

SUPPORTING STATEMENT**DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS
AGREEMENT APPROVAL PROCESS FOR USE OF COMPLAINT FORM CC-4****OMB No.1250-0002****A. JUSTIFICATION****EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY.**

The Office of Federal Contract Compliance Programs (OFCCP) administers two equal employment laws and an Executive Order prohibiting discrimination by Federal contractors based on race, color, religion, sex, national origin, disability, and status as a protected veteran.¹ Additionally, these laws require Federal contractors to take affirmative action to achieve equal employment opportunity.

- Executive Order 11246, as amended (EO 11246),²
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503),³ and
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA).⁴

EO 11246 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin and requires affirmative action. EO 11246 applies to Federal contractors and subcontractors, and to federally-assisted construction contractors and subcontractors holding a Federal Government contract or subcontract of more than \$10,000, or Federal Government contracts or subcontracts that have, or can reasonably

¹The term Federal contractor includes subcontractors and federally-assisted construction contractors and subcontractors.

² The authority for collection of complaint information is Section 206 (b) of the Executive Order. The implementing regulations which specify the content of this information collection are found at 41 CFR 60-1.23 (a).

³ The authority for collecting complaint information under this statute is Section 503 (d) of the Act. The implementing regulations which specify the content of this information collection are found at 41 CFR 60-741.61(c).

⁴ The authority for collecting complaint information under this statute is 38 U.S.C. 4212(d). The implementing regulations which specify the content of this information collection are found at 41 CFR 60-300.61(b).

expect to have, an aggregate total value exceeding \$10,000 in a 12-month period. EO 11246 also applies to Federal Government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds.

Section 503 prohibits employment discrimination on the basis of disability, and requires Federal contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Its requirements apply to Federal contractors and subcontractors with a Federal Government contract or subcontract in excess of \$10,000.

The affirmative action provisions of VEVRAA prohibit employment discrimination against protected veterans and require Federal contractors and subcontractors to take affirmative action to employ and advance in employment protected veterans. Its requirements apply to Federal contractors and subcontractors with a Federal Government contract or subcontract of \$100,000 or more.

No private right of action exists under EO 11246, Section 503 and VEVRAA. This means that a private individual may not bring a lawsuit against an employer or prospective employer for noncompliance with its obligations under the laws enforced by OFCCP. However, any employee or applicant for employment with a Federal contractor or subcontractor may file a complaint with OFCCP alleging discrimination or lack of affirmative action by completing a complaint form.⁵ OFCCP investigates the complaint and retains the discretion whether to pursue administrative or judicial enforcement.

To file a complaint with OFCCP, a complainant may either complete a complaint form or send a letter including the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor and a description of the acts considered to be discriminatory and any other pertinent information. To facilitate this process, OFCCP uses a complaint form (CC-4) which is currently titled "Complaint of Discrimination in Employment Under Federal Government Contracts." OFCCP is proposing changing the name of this form to "Complaint of Discrimination in Employment by a Federal Contractor or Subcontractor" to give users a better understanding of the purpose of the form. As a part of this ICR package, OFCCP is also

⁵ Under Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, individuals may file a complaint based on a contractor's failure to take affirmative action.

proposing revising and updating the complaint form to make it easier to understand and complete, using plain language consistent with the Plain Language Act of 2010, and removing the impression that complainants must expressly establish OFCCP's jurisdiction when submitting the complaint form or the complaint will be summarily rejected.

In investigating complaints it receives, under EO 11246 or Section 503, OFCCP may refer these complaints to the U.S. Equal Employment Opportunity Commission (EEOC). These referrals are made based on formal arrangements between the two Federal agencies.⁶ Generally, individual complaints filed under EO 11246 are referred to EEOC, while complaints involving groups of people or indicating patterns of discrimination are retained and investigated by the OFCCP. Additionally, if a complaint filed under Section 503 involves allegations of disability discrimination along with allegations of individual complaints of race, color, religion, sex, national origin, or age discrimination, OFCCP will refer the complaint to EEOC. Such referrals are made under a joint regulation with EEOC. OFCCP investigates individual and group complaints filed under VEVRAA.

