is impossible to determine whether the information being requested is the least burdensome necessary approach or that it will have practical utility, given that the requirements of the ICR, like that of the EO 14398 and the subsequent FAR Clause, remain completely unclear as to what is being required of both contractors and contracting agencies.

C. Burden Estimate Does Not Take into Account the Actual Burden

The central purpose of the PRA is to ensure that federal agencies consider the burden their requests for information impose on the regulated community. Therefore, burden estimates must include the value of both the time and the effort required by, in this instance, federal contractors to comply with the information collection, as well as associated financial costs. In this ICR, the FAR Council does not provide a detailed public burden estimate explaining how the burden was calculated.¹⁰ As a result, it is unclear what the actual burden to contractors and agencies in actuality will be.

Absent a burden estimate compliant with the PRA, the proposal is incomplete in its own terms and cannot become a final rule. As a result, the proposal should be withdrawn until such time as it meets the PRA standard. No valid federal rule can impose burdens on others when it fails to meet those imposed by law on itself.

Similar to our response as to whether the information being requested is the least burdensome necessary or will have practical utility, The Institute cannot respond to whether the burden estimate is accurate because it is unclear what information will be required to be provided by contractors to the contracting agencies.

D. Withdraw the ICR to Enhance Information Quality, Utility and Clarity

This ICR should be withdrawn and revised to clarify what information is to be collected from federal contractors by contracting agencies and how that information will be used to determine contractors’ compliance with Executive Order 14398 and FAR Section 52.222-90.

¹⁰ There had been a draft supporting statement which was shortly available on OIRA’s website which provided more detailed information, but it is no longer available on the website. We therefore understand that the draft supporting statement is not being used to meet the PRA obligations in support of the ICR.

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CONCLUSION

Thank you in advance for your consideration of the comments by The Institute. We are happy to provide any additional information you may need or to answer any questions you may have.

Respectfully,

A handwritten signature in black ink, reading "Barb L. Moskowitz". The signature is written in a cursive, flowing style.

Barbara L. Moskowitz
Director
The Institute for Workplace Equality