

SUPPORTING STATEMENT
U.S. Department of Commerce
Office of the Secretary/Office of Civil Rights
Reporting Process for Complaint of Employment Discrimination
Based on Sexual Orientation Against the Department of Commerce
OMB CONTROL NO. 0690-0024

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

1This supporting statement is an extension request to approve an information collection from employees and applicants for employment with the Department of Commerce (DOC) who allege that they were subjected to discriminatory treatment because of sexual orientation.

In 1998, President Clinton amended Executive Order 11478 entitled “Equal Employment Opportunity in Federal Government,” to establish a uniform policy prohibiting sexual orientation discrimination in Federal employment. The DOC’s Office of Civil Rights (OCR) implemented this Order by establishing a complaint process for violations of this policy. Department Administrative Order 215-11 would allow claims involving incidents occurring on or after June 1, 1999, to be raised in this process. In order to ensure that the Executive Order’s prohibition of sexual orientation discrimination is being enforced throughout DOC, it is necessary to have some process to investigate and correct violations. The intent is to track incidence of discrimination and poor management practices and correct them in a timely manner. The hope is that by having a discrimination free workplace and good management practices, the level of attrition of the workforce will be reduced, and, thus, lead to smoother and more efficient operations.

The form, CD-545, “Complaint of Employment Discrimination Based on Sexual Orientation Against the Department of Commerce,” will provide an instrument to report allegations of discriminatory treatment. It will also allow OCR to determine in a systematic and organized manner the acceptability of the complaints and identify organizational units in which complaints originate for tracking and evaluation purposes.

Collection of the aforementioned information will be made pursuant to the governing Executive Order 11478 and the Department Administrative Order. The pertinent section of the Order requires that anyone making allegations of discriminatory treatment based on sexual orientation against the DOC or one of its sub-agencies needs to submit a signed statement that is sufficiently precise to identify the general actions or practices that form the basis of their complaint. Although the complainants are not required to use our form to file their formal complaint, we find it more efficient and useful if they employ the proposed standard form.

This information will allow the Department to remain in compliance with the governing Executive Order and Department Administrative Order and to identify and correct any

discriminatory practices that may occur in the workplace. Further, use of the proposed form will:

- Provide potential complainants with a user-friendly form that asks for all of the core information to constitute a sufficient formal complaint;
- Allow DOC to expeditiously determine whether the complaint is timely and whether there is a factual basis for an investigation of the complaint;
- Allow the OCR to provide timely feedback to managers and supervisors regarding formal complaints filed in their organizational units; and
- Provide OCR the ability to monitor the effectiveness of this aspect of its Equal Employment Opportunity (EEO) program and the management practices of Department managers as a whole.

The sexual orientation complaint process has three parts: Counseling (the informal process); the formal complaint process; and the appeal process.

COUNSELING: THE INFORMAL PROCESS: Bureau EEO Offices administer the informal counseling process. If an employee believes that he or she has been discriminated against in the workplace or in the hiring process, they may contact an EEO Counselor. The Counselor will look into the facts of the situation and try to resolve their concerns with bureau management through mutual agreement. The employee must complete Counseling before filing a formal complaint. To preserve the employee's right to file a formal complaint, they must contact an EEO counselor within 45 calendar days of the alleged discrimination or the date they became aware of it. The employee may ask their EEO Counselor not to reveal their name during counseling. The EEO Counselor will also provide the employee with information about other forums in which claims involving sexual orientation discrimination can be raised.

THE FORMAL COMPLAINT PROCESS: The DOC's OCR administers the formal complaint process. The employee must file their formal complaint within 15 calendar days of receiving the Notice of Right to File from an EEO Counselor. OCR will send the employee written notice if their complaint is accepted for investigation. If OCR dismisses the employee's complaint or part of their complaint, the DOC will issue a Final Agency Decision explaining the reasons. Some reasons that complaints are dismissed are: untimely counseling or filing, failure to see an EEO Counselor, and failure to state a claim.

The DOC must conduct a thorough investigation of accepted issues within 180 calendar days of the date the complaint was filed unless an extension is agreed to. OCR will provide a copy of the Report of Investigation (ROI), along with a notice of the employee's rights. After the employee receives the ROI, the Director, OCR, will issue a Final Agency Decision (FAD) on the merits of the case.

