

1SUPPORTING STATEMENT
U.S. Department of Commerce
Office of the Secretary/Office of Civil Rights
Reporting Process for Complaint of Employment Discrimination used by
Permanent Employees and Applicants for Employment at DOC
OMB CONTROL NO. 0690-0015

A. JUSTIFICATION

This is a revision and extension of a currently approved information collection.

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

This supporting statement is a request to approve an information collection from employees and applicants for employment with the Department of Commerce (DOC), who alleges that they were subjected to discriminatory treatment, on the grounds of race, color, religion, sex, national origin, age, disability, genetic information, and/or reprisal for participation in Equal Employment Opportunity (EEO) activity. This collection is administered by the Office of Civil Rights (OCR).

In 1998, President Clinton amended *Executive Order 11478* entitled “*Equal Employment Opportunity in Federal Government*,” to establish a uniform policy prohibiting discrimination in Federal employment. The Department of Commerce, OCR implemented Department Administrative Order 215-9, “*Filing Discrimination Complaints*,” establishing a complaint process for violations of this policy. In order to ensure that the Executive Order’s prohibition of discrimination is being enforced throughout DOC, it is necessary to have some process to investigate and correct violations.

This complaint process involves Form CD-498, ***Complaint of Employment Discrimination (Used by Permanent Employees and Applicants for Employment at DOC)***. The review and clearance of the form is essential to the mission of DOC to obtain reliable data that will enhance the ability to process and resolve complaints of employment discrimination and to measure the success of the complaint program. Efficient, effective processing of EEO complaints will minimize disruptions in operations.

The previous submission also contained Form CD-498A, Complaint of Employment Discrimination for the Decennial Census, which has been removed because the decennial census is completed.

Also, since the previous submission compliance to new statutory requirements under the Genetic Information Nondiscrimination Act of 2008 (GINA) was added to Form CD-498.

Use of a standardized form will allow OCR to gather reliable data on the type of complaints filed and the location of the complaints. The form also aids in the determination of whether a complaint meets all procedural and jurisdictional requirements for acceptance.

The collection of EEO complaint information is made pursuant to the Equal Employment Opportunity Commission regulations at 29 C.F.R. Part 1614. These regulations, which govern the EEO complaint process, require that the complainant submit a signed statement that is sufficiently precise to identify the general actions or practices that form the basis of the complaint. Although complainants are not required to use the form, we strongly encourage its use to ensure complete, accurate and uniform case processing and data collection.

In addition to the benefits mentioned above, use of the form will:

- Facilitate program compliance with EEOC regulations;
- Provide complainants with an easy-to-use form that requests for all of the basic information needed in a formal EEO complaint;
- Allow the Department to provide timely feedback to managers and supervisors regarding formal complaints filed in their organizational units;

The complaint process has three parts:

1. **EEO COUNSELING: THE INFORMAL PROCESS:** Bureau EEO Offices administer the informal EEO 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 EEO Counseling before filing a formal complaint. To preserve their right to file a formal EEO complaint, the employee 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 the counselor not to reveal their name during counseling.
2. **THE FORMAL COMPLAINT PROCESS:** The Department's Office of Civil Rights administers the formal complaint process. Employees must file a formal complaint within 15 calendar days of receiving the Notice of Right to File from an EEO Counselor. OCR will send them written notice if their complaint is accepted for investigation. If OCR dismisses their complaint or part of their complaint, the Department 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 under a law enforced through the EEO process.

The Department must conduct a thorough investigation of accepted issues within 180 calendar days of the date the complaint was filed unless the employee agrees to an extension. OCR will send the employee a copy of the Report of Investigation (ROI), along with a notice of their rights. After receiving the ROI, employees may request:

- (a) A hearing before an Administrative Judge (AJ) who works for the Equal Employment Opportunity Commission (EEOC), an independent Federal agency;

or,

(b) A Final Agency Decision (FAD) by the Director of OCR without a hearing. The employee may also request a hearing anytime after 180 days from the date the complaint is filed if they have not received a notice of their right to request a hearing. If the employee does not make a choice, OCR will issue the FAD without a hearing. If the employee chooses a hearing, the AJ will issue a decision, which the Department may accept, modify, or reject.

3. **THE APPEAL PROCESS:** The EEOC administers the appeal process. The employee may appeal the FAD, including a decision dismissing issues in their complaint, to the EEOC within 30 calendar days of receiving the decision. If the employee has an attorney, the 30 calendar days will be calculated from the date their attorney receives the decision. The employee may ask the EEOC to reconsider its decision on their appeal within 30 days of receiving the decision or within 20 calendar days of receiving the Department's timely request for reconsideration.

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.

1The form will help OCR determine whether the complaint meets all procedural and jurisdictional requirements for acceptance. Additionally, the form may be used to:

1. Disclose pertinent information to the appropriate federal agency responsible for investigating, prosecuting, enforcing or implementing the 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.
5. Disclose, in response to a request for discovery or for appearance of a 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.

Due to the governing EEOC regulations, which require all complaints to be signed by the complainant or his/her representative, electronic means of collecting this information is not available.

4. Describe efforts to identify duplication.

The information collected is incident-specific so no duplication is identified.

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 form is used on an as-needed basis. If the collection were not conducted, employees and applicants for employment who believe that they have been discriminated against would not have a process to file a complaint. The Department would not be in compliance with EEOC regulations.

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 15, 2011 (Volume 76, pg. 13977). No comments were received.

1In designing the form, OCR consulted with representatives of the Department's Office of General Counsel, Equal Employment Opportunity Commission, and the Departmental Clearance Officer.

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 on the form. For Equal Employment Opportunity Commission (EEOC) compliant files (complaints filed on the CD-498), federal agencies subject to the EEOC's regulations are covered by the EEOC-GOVT1 system of records notice (SORN) dated July 30, 2002 (Vol. 67, pg. 49338).

Except for agency managers and supervisors, and other administrative or judicial officials who have a need-to-know the information 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.

¹The form is used for the filing of complaints of discrimination, and as such often generates sensitive information regarding the individual's complaint. 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.

¹It is estimated that **300** formal complaints from permanent employees and applicants for employment will be filed and require **30 minutes** to complete the form.

300 complaints X 30 minutes = 150 hours

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 Question 12 above).

Not Applicable.

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

1Costs are incurred for the printing, evaluation and distribution of the form. 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 150 complaints would be investigated – $150 \times \$3,600 = \$540,000$.

Total Cost to the Government = \$545,000

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

The program change decreases (400 respondents/responses and 200 burden hours) are due to the removal of the decennial census form used to report complaints by temporary employees.

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.

1The OMB control number and the expiration date will appear on the form.

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.