

**Requests for OMB Review and Approval
Under the Paperwork Reduction Act and 5 CFR 1320**

**(HHS Office for Civil Rights Complaint
Forms)**

Department of Health and Human Services

Office of the Secretary/Office of the Civil Rights
Harold Henderson
Deputy Executive Officer
Office for Civil Rights

Office: (202) 774-3012
200 Independence Avenue, S.W.
Washington, DC 20201

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Supporting Statement for
HHS Office for Civil Rights Complaint Forms
June 13, 2019

Background - Please explain the purpose of this collection.

The Office for Civil Rights (OCR) is requesting a revision of the previously approved collection 0945-0002, titled: Complaint Forms for Discrimination; Health Information Privacy Complaints and Civil Rights Discrimination. This request revises the OCR Civil Rights Discrimination Complaint Form and the Privacy Discrimination Complaint Form as currently approved and will remain in compliance with the Paperwork Reduction Act.

The purpose of this revision is to allow OCR to collect the minimum information needed from individuals filing complaints with OCR to form the basis for the initial processing of those complaints. The revision will accomplish this in three ways: (1) by adding the words Conscience and Religious Freedom Discrimination to the Civil Rights complaint form; (2) by adding certain longstanding conscience and religious freedom nondiscrimination laws to the bottom paragraph of the Complaint Form explaining OCR's legal authority over these laws and OCR's complaint process; (3) by modifying the NOTICE TO COMPLAINANTS AND OTHER INDIVIDUALS ASKED TO SUPPLY INFORMATION TO THE OFFICE FOR CIVIL RIGHTS form to update the list of legal authorities and statutes for Civil Rights and Conscience and Religious Freedom.

The purpose of this collection is to allow OCR to collect the minimum information needed from individuals filing complaints with our office so that we have the basis for processing these 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 statutes and regulations that apply to programs, services, and activities receiving Health and Human Services (HHS) federal financial assistance. Specifically, OCR enforces and is authorized to solicit information under the following:

- (i) Federal laws barring discrimination by recipients of Federal financial assistance on grounds of race, color, national origin, disability, age, sex, or religion under programs and activities receiving Federal financial assistance from HHS, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), the Age Discrimination Act of 1975 (42 U.S.C. §6101 *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. §1681 *et seq.*), Sections 794 and 855 of the Public Health

Service Act (42 U.S.C. §§295m and 296g), and Section 1557 of the Affordable Care Act (42 U.S.C. §18116);

- (ii) Federal laws protecting rights of conscience and religious freedom in health and human services programs, such as Sections 1303(b)(4) and 1553 of the Affordable Care Act (42 U.S.C. §§18113, 18023(b)(4)), the Church Amendments (42 U.S.C. § 300a-7), the Coats-Snowe Amendment (42 U.S.C. §238n), the Religious Freedom Restoration Act (42 U.S.C. § 2000bb *et seq.*), and the Weldon Amendment (*e.g.*, Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019, Pub. L. No. 115-245, Div. B., §507(d)), and applicable regulations;
- (iii) Titles VI and XVI of the Public Health Service Act (42 U.S.C. §§291 *et seq.* and 300s *et seq.*) and 42 C.F.R. Part 124, Subpart G (Community Service obligations of Hill-Burton facilities);
- (iv) 45 C.F.R. Part 85, as it implements Section 504 of the Rehabilitation Act in programs conducted by HHS;
- (v) Title II of the Americans with Disabilities Act (42 U.S.C. §12131 *et seq.*) and Department of Justice regulations at 28 C.F.R. Part 35, which give HHS “designated agency” authority to investigate and resolve disability discrimination complaints against certain public entities, defined as health and service agencies of state and local governments, regardless of whether they receive federal financial assistance; and
- (vi) HIPAA Standards for the Privacy of Individually Identifiable Health Information (The Privacy Rule), 45 C.F.R. Part 160 and Subparts A and E of Part 164, Health Insurance Reform: Security Standards (The Security Rule), 45 C.F.R. Part 160 and Subparts A and C of Part 164, Breach Notification for Unsecured Protected Health Information (The Breach Rule), 45 C.F.R. Part 160 and Subparts A and D of Part 164, and Administrative Simplification: Enforcement, 45 C.F.R. Part 160, Subparts C, D, and E, which contains provisions relating to compliance and investigations, the imposition of civil money penalties, and procedures for hearings related to violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U.S.C. §1320d-2).

