

**U.S. Department of Labor
Office of Federal Contract Compliance Programs
Complaint Involving Employment Discrimination by a Federal Contractor or
Subcontractor**

OMB Control Number 1250-0002

A. JUSTIFICATION

The Office of Federal Contract Compliance Programs (OFCCP) enforces Executive Order 11246, as amended (“E.O. 11246”), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (“Section 503”), and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (“VEVRAA”). Collectively, these authorities protect employees and job applicants of Federal contractors and subcontractors from discrimination in employment based on race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran.¹ Applicants and employees of contractors are also protected from adverse employment actions because they inquired about, discussed, or disclosed information about their pay or the pay of their co-workers, subject to certain limitations.

OFCCP is seeking Office of Management and Budget (OMB) reauthorization of OFCCP’s information collection request (ICR) for its complaint program. The ICR includes the form that applicants and employees of contractors, authorized representatives, or third parties can use to file an employment discrimination complaint with OFCCP.² As discussed below, OFCCP is proposing changes to the complaint form to improve the efficiency of its complaint intake process, increase the ease of use of its forms, and benefit workers. OFCCP is also requesting approval of an additional form that applicants and employees of contractors, authorized representatives, or third parties would use to submit a pre-complaint inquiry prior to filing a formal complaint of discrimination.³ Together these forms would allow OFCCP to modify its complaint intake procedures to adopt a two-step complaint intake process. The U.S. Equal Employment Opportunity Commission (EEOC) has long utilized a two-step intake process.⁴ As explained in detail below, this new process would improve the complaint intake process for potential complainants and OFCCP.

1. Legal and Administrative Requirements

¹ Hereinafter, all references to “contractor” include Federal contractors and subcontractors unless otherwise stated.
² See “Complaint of Employment Discrimination Involving a Federal Contractor or Subcontractor” form (Form CC-4), available at <https://www.dol.gov/agencies/ofccp/contact/file-complaint> (last accessed Mar. 23, 2023). Hereinafter, this form will be referred to as the “complaint form.”
³ Hereinafter, this form will be referred to as the “pre-complaint inquiry form.”
⁴ See EEOC, *How to File a Charge of Employment Discrimination*, <https://www.eeoc.gov/how-file-charge-employment-discrimination> (last accessed Mar. 23, 2023) (describing EEOC’s pre-charge inquiry and charge filing process).

E.O. 11246 prohibits covered contractors from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, or national origin and requires contractors to take affirmative action to promote equal opportunity. E.O. 11246 also prohibits contractors from taking discriminatory actions against applicants and employees for inquiring about, discussing, or disclosing their own compensation information and, in certain instances, the compensation information of their co-workers. The requirements in E.O. 11246 generally apply to any business or organization that (1) holds a single Federal contract, subcontract, or Federally assisted construction contract in excess of \$10,000; (2) has Federal contracts or subcontracts that combined total in excess of \$10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount. Supply and service contractors with 50 or more employees and a single Federal contract or subcontract of \$50,000 or more also must develop and maintain an affirmative action program (AAP) that complies with 41 CFR part 60-2. Construction contractors have different affirmative action requirements under E.O. 11246 at 41 CFR part 60-4.

Section 503 prohibits employment discrimination against applicants and employees based on disability and requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on physical or mental disabilities. Its requirements apply to contractors with a Government contract in excess of \$15,000.⁵

VEVRAA prohibits employment discrimination against protected veterans, namely disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans, and requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on their status as a protected veteran. Its requirements apply to contractors with a Government contract of \$150,000 or more.⁶

Consistent with the Administrative Procedure Act, OFCCP promulgated regulations implementing these programs under title 41 of the Code of Federal Regulations (CFR) in chapter 60.⁷

Complaints under E.O. 11246, Section 503, and VEVRAA

No private right of action exists under E.O. 11246, Section 503 or VEVRAA, which means that a private individual may not bring a lawsuit against an employer or prospective employer for noncompliance with its obligations under the authorities enforced by OFCCP. However, any employee or applicant for employment with a contractor may file a complaint with OFCCP alleging discrimination in employment or failure to comply with other OFCCP contractor

⁵ Effective October 1, 2010, the coverage threshold under Section 503 increased from \$10,000 to \$15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 CFR 53129 (Aug. 30, 2010).

