

Supporting Statement for  
HHS Office for Civil Rights Complaint Forms  
June 25, 2009

A. Justification

1. Background

The Office of Civil Rights is requesting extension on a previously approved collection 0990-0269, titled Complaint Forms for Discrimination; Health Information Privacy Complaints. The purpose of this collection is to allow the Office for Civil Rights to collect the minimum information needed from individuals filing complaints with our office so that we have the basis for initial procession of those complaints.

2. *Need and Legal Basis*

The Office for Civil Rights (OCR) is responsible for enforcing Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975 and other statutes that prohibit discrimination by programs or entities that receive Federal financial assistance from HHS. Additionally, OCR has jurisdiction over Federally conducted programs in cases involving disability based discrimination under Section 504 of the Rehabilitation Act, over state and local public entities in cases involving disability based discrimination under Title II of the Americans with Disabilities Act and certain health plans, health clearinghouses and health care providers with respect to enforcement of the standards for privacy of individually identifiable health information under the privacy rule issued pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

Under OCR's authorities, individuals may file written complaints with the Office for Civil Rights when they believe they have been discriminated against by programs or entities that receive Federal financial assistance from HHS or if they believe that their right to privacy of protected health information has been violated. In order to fulfill our statutory authority to respond to those complaints, OCR must collect a limited set of information sufficient to allow initial processing of such complaints. The complaint forms in this PRA submission request the basic information needed by OCR. See Attachment A for the relevant statutory and regulatory language requiring or authorizing the collection of information described in this submission.

3. *Information Users*

OCR provides two complaint forms – one for civil rights discrimination complaints and one for complaints alleging violation of the privacy of protected health information. (See Attachment B.) Use of these forms is voluntary. Alternatively, a complainant may choose to submit a complaint in the form of a letter, or electronically. An individual who

needs help to submit a complaint in writing may call the regional office serving the state in which they believe the discrimination or health information privacy violation took place.

OCR has collected similar information for many years to help in the initial assessment of a complaint. The existing civil rights and health information privacy forms were approved by OMB in 2003 (OMB 0990-0269) and were granted an extension in April 2006.

The mandatory fields for the existing forms are: name, contact, information, whether the complaint is being filed on behalf of someone else, the basis for the complaint (e.g., race/color/national origin, age, religion, gender (male/female), disability, violation of the privacy of protected health information, the entity against which the complaint is being filed, when the incident(s) occurred, a brief description of what happened and the complainant's signature. In some situations, the law requires OCR to get the complainant's signature; in other cases it is voluntary. The two forms request essentially the same information, with only substantive difference being the basis for the complaint.

In addition, each form includes several voluntary fields to assist OCR in processing the complaint and to provide appropriate customer service. Those fields are: an alternate person to contact if the complainant cannot be reached; whether this complaint has been filed with other agencies or is the basis of a lawsuit and, if so, to identify where else the complaint has been filed; and whether the complainant needs special accommodations for OCR to communicate with them (e.g. Braille, TDD). We also have included a limited number of questions to be answered on a voluntary basis to help us better assess whether we are adequately reaching and providing service to populations whose rights are covered by our statutory authorities. These questions concerning the complainant or the person on whose behalf a complaint has been filed, are: ethnicity, race, primary language spoken (if other than English), and the means by which the complainant learned about being able to file a complaint with the Office for Civil Rights. Failure to answer the voluntary questions will not affect OCR's decision to process a complaint.

OCR intends to continue requiring the same small set of mandatory fields and to request the voluntary information as described above.

#### *4. Improved Information Technology*

In addition to paper submission of complaints, OCR facilitates electronic submission of complaints. First, the forms themselves are available to be downloaded electronically to a user's own computer in a form that allows a complainant to fill out the form electronically if they so choose. The form can then be printed and submitted, or submitted electronically via electronic mail. Second, we are working on providing the forms in a format that allows completion and submission of the information online via the web. Actual burden time would be reduced only marginally using electronic methods since the bulk of the estimated average effort relates to assembling and recording a set of factual information.