2. USE OF MATERIALS

The complaint information collection form (CC-4) is used by OFCCP staff as the first step in the initiation of a complaint investigation. If the complaint is timely, and appears to raise discrimination or retaliation issues that fall within OFCCP's jurisdiction, then a complaint investigation is initiated. A standardized form helps guide complainants in providing important information about their alleged discrimination and reduces the time it takes OFCCP staff to determine jurisdiction. This form improves efficiency in responding to complainants and in initiating investigations.

3. IMPROVED INFORMATION TECHNOLOGY

In accordance with the Government Paperwork Elimination Act (GPEA), the complaint form is available on the OFCCP's Web site with information regarding its use and where it should be mailed. The Agency makes Form CC-4 available on the Internet for downloading at

⁶ OFCCP has a Memorandum for processing EO 11246 complaints which is found at http://www.dol.gov/ofccp/pdf/EEOC-OFCCP_MOU_FR_Notice_11-10-11.pdf. OFCCP follows the procedures for processing complaints filed under Section 503 found at 41 CFR 60-742.5 (d) and 29 CFR 1641.5 (e).

<http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>. The form may be completed and emailed to the appropriate regional office. Additionally, once approved, OFCCP will translate the forms into additional languages including Spanish, Cantonese, and Mandarin and request OMB approval for a non-material change.

4. DESCRIPTION OF EFFORTS TO IDENTIFY DUPLICATION

Information collected on the complaint form is unique to the individual complainant and no duplication is possible.

5. COLLECTION OF INFORMATION IMPACT ON SMALL BUSINESSES OR OTHER ENTITIES

Complaints are made solely by nonbusiness entities, usually individuals. This information collection does not have a significant economic impact on a substantial number of small entities.

6. CONSEQUENCES TO FEDERAL PROGRAMS IF THIS INFORMATION WERE COLLECTED LESS FREQUENTLY.

There is no schedule for collection of this information. This information is collected solely, usually from individuals on an "as needed" basis.

7. SPECIAL CIRCUMSTANCES FOR THE COLLECTION OF INFORMATION

There are no special circumstances for the collection of this information.

8. CONSULTATION OUTSIDE THE AGENCY

OFCCP received two comments in the 60-day comment period. Although both commenters endorsed OFCCP's effort to simplify the Complaint Form (CC-4), the comments also contained a number of proposals intended to enhance and clarify various portions of the form. All comments and concerns were given careful consideration and the issues are summarized and answered below.

a. Changes to the Inquiry Regarding Discriminatory Actions Taken By the Employer

Although one commenter applauded the enhanced clarity with which the proposed form describes the bases of discrimination, they expressed concern that it does not adequately explain discriminatory actions an employer may take or enable

complainants to indicate that such discriminatory actions were taken against them. This commenter specifically noted that OFCCP's current complaint form contains a question that lists various types of employment actions with checkboxes in which a complainant can select the actions they believe their employer took or failed to take because of the complainant's race, color, religion, sex, national origin, disability, or veteran status. This question appears as "Step 3" in OFCCP's current form.

The commenter argued that removing "Step 3" from the complaint form could make it more difficult for OFCCP to identify and categorize discriminatory actions. Moreover, the commenter suggested that a complainant's ability to identify and describe discriminatory action(s) may be compromised by the lack of a question in which a complainant can select applicable employment activities. Accordingly, the commenter proposed that a modified version of "Step 3" on the existing form be inserted before the question proposed on the new form, "Please describe below what you believe the employer did or failed to do to cause discrimination or retaliation."

In considering this comment, OFCCP found that complainants may be deterred from filing complaints. The limited list of choices for applicable employment actions in "Step 3" may suggest to complainants that these are all of the employment actions that OFCCP investigates. Thus, complainants who experienced employment actions not included in the "Step 3" listing may have been discouraged from filing complaints because they could not find actions that fit their specific circumstances. Further, if a complainant were not familiar with the definitions of the various actions listed in "Step 3", identifying specific actions may become frustrating and possibly deter the complainant from completing and submitting the form.

To assist complainants in understanding the types of activities that may be discriminatory, OFCCP includes examples of employment actions in the complaint form's instructions. Including this information in the instructions allows OFCCP to provide more information which should reduce confusion. Thus, in redesigning its form, OFCCP believes open-ended questions allow complainants to focus on their experiences and explain their particular circumstances without adding the requirement to categorize employers' actions. Therefore, OFCCP will retain the open-ended question.