⁶ Effective October 1, 2015, the coverage threshold under VEVRAA increased from \$100,000 to \$150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

⁷ The regulations are accessible at <https://www.ecfr.gov/current/title-41/subtitle-B/chapter-60>.

obligations. A third party or authorized representative may also file a complaint on behalf of an individual or a group. OFCCP accepts and investigates complaints pursuant to its authorities and retains the discretion whether to pursue administrative or judicial enforcement.

A complaint alleging discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin must be filed within 180 days from the date of the alleged discrimination, unless the time for filing is extended for good cause shown. Complainants alleging discrimination for discussing, disclosing, or inquiring about pay also have 180 days from the date of the alleged discrimination to file a complaint. If the complaint alleges a violation based on disability or status as a protected veteran or pre-Jobs for Veterans Act (pre-JVA) veteran, the complaint must be filed within 300 days unless the time for filing is extended for good cause shown. Some examples of what may constitute good cause include: mental or physical incapacity; military deployment, incarceration, or possibly being unaware of the discrimination; misleading information provided by the employer or Agency that prevents or delays filing; or information withheld by the employer that prevents or delays filing.

OFCCP may refer complaints filed on bases covered under E.O. 11246 or Section 503 to the EEOC as described in the most recent Memorandum of Understanding (MOU) entered into by OFCCP, EEOC, and the U.S. Department of Justice and OFCCP's regulations at 41 CFR 60-742.⁸ In many circumstances, OFCCP retains complaints filed under Section 503 (*see* 41 CFR 60-742.5(e)). OFCCP may also refer some Section 503 complaints to EEOC using the procedures found at 41 CFR 60-742.5(d) and 29 CFR 1641.5(e). OFCCP retains all complaints filed under VEVRAA.

Modifications to OFCCP's Complaint Process

Currently, OFCCP has one form that applicants and employees of contractors, authorized representatives, or third parties can use to file a complaint with OFCCP, Form CC-4. Alternatively, these individuals may send OFCCP a signed letter including the name, address, and telephone number of the complainant, the name and address of the contractor and a description of the acts considered to be discriminatory and any other pertinent information.⁹ If the complaint alleges a violation of VEVRAA, it must also include documentation that the individual is a protected veteran or pre-JVA veteran (such as Form DD 214) and the name of any known Federal agency with which the employer has contracted.¹⁰ If the complaint alleges a violation of Section 503, it must also include facts that the individual has a disability, a record or history of a disability, or was regarded by the contractor as having a disability and the name of any known Federal agency with which the employer has contracted.¹¹ OFCCP must notify the employer of the complaint.¹²

⁸ "Memorandum of Understanding among the U.S. Department of Labor, the Equal Employment Opportunity Commission, and the U.S. Department of Justice," Nov. 3, 2020, <https://www.eeoc.gov/memorandum-understanding-among-us-department-labor-equal-employment-opportunity-commission-and-us>, (last accessed Mar. 23, 2023). *See also*, 41 CFR 60-1.24(a).

⁹ *See* 41 CFR 60-1.23.

¹⁰ *See* 41 CFR 60-300.61(b).

¹¹ *See* 41 CFR 60-741.61(c).

¹² Title VII of the Civil Rights Act of 1974 (Title VII) mandates that whenever an employee, or someone on their behalf, files a charge of discrimination against an employer, the employer shall be notified of the charge within ten

In fiscal year (FY) 2022, OFCCP received 2,075 complaints, and assigned only 4.9% of these complaints for investigation. OFCCP referred the majority of the complaints it received to EEOC, in accordance with the MOU, which provides that OFCCP will generally refer to EEOC individual E.O. 11246 complaints and retain complaints alleging class or systemic discrimination. In some instances, OFCCP could not investigate the complaint for a reason such as when the employer was not a covered contractor or when the complaint alleged age discrimination, where EEOC has jurisdiction but OFCCP does not. In addition, OFCCP closes complaints if the complaint is untimely or the complaint does not allege a violation of OFCCP’s authorities. Under this current process, OFCCP must still notify an employer that it received a complaint, even when the agency refers or closes the complaint without an investigation.¹³ This requirement may increase the risk of retaliation or other negative treatment of the individual(s) who filed the complaint. It also unnecessarily consumes OFCCP staff resources, as well as employer resources, for the agency to send a notification letter to all employers named in the complaint even when the agency does not plan to investigate the complaint.

To address these challenges, OFCCP is proposing a new two-step intake process where OFCCP can assess the allegations at the pre-complaint inquiry stage (prior