Since access to computers and the internet, as well as computer proficiency still varies widely, these different methods will allow complainants to use the method with which they are most comfortable without increasing burden on any particular class of individuals.

#### *5. Duplication of Similar Information*

The information being collected is case and individual specific. OCR would not already have this information available. If a person has filed a previous complaint with OCR, a relatively rare occurrence, then data on the individual may be in OCR's records, but confidentiality considerations would restrict our ability to display that information to the complainant, since it might in fact relate to another person with the same name. Use of PIN numbers and other methods that allow individuals to return to the same web site without having to re-enter personal information are not cost effective given the very limited number of multiple complaints filings by the same individual.

#### *6. Small Businesses*

Complainants are individuals or, in rare instances, advocacy organizations filing complaints on behalf of a class of individuals. Small businesses are not required to provide any of this information.

#### *7. Less Frequent Collection*

Since OCR needs the mandatory information on these forms to begin an investigation, inability to collect this information would prevent OCR from carrying out our statutory-mandated authority to conduct complaint investigations and rectify instances of civil rights and health information privacy violations. Further, lack of a standardized form would hinder OCR's ability to fully and effectively comply with the requirements of the Government paperwork Elimination Act to support electronic communication with OCR's stakeholders.

The forms also include two sets of voluntary questions: those intended to help us communicate with the complainant in processing the complaint, and those designed to help OCR better assess whether we are adequately reaching and providing service to our various target populations.

For the first set of voluntary questions (e.g. does the complainant need us to communicate using Braille, is there an alternate person to contact if the complainant can't be reached), if they were removed from the form, the complaint process could proceed. But there would be a cost in effective customer service in that OCR would not discover special communication needs until contact has been made and the initial contacts may prove to be extremely frustrating for the complainant while increasing the potential for missed communications.

For the second set of voluntary questions (e.g. ethnicity, race, primary language spoken), again, if they were removed from the form, the complaint process could proceed. However, over the long-term, OCR's effectiveness in reaching the populations most in need of our services would be impaired by lack of data on who does, and by implication, does not, avail themselves of OCR's services.

There are no other technical or legal obstacles to reducing burden other than as described in this question or in Question 3.

#### *8. Special Circumstances*

None of the scenarios in this question apply to OCR's information collection.

#### *9. Federal Register Notice/Outside Consultation*

[Federal Register: May 28, 2009 (Volume 74, Number 101)]  
[Notices]  
[Page 25547]

No public comments were received.

The mandatory questions on the complaint forms have been used for a number of years in our existing complaint process, so the issue of availability of data is well established. Frequency of collection is once per complaint. There are no special requirements regarding recordkeeping or disclosure. While a reporting format is provided, its use is not mandatory. Answers to the voluntary questions generally will be known to the complainant. Where the complainant is filing on behalf of someone and doesn't know the answers, since the questions are voluntary, they need not be completed. We have tested the forms for clarity of instructions using staff in both OCR headquarters and regional offices with a range of experience and backgrounds.

#### *10. Payment/Gift to Respondent*

OCR does not provide any payment or gift to respondents or remuneration to any contractors or grantees.

#### *11. Confidentiality*

The information received from complainants is collected pursuant to an approved Privacy Act System of Records (67 Fed Reg. 57011-57014(September 6, 2002)). Pursuant to the Act and to that notice, disclosure of information collected is strictly for investigatory purposes or for a limited set of routine uses consistent with those investigatory purposes.

## 12. Sensitive Questions

As identified in Question 2, OCR proposes to collect the following information on a voluntary basis from those filing complaints with OCR: ethnicity, race, and primary language spoken (if other than English). For some individuals, this information may be considered sensitive insofar as they are concerned that the answers provided may affect how or whether OCR processes their complaint. In carrying out our legislative and regulatory mandates to enforce civil rights and health information privacy protections, OCR needs to be able to effectively assess how well it is serving the targeted populations most in need of our services. Collecting this information on a voluntary basis is a critical part of that assessment.