Under OCR’s authorities, individuals may file written or electronic complaints with 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 rights to

privacy or security of protected health information has been violated. In order to fulfill OCR's statutory obligation and authority to respond to these complaints, OCR must collect a limited set of information sufficient to allow processing of such complaints. The complaint forms in this Paperwork Reduction Act submission request the basic information needed by OCR. See paragraph 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 has collected similar information through complaint forms for many years to help in the initial assessment of a complaint. OCR provides two complaint forms – one for civil rights/religious freedom or conscience discrimination complaints, and one for complaints alleging violation of the privacy or security 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 customer response center to request the needed assistance.

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, or conscience, or violation of the privacy or security of protected health information); the name and/or contact information of 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 obtain the complainant's signature regarding consent; in other cases it is voluntary. The two forms request essentially the same information, with the 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). OCR has also included a limited number of fields to be answered on a voluntary basis to help OCR better assess whether OCR is adequately reaching out and providing service to populations whose rights are covered by OCR's statutory authorities. These fields concerning the complainant or the person on whose behalf a complaint has been filed request information about: ethnicity; race; primary language spoken (if other than English); and the means by which the complainant learned about filing a complaint with the OCR. Failure to answer the voluntary questions does not affect OCR's decision to process a complaint.

OCR intends to continue requiring this 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 the electronic submission of complaints. An electronic complaint can be submitted on the OCR's Website at:

<http://www.hhs.gov/ocr/privacy/hipaa/complaints/index.html>

<http://www.hhs.gov/ocr/civilrightsconsciencereligiousfreedom/complaints/index.html> (This link will become active once the revised form is approved)

The forms themselves are available to be downloaded electronically to a user's own computer in a fillable format, should they so choose. The form can also be printed and submitted, or submitted electronically via electronic mail. Actual burden time would be reduced only marginally by using electronic methods since the bulk of the estimated average effort relates to the assembling and recording of a set of factual information.

Since access to computers and the internet, as well as computer proficiency, still varies widely, these different methods 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 not duplicative of another information collection. It is case and individual specific so OCR does not already have this information. If a person has filed a previous complaint with OCR, then data on the individual may already be in OCR's records, but confidentiality considerations would restrict OCR's 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 have not been adopted because they 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 unless they are filing a complaint.

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 in each instance of a complaint would prevent OCR from carrying out OCR's statutorily mandated law enforcement authority to conduct complaint investigations and rectify instances of civil rights, conscience and religious freedom, and health information privacy and security 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 OCR communicate with the complainant in processing the complaint, and those designed to help OCR better assess whether OCR is adequately reaching and providing service to our various target populations.

If the first set of voluntary questions (i.e. Does the complainant need OCR to communicate using Braille or an alternate format or language? Is there an alternate person to contact if the complainant cannot be reached? etc.), were removed from the form, the complaint process could proceed. However, this would be at the cost of effective customer service for individuals with special communication needs and would not meet OCR's legal requirements to provide effective communication and meaningful access. Initial contact from OCR may prove to be extremely frustrating for the complainant in such an instance, and the potential for missed communications would be increased.

If the second set of voluntary questions (i.e. questions concerning the complainant's ethnicity, race, primary language spoken, etc.) were removed from the form, again, the complaint process could proceed. However, over the long-term, OCR's effectiveness in reaching those populations most in need of our services would be impaired by the lack of data on who does, and by implication, who does not, avail themselves of OCR's services.

7. *Special Circumstances*: Describe special circumstances for collecting this information.

There are no additional special circumstances for collecting this information.

8. *Federal Register Notice/Outside Consultation*: When was the notice published in the *Federal Register*? Was there any outside consultation with the industry on these information collection requirements?

[Federal Register Volume 84, Number 52 (Monday, March 18, 2019)

[Notices]

[Pages 9802-9803]

We have received comments from: LGBT Research and Communications Project,

Center for American Progress, and the American Atheists with numerous undersigned organizations who oppose the proposed changes to the civil rights forms (see the attached final comment letter).and below are the responses.

Comment: The Department received comments arguing that the proposed revisions to the complaint form emphasized conscience and religious freedom to the detriment of other civil rights.

Response: The proposed form emphasizes both civil rights and conscience and religious freedom protections enforced by respective divisions in the HHS Office for Civil Rights (OCR). The revised form continues to include all the civil rights laws included on the prior form and which the OCR Civil Rights Division (CRD) enforces. With the creation of OCR's new Conscience and Religious Freedom Division (CRFD), the Department determined that it also was appropriate for the form to delineate the conscience and religious freedom laws which CRFD enforces.

