

Supporting Statement for
HHS Office for Civil Rights Complaint Forms
August 31, 2012

Background - Please explain the purpose of this collection.

The Office for Civil Rights (OCR) 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 OCR 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.

A. Justification

1. *Need and Legal Basis*

What is the need and legal basis for this information collection? What does the law say?

The Office for Civil Rights (OCR) enforces nondiscrimination regulations that apply to programs, services, and activities receiving Health and Human Services (HHS) federal financial assistance. OCR also enforces nondiscrimination provisions of other laws as they apply to programs and activities receiving HHS federal financial assistance. Specifically, OCR enforces the following: (1) Title VI of the Civil Rights Act of 1964, (2) Section 504 of the Rehabilitation Act of 1973, (3) Title IX of the Education Amendments of 1972, (4) The Age Discrimination Act of 1975, (5) Titles VI and XVI of the Public Health Service Act, (6) Section 1557 of the Patient Protection and Affordable Care Act, (7) Title II of the Americans with Disabilities Act, (8) Section 508 of the Rehabilitation Act of 1973, (9) Section 1808c of the Small Business Job Protection Act of 1996, (10) Sections 794 and 855 of the Public Health Service Act, (11) Section 508 of the Social Security Act, (12) Section 533 of the Public Health Service Act, (13) Section 1908 Of the Public Health Service Act, (14) Section 1947 of the Public Health Service Act, (15) The Family Violence Prevention and Services Act, (16) the Low-Income Home Energy Assistance Act of 1981, (17) The Community Services Block Grant Act and (18) the Communications Act of 1934.

Additionally, the OCR enforces (19) The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, which protects the privacy of individually identifiable health information; (20) The HIPAA Security Rule, which sets national standards for the security of electronic protected health information; (21) the HIPAA Breach Notification Rule, which requires notification to individuals in the case of a breach of their protected health information; and the confidentially provisions of (22) The Patient Safety and Quality Improvement Act of 2005 (PSQIA) Patient Safety Rule. Under OCR's authorities, individuals may file written complaints with the OCR 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 Paperwork Reduction Act 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.

2. *Information Users*

Who uses this information and for what purpose?

OCR provides two complaint forms – one for civil rights discrimination complaints and one for complaints alleging violation of the privacy of protected health information. 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 first approved by OMB in 2003, approved again in 2006 (OMB 0990-0269), and were granted an extension in September 2009.

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 OCR. 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.

3. *Improved Information Technology*

Was there any consideration of using technology to reduce burden? How can the Office of the Secretary (OS) use technology to improve this information collection?

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 continuing to work 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.

4. *Duplication of Similar Information*

Identify whether this information is duplicative of another information collection.

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, 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 limited number of multiple complaints filings by the same individual.

5. *Small Businesses*

How were the information collection requirements minimized for 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.

6. *Less Frequent Collection*

What will happen if this information is collected less frequently?

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. However, 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.

7. *Special Circumstances*

Describe special circumstances for collecting this information.

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

8. *Federal Register Notice/Outside Consultation*

When was the regulation published in the *Federal Register*? Was there any outside consultation with the industry on these information collection requirements?

[Federal Register: July 26, 2012 (Volume 77, Number 144)]

[Notices]

[Page 43826-43827]

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.

9. *Payment/Gift to Respondent*

Explain any decisions to provide payments or gifts to the respondents.

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

10. *Confidentiality*

Does OS assure the public that this information will be confidential?

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.

11. *Sensitive Questions*

Provide justification for any sensitive questions in this information collection.

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 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 results 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.

12. *Burden Estimate (Total Hours & Wages)*

Total burden hours for this information collection and the cost associated with those hours.

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 3,493 civil rights complaints per year, while privacy will average 10,286 complaints per year. The overall burden estimate is calculated as follows:

Form Name	Type of Respondent	Number of Respondents	Number of Responses Per Respondent	Average Burden Hours Per Response	Total Burden Hours
Civil Rights Complaint Form	Individuals or households, Not-for-profit institutions	3,493	1	45/60	2,620
Health Information Privacy Compliant Form	Individuals or households, Not-for-profit institutions	10,286	1	45/60	7,715
Total		13,779			10,335

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

13. *Capital Costs (Maintenance of Capital Costs)*

Total cost of capital and cost of maintaining capital associated with this information collection. These capital items only refer to systems that the respondent would not purchase or maintain in the absence of this information collection.

In the vast majority of situations, this information is submitted by individuals one time. Therefore, there are no capital and start up costs or ongoing operation and maintenance or purchase of services in order to compete this form.

14. *Cost to Federal Government*

Total cost to the Federal Government for this information collection.

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.

15. *Program or Burden Changes*

Explain any program or burden changes. Please consider any burden reductions that may be applicable.

OCR's two complaint forms have not changed. Our volume of complaints has increased since our previous 83-I supporting statement (2009). OCR has begun addressing new civil rights responsibilities, as well enforcing initiatives in areas that are Secretary and Administration priorities: specifically, ensuring non-discriminatory access to health care under the Affordable Care Act (ACA), reducing racial and ethnic health disparities and ensuring language access, and promoting the right of individuals with disabilities to have options to live in their own communities, pursuant to the Supreme Court's Olmstead decision and the Secretary's Community Living Initiative.

Additionally, increased outreach has contributed to the increase in the number of complaints. OCR is working to raise awareness, increase understanding and ensure compliance of all federal laws requiring non-discriminatory access to Health and Human Services programs and protection of the privacy and security of health information. . Therefore, the number of respondents has increased. This increased number is based on the number of complaints documented in the electronic recordkeeping system of OCR known as the Program Information Management System (PIMS)". Consequently, while the burden per complaint remains unchanged at 45 minutes, total burden has increased from 8,968 hours to 10,335 hours.

16. *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.

17. *Expiration Date*

If seeking approval to not show expiration date, explain why.

OCR does not request such approval.

18. *Certification Statement*

Explain each exception to the second page of the 83i.

None.

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.