Executive Order 13166 (August 2000) requires that each federal agency take steps to ensure meaningful access for Limited English Proficient (LEP) individuals to the important benefits, services, information, and rights provided by the agencies themselves. In order to provide effective communication that result in meaningful access, OCR must be able to identify LEP individuals by the primary languages that they speak. Furthermore, policy guidance from the U.S. Department of Justice (August 2000 and June 2002) requires that Federal agencies do a four factor analysis to determine whether they have taken reasonable steps to ensure meaningful access to LEP persons. One of the four factors is the frequency with which LEP individuals come in contact with the program. In order to assess whether OCR has taken reasonable steps to provide meaningful access to an individual LEP complainant, OCR needs to know what language the LEP individual speaks and what languages all LEP individuals who come in contact with OCR speak.

## 13. Burden Estimate (Total Hours & Wages)

OCR estimates that the average time needed to complete a complaint form is 45 minutes. Based on examination of actual complaint levels over the past two years, we project that we will average 3,037 civil rights complaints per year, while privacy will average 8,944. The overall burden estimate is calculated as follows:

| Form Name                                 | Type of Respondent                                     | # of Respondents | # of responses per respondent | Hours per response | Response burden |
|---|--|------------------|-------------------------------|--------------------|-----------------|
| Civil rights Complaint From               | Individuals or households, Not-for-profit institutions | 3,037            | 1                             | 45/60              | 2,278           |
| Health Information Privacy Compliant Form | Individuals or households, Not-for-profit institutions | 8,944            | 1                             | 45/60              | 6,708           |
| Total                                     |  | 11,981           |                               |                    | 8,986           |

Calculation of annualized costs for the hour burdens using appropriate wage rate categories is not relevant in this circumstance.

#### *14. Capital Costs (Maintenance of Capital Costs)*

Since these are individuals who are submitting this information, and, since in the vast majority of situations, each individual only submits this information one time, there are no capital and start up costs or ongoing operation an maintenance or purchase of services in order to compete this form.

#### *15. Cost to Federal Government*

As previously explained, the work of OCR cannot be conducted without collection of the information on these complaint forms. Even if we did not use complaint forms and only took information orally, we would still have to capture the same information in order to begin processing a complaint. Therefore there is no incremental cost over and above that required to carry out OCR's mission.

#### *16. Program or Burden Changes*

Our volume of complaints has not increased significantly since our previous 83-I supporting statement (2006). We have made significant changes to our front-end guidance to complainants thru our website and toll-free telephone number to help direct their complaints to the right entity. Consequently, while the burden per complaint remains unchanged at 45 minutes, total burden has been reduced from 9,300 hours to 8,968 hours due fewer number of complaints received.

#### *17. Publication and Tabulation Dates*

If there is **any** possibility that these information collection requirements **may** be published, tabulated or manipulated (i.e., the results are summarized, segmented, or altered), please discuss. This includes hard copies and most important, publication on the Internet.

The information being collected will not be published.

#### *18. Expiration Date*

OCR does not request such approval.

## B. Collection of Information Employing Statistical Methods

1. Describe potential respondent universe.
2. Describe procedures for collecting information.
3. Describe methods to maximize response rates.
4. Describe any tests of procedures or methods.
5. Provide name and telephone number of individuals consulted on statistical aspects.

The mandatory questions on the complaint forms, as well as the voluntary questions designed to assist OCR in processing the complaint, are specific to the individual filing the complaint and the circumstances associated with that complaint. OCR needs the unique information provided in order to respond to that complaint. As such, the collection is not amendable to the use of statistical methods to reduce the number of respondents. Regarding the four voluntary questions used to help OCR assess whether we are adequately reaching and providing service to our various target populations, the universe of respondents is not known or definable in advance in a manner that would allow the use of statistical methods. Thus questions B.1-B.5 do not apply.