Comment: The Department received comments arguing that the proposed revisions to the complaint form are unnecessary, and are an attempt to generate complaints based on conscience and religious freedom.

Response: The proposed changes clarify that complainants may file complaints either under the civil rights laws previously listed in the form, and/or under conscience and religious freedom laws applicable to HHS programs. The Department considers the change appropriate to ensure that persons who wish to file complaints in whole or in part under any of our civil rights or conscience and religious freedom authorities know that they may use this form to do so. The proposed changes also offer clarity concerning the Department's delegation to OCR of the ability to receive and handle complaints under conscience and religious freedom laws. The form asks complainants to submit the same kind of factual information that it asks complainants to submit concerning civil rights laws that were previously encompassed by the form.

Comment: The Department received a comment arguing that the revised form's description of protected rights is vague and confusing, and would lead to conflation of complaints based on conscience with complaints based on religious identity.

Response: The option to file a complaint related to "Religion/Conscience," as with other civil rights protections listed on the form, encompasses a broad variety of factual scenarios. OCR's new division specializes in enforcement of and compliance with laws that protect conscience and the free exercise of religion, and that prohibit coercion and religious discrimination. To provide additional clarity, the proposed form also lists several conscience and religious freedom statutes that OCR enforces as well as other civil rights authorities. OCR reviews each complaint to facilitate proper handling and to determine the applicability of various legal grounds a complainant is citing or that may be implicated by the facts asserted in the complaint.

Comment: The Department received a comment stating that the complaint form should require more detailed information from individuals asserting conscience or religious freedom complaints.

Response: The proposed form provides the same opportunity for a complainant to submit information for any allegation of violations of their statutorily protected rights in health and human services. We see no compelling reason for departing from a uniform approach or for making the complaint process more burdensome for some complainants based on the type of discrimination alleged.

Many, if not most, complainants to OCR are unrepresented by counsel. This is true for civil rights laws that have been encompassed by the form previously, as well as for conscience and religious freedom laws.

The proposed form retains components that seek information from complainants about their claims, which OCR believes will be sufficient to allow OCR to make appropriate initial evaluations of complaints and will not be unduly burdensome or dissuade complainants who may not have representation or legal expertise from filing a complaint.

The mandatory questions on the complaint forms have been used for a number of years and 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 does not know the answers, since the questions are voluntary, they need not be completed. .

9. *Payment/Gift to Respondent:* Explain any decisions to provide payments or gifts to the respondents.

OCR does not provide any payments or gifts to respondents or any form of 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 contained in OCR's System of Records Notice.

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. 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.

In addition, OCR has a statutory responsibility under Section 504 of the Rehabilitation Act to provide effective communication to persons with disabilities so we ask whether the individual filing a complaint needs the consent form and attachments in an alternative format or needs to communicate with OCR in an alternative format.

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, OCR projects that OCR will average 8433 civil rights related complaints per year and 25,299 privacy related complaints per year. The overall burden estimate is calculated as follows:

Estimated Annualized Burden Table

Written Forms/Electronic Forms	Type of Respondent	Number of Respondents	Number of Responses per Respondent	Average Burden hours per Response	Total Burden Hours
Civil Rights/Conscience Religious Freedom	Individuals or households, Not-for-	8,433	1	45/60	6325

Discrimination Complaint	profit institutions				
Health Information Privacy Complaint	Individuals or households, Not-for-profit institutions	25,299	1	45/60	18,974
Total					25,299

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 startup 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 OCR did not use complaint forms and only took information orally, OCR 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. However, our volume of complaints has increased since our previous 83-I supporting statement (2009). In addition, OCR has begun addressing new civil rights, conscience and religious freedom, and health privacy responsibilities, as well as enforcing initiatives in areas that are Secretary and Administration priorities. Increased outreach and expanded responsibilities likely have 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 nondiscriminatory access to Health and Human Services programs and protection of the privacy and security of health information. 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 to 10,335 hours to 25,299 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 by the Department of Health and Human Services.

17. *Expiration Date:* If seeking approval to not show an expiration date, explain why.

OCR does not request such approval.

18. *Certification Statement:* Explain each exception to the second page of the 83-I.

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 OCR is adequately reaching and providing service to OCR's 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.

Section B: There is no statistical methodology