The same commenter further recommended that discriminatory actions pertaining to compensation be incorporated into OFCCP's

proposed form. OFCCP agrees that including compensation discrimination in its complaint form instructions will enhance OFCCP's ability to enforce its nondiscrimination requirements. Thus, OFCCP adopts the commenter's recommendation to elaborate on compensatory discrimination in the examples of discriminatory actions listed in the new form's instructions. OFCCP is committed to investigating and eliminating discrimination in compensation⁷ among the Federal contracting community, and the agency agrees with the commenter that refining how the form addresses unlawful compensation discrimination represents a clear statement of that commitment.

b. Protected Veteran Status As a Basis of Covered Discrimination

One commenter requested that "protected veteran status" be removed as one of the bases of prohibited discrimination that complainants may select. The commenter asserted that the VEVRAA statute does not mention discrimination specifically, but only that contractors "shall take affirmative action to employ and advance in employment qualified covered veterans," and thus inclusion of "protected veteran status" as a basis for discrimination goes beyond the agency's authority.

We respectfully disagree with this commenter's assertions and opt not to revise the complaint form as requested. It is OFCCP's longstanding position that the plain meaning of the words "shall take affirmative action to employ and advance in employment" is broader than, and thus encompasses, non-discrimination. Simply put, contractors cannot comply with their obligation to engage in affirmative action for protected veterans if they are simultaneously discriminating against them. Although OFCCP disagrees with this commenter's assertions, it has modified its form by adding "protected" to "veteran status" on its form so that it is clear that it applies to "protected veterans" as opposed to veterans in general.

c. Identification of Protected Veteran Status and References to Title VII and the ADA

⁷ OFCCP defines compensation as including any payments made to, or on behalf of, an employee as remuneration for employment, including but not limited to salary, wages, overtime pay, shift differentials, commissions, bonuses, vacation and holiday pay, retirement and other benefits, stock options and awards, and profit sharing. (Directive Number: 307, Date: Feb 28, 2013. <http://www.dol.gov/ofccp/regs/compliance/directives/dir307.htm>)

In lieu of removing discrimination against protected veterans from the new form, the commenter proposed inserting a requirement for complainants, who claim protected veteran status, to identify and provide their category of protected veteran. The commenter asserted that this information will be important to contractors in their own defense, and that "complainants should be required to attest to their precise protected veteran status when submitting their complaint." In order to verify the protected veteran status claimed by a complainant, OFCCP requests that complainants attach to their complaints, a copy of their DD Form 214, Certificate of Release or Discharge from Active Duty.⁸ The DD Form 214 is a document issued to a military service member by the Department of Defense upon that service member's retirement, separation, or discharge from active-duty military. The DD Form 214 details a service member's record including awards and medals, promotions, and combat service or overseas service. Thus, the identification of protected veteran status proposed by the commenter is not necessary. Further, as mentioned above, OFCCP is adding "protected" before "veteran status" to the complaint form. This revision makes clear that there are categories of protected veterans, which are fully defined in the complaint form's instructions.

The commenter further recommended eliminating all references to Title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) from the form's instructions as OFCCP does not enforce these laws and any implication otherwise may be misleading. However, OFCCP is party to two Memoranda of Understanding (MOU) with EEOC that establish specific coordination procedures for complaints (also known as charges) of employment discrimination based on race, sex, religion, color, national origin and disability. These MOU establish procedures for processing of "dually filed" complaints or complaints that allege violation of both EO 11246 and Title VII or Section 503 and the ADA. When such complaints are received, then OFCCP acts as EEOC's agent.⁹ Thus, including references to Title VII and the ADA in OFCCP's complaint form is appropriate.

d. Issues with Language Used in the Form

A commenter proposed changes to additional wording on the proposed complaint form as well as revisions to certain information requested in the new form. For instance, this

⁸ If a complainant does not attach their DD Form 214 the complainant will be asked to provide it during OFCCP's processing of the complaint.

⁹ 41 CFR 60-7.42.5(a), and 76 FR 71029-71032.

commenter recommended changing the proposed title of the complaint form, "Complaint of Employment Discrimination by Federal Government Contractors or Subcontractors." This commenter argued that the proposed name is confusing and implies that the Federal contractor is lodging the complaint, rather than an applicant or employee. OFCCP agrees with the commenter and has revised the title to "Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor."

