

SUPPORTING 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 and Complaint of Employment
Discrimination for the Decennial Census
OMB CONTROL NO. 0690-0015

A. JUSTIFICATION

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

This supporting statement is a request for an extension of a currently approved information collection from employees and applicants for employment with the Department of Commerce (DOC) and employees hired during the Decennial Census, who alleges that they were subjected to discriminatory treatment, on the grounds of race, color, religion, sex, national origin, sexual orientation, age, disability, 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 collection involves two forms: CD-498, *Complaint of Employment Discrimination (Used by Permanent Employees and Applicants for Employment at DOC)*, and CD-498A, *Complaint of Employment Discrimination for the Decennial Census*. Both collect the same information, but the instructions about where to file, the statement of rights, and the color (to minimize confusion) of the Decennial form are different.

The U.S. Census Bureau plans to hire thousands of people around the nation to conduct the 2020 Census. Some temporary Local Census Offices (LCOs) will open in late 2018 and others began hiring in early 2009. However, the majority of temporary LCOs will open in late 2019 and peak hiring will take place in the Spring of 2020.

In order to conduct a successful Decennial Census, it is necessary to hire and retain a representative workforce. The review and clearance of the forms are essential to continue 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 regular and decennial complaint programs. Efficient, effective processing of equal employment opportunity (EEO) complaints will minimize disruptions to Decennial Census operations.

Use of standardized forms will allow OCR to gather reliable data on the type of complaints filed and the location of the complaints. The forms will also aid in the determination of whether a complaint meets all procedural and jurisdictional requirements for acceptance. The ability to track by location will allow OCR to measure the effectiveness of the EEO Specialists placed in the LCOs.

To properly allocate resources and to develop accurate performance measures for the Decennial Census Complaint Program, a simple, effective means of distinguishing Decennial Census complaints from the regular caseload is needed. The Decennial form directs users to file their complaints with, or otherwise contact, the Decennial Complaints Program Office at Census Headquarters, rather than OCR. The Decennial complaint form also omits certain information that is part of the regular complaint form but does not apply to temporary employees (for example, Merit Systems Protection Board rights).

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 forms, 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 forms 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; and
- Allow the Department to provide timely feedback to managers and supervisors regarding formal complaints filed in their organizational units.

Each 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 your EEO Counselor not to reveal their name during counseling.
2. **THE FORMAL COMPLAINT PROCESS:** The Department's Office of Civil Rights (OCR) 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 they filed their complaint 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.

The form CD-498 will be used for employees and applicants for employment; and CD-498A will be used only for Decennial Census employees. The forms will help OCR determine whether the complaint meets all procedural and jurisdictional requirements for acceptance. Additionally, the forms 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. To 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. To 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. To 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. To 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 forms are used on an as-needed basis. If the collection were not conducted, employees, applicants for employment, or Decennial Census employees 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 August 24, 2017 (Volume 82, pg. 40134). No comments were received.

In designing these forms, 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.

OCR will not provide gifts or payments to respondents.

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

Privacy Act of 1974 (PL-93-579): A Privacy Act Statement is part of the instructions to these forms.

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.

The forms are used for the filing of complaints of discrimination and as such often elicit the generation of 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.

It is estimated that **300** formal complaints from permanent employees and applicants for employment; and **400** formal complaints from Decennial Census employees = **700** will be filed. It is estimated that it will take the average complainant **30 minutes** to complete the form.

700 complaints X 30 minutes = 350 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 #12 above).

Not Applicable.

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

Costs 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 \$1,150. If a complaint is accepted for processing, investigative costs range from \$4,000 to \$9,000, depending on the complexity of the complaint and the investigative processes used. It is estimated that 50 complaints would be investigated – $50 \times \$4,500 = \$225,000$.

Total Cost to the Government = \$225,500

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

Adjustment: The costs incurred for the design, printing, evaluation and distribution of the forms have increased slightly since the last renewal.

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

Not 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.

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

18. Explain each exception to the certification statement.

No exceptions are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information will not employ statistical methods.