THE APPEAL PROCESS: The employee may appeal the FAD, including a decision dismissing issues in the complaint, to the Chief Financial Officer/Assistant Secretary of Administration (CFO/ASA) within 30 calendar days of receiving the decision. If the employee has an attorney, the 30 calendar days will be calculated from the date the attorney receives the decision.

There is no right to further appeal from the decision of the CFO/ASA or to file a civil action regarding a violation of the policy prohibiting sexual orientation discrimination and related retaliation.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

1OCR will use the form to record the filing of a formal complaint against DOC on the grounds of sexual orientation or reprisal for participation in related equal employment opportunity activity, as well as to determine whether the complaint was filed timely and whether there is a factual basis for its acceptance and investigation. Additionally, the form may be used to:

1. Disclose pertinent information to an appropriate federal agency responsible for investigating, prosecuting, enforcing or implementing relevant civil right statutes;
2. Describe information to another federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the Department is a party to the judicial or administrative hearing;
3. Provide information to a congressional office from the record of an individual in response to an inquiry that the congressional office made at the request of the individual;
4. Disclose information to an authorized grievance examiner, formal complaints examiner, administrative judge, EEO Investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by the complainant, and
5. Disclose, in response to a request for discovery or for appearance, of witness information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The form is not available through the Internet because it may encourage filing formal complaints without going through the required period of informal counseling. The informal counseling period is intended to provide individuals with information about the complaint process and the types of claims that may be adjudicated through the process, as well as to provide a means of resolving allegations informally. Complaint forms will be distributed by Counselors at the conclusion of the required counseling period.

4. Describe efforts to identify duplication.

There is no duplicative information collected. The information is unique to the specific incidents.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Not Applicable.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The DOC will be unable to meet its compliance with the Executive Order. There is no schedule of frequency for the usage of this form.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

Not Applicable.

8. Provide information of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to

obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The Federal Register Notice soliciting public comment was published on March 22, 2011 (Vol. 76, no. 55, pg. 15938-39). No comments were received.

In designing the form, CD-545, OCR consulted with representatives of the Department's Office of General Counsel and the Departmental Clearance Officer. When we renew the collection, we will be publishing the standard PRA Notice requesting comments.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Not Applicable.¹

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

¹Privacy Act of 1974 (PL-93-579): A Privacy Act Statement is part of the instructions to the form. The System of Records Notice (SORN) to amend DOC System of Records 14, entitled Litigation, Claims and Administrative Proceeding Records, was published on April 20, 2000.

Except for agency managers and supervisors, and other administrative or judicial officials who have a need- to- know information in complaint form in order to investigate, adjudicate or resolve the claims raised therein, it is OCR's policy not to release confidential information, other than in aggregate form to appropriate federal agencies.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

¹This form is used for the filing of complaints of discrimination and elicits the generation of sensitive information regarding the individual complainant's sexual orientation. As indicated above, the confidentiality of this information is protected and not released to anyone who is not authorized or does not have a need-to-know in order to discharge their official duty.

12. Provide an estimate in hours of the burden of the collection of information.

¹Based on historical data regarding EEO complaints filed on other types of discrimination, it is estimated that no more than 20 formal complaints will be filed per year by individuals who are

not Department employees. It is estimated that will take the average complainant 30 minutes to complete the form.

20 complaints X 30 minutes = 10 hours

No appeals are anticipated. If any are processed during the 3-year approval period, it will be reported at the time of the extension process.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

None.

14. Provide estimates of annualized cost to the Federal government.

1Costs are incurred for the design, printing, evaluation and distribution of the forms. Most of this cost is reflected in terms of hours expended by the staff assigned to this project. The estimated total cost is \$5,000. If a complaint is accepted for processing, investigative costs range from \$2,900 to \$3,600, depending on the complexity of the complaint and the investigative processes used. It is estimated that 5 complaints would be investigated – 5 X \$3,600 = \$18,000.

Total Cost to the Government = \$23,000

15. Explain the reasons for any program changes or adjustments.

Not Applicable.

16. For collections whose results will be published, outline the plans for tabulation and publication.

1Not Applicable.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not Applicable1.

18. Explain each exception to the certification statement.

1No exceptions are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

1This collection of information will not employ statistical methods.