Additionally, the commenter proposed additional wording changes. Regarding the question in which the complainant is asked, "Why do you believe this company or employer discriminated against you," the commenter proposed revising that question to "On what bases do you contend this employer discriminated against you?" Regarding the question in which the complainant is asked to provide an account of what they "believe the employer did" that constituted discrimination or retaliation; the commenter recommended changing the question to "What is the basis for your allegation that this employer discriminated or retaliated against you?"

OFCCP's intent in revising its complaint form is to simplify the form in a manner that makes it not only easier for a complainant to complete the form, but also enhances the level of comfort for the complainant has in filing a complaint. OFCCP believes using words like "contend" and "allegation" in its form may connote that the burden of proof for proving the merits of the complaint resides with the complainant and that OFCCP takes an adversarial position with the complainant. Accordingly, the use of such terms may have a chilling effect on complainants and ultimately it could deter victims from lodging legitimate complaints.

Additionally, the commenter recommended changing the form's request for complainants to provide contact information for any attorney, person, or organization they claim as their representative. The commenter also suggested that the wording of the request be changed to: "If you have an attorney, person, or organization representing you in connection with this complaint and would like us to contact them for additional information, please provide their contact information below." OFCCP rejected the commenter's proposed language for the form's request of representative information because the language implies that OFCCP is only interested in speaking to the representatives of complainants that the complainant perceives to possess additional information regarding the complaint. In investigating a complaint of discrimination, OFCCP will request to speak with any representative claimed by the complainant, regardless of whether the complainant believes the representative possesses additional

information or not. Thus, language that imposes additional qualifiers on complainant's claimed representative misrepresents OFCCP's objective in soliciting that contact information. In considering this comment, OFCCP changed the phrase to clarify the intent of its request.

e. Other Changes

In addition to the above modifications, OFCCP has made additional edits to its complaint form for clarity purposes. The changes include:

1. On page 1, OFCCP reduced the number of answer options to the question "Where did you learn you could file a complaint with OFCCP?" by eliminating "Fact Sheet" as an answer. In looking at the options, including both "Brochure" and "Fact Sheet" could cause confusion to an individual completing the form.
2. On page 2, OFCCP changed the wording under "Your Complaint" from "failed to do..." to "didn't do..." to improve the clarity of the question. This change is to make it clear that the information required from the complainant is based on his or her belief and not on a finding of discrimination. OFCCP also clarified how it asks complainants to provide information regarding the event or events and who may have seen the discriminatory act.
3. On page 2, OFCCP revised its question regarding other individuals who may have experienced the same question and removed the note indicating that the complainant would be contacted to provide the names and titles of individuals who faced similar discrimination. These changes were made for clarity and information related to others OFCCP will gather during its investigation of the allegations.

Conclusion

The proposed revisions to the Complaint Form CC-4 do not impose new recordkeeping requirements on complainants or contractors. Its purpose is to provide any complainant with a mechanism to provide important information regarding allegations of discriminatory or retaliatory acts committed by a Federal contractor or subcontractor. Thus, giving careful consideration to each of the comments received, OFCCP revised its proposed complaint form by adding additional clarifications to both the form and instructions. With these edits, OFCCP requests that OMB approve its revised Complaint Form CC-4.

9. GIFT GIVING

OFCCP provides neither payments nor gifts to respondents.

10. ASSURANCE OF CONFIDENTIALITY

Form Confidentiality is maintained to comply with the Privacy Act. However, a copy of the complaint form may be provided to the contractor and the information contained on the form may be used in the course of settlement negotiations with the contractor and/or in the course of presenting possible disclosure to opposing counsel. Before providing a copy of the complaint form, the agency redacts it to protect confidential information such as the name and other information that would easily identify someone other than the complainant who might suffer retaliation, be construed as an informer, or suffer embarrassment or other unwarranted invasion of privacy; obscene, inflammatory or libelous language; names and allegations against more than one company (delete the name and allegations against company #1, from the complaint copy provided to company #2, and vice versa); and identifying characteristics of individuals in a third party complaint (e.g., description of unique characteristics, unique job title or position) if the individual has not signed the complaint or authorized release of his or her identity. A Privacy Act disclosure statement is included in the instructions for form CC-4.

11. SENSITIVE QUESTIONS

Although the CC-4 does not specifically request sensitive information related to a complainant's disability or other protected information, the complainant may disclose such information when describing the circumstances that led to filing the complaint on Page 2 of the form. As noted in number 10 (above), a Privacy Act disclosure statement is included in the instructions with the form.

12. ESTIMATE OF INFORMATION COLLECTION BURDEN HOURS

During the last three fiscal years (FY 2011, FY 2012 and FY 2013), OFCCP received 670, 781 and 790 complaints, respectively, for a three year total of 2,241 complaints. Therefore, on average, OFCCP receives approximately, 747 complaints annually. It is also estimated, based on the agency's experience assisting complainants, that it will take an average of 1 hour for a complainant to complete and submit the form. Therefore, it is

projected that the collection of information will impose an aggregate burden of 747 hours (i.e., 747 complaints multiplied by 1 hour). OFCCP estimates that the cost of completing the CC-4 is \$23,851.71 (i.e., 747 hours multiplied by \$31.93 per hour).¹⁰

13. ANNUAL OPERATION AND MAINTENANCE COST BURDEN TO RESPONDENTS

There are no capital or start-up costs associated with filing a complaint.

The actual out-of-pocket cost for the complainant is estimated at 46¢ for stamps, 20¢ for paper and copying plus 4¢ for envelopes which equal 70¢. OFCCP receives approximately 747 complaints of which 90% (or 672 complaints) are submitted electronically by either facsimile or email. The remaining 10% or 75 complaints are sent by mail. Therefore, it is estimated that the filing of the 75 complaints mailed will cost \$52.50 (75 complaints multiplied by \$0.70 for postage, paper and envelope).

14. ESTIMATED OF COST TO FEDERAL GOVERNMENT

The cost to the Federal Government (OFCCP) for receiving the forms, reviewing them for jurisdiction and timeliness, and determining their disposition is estimated at \$54,165 (747 complaints multiplied by a cumulative labor cost of \$72.51 per complaint).

The Federal labor cost reflects the 2.25 hours it takes OFCCP staff to process the form and includes one hour for an administrative support staff (GS-6) to review the complaint and check jurisdiction, one hour for a professional staff (GS-13) to verify the jurisdiction and prepare correspondence, and 0.25 hours for a manager (GS-14) to review and sign the documents. This cost was determined by surveying OFCCP's regional offices on the amount of time it takes to process a complaint. The calculation for the labor costs are detailed below.

¹⁰ OFCCP used the average private industry employers spend in employee wages and salaries as reported in *Employer Costs for Employee Compensation*, June 2013, United States Department of Labor, Bureau of Labor Statistics, p. 10, Table 5, <http://www.bls.gov/news.release/pdf/ecec.pdf>.

Table 1–Federal Cost

Grade/ Step	Wage Rate ¹¹	Time (hours)	Total (wage rate x hours)
6/4	\$18.58	1	\$18.58
13/4	\$43.56	1	\$43.56
14/4	\$51.47	0.25	\$10.37
Cumulative labor cost per complaint			\$72.51

15. CHANGE IN BURDEN HOURS

Based on the three-year average of complaints received, OFCCP expects to process more complaints (747) than under the previous approved ICR (602). Yet, with the shorter and easier form OFCCP estimates that complainants will spend less time completing the revised CC-4, thus resulting in an overall decrease in burden. The estimated decrease is .28 hours per response. OFCCP has also updated the burden cost estimate to reflect the percentage of complaints received by fax or email. The reduction in burden hours is detailed in the chart below.

Table 2–Burden Changes

	Responses	Burden Hours	Cost
Previously Approved	602	771	\$283
Requested	747	747	\$52
Adjustment increase/decrease	+145	-24 (+145 due to increased responses and - 169 from shorter/easier form)	-\$231

16. STATISTICAL USES AND PUBLICATION OF DATA

OFCCP will not publish the data collected as a result of the items contained in this request as statistical tables.

17. APPROVAL TO NOT DISPLAY THE EXPIRATION DATE

OFCCP does not seek approval to not display the expiration date.

¹¹ Average hourly rates are from the Office of Personnel Management (OPM) 2014 Rest of U.S. Schedule Salary Table. See <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/salhr1.pdf> at 32.

18. EXCEPTION TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

B Statistical Methods

This information collection does not employ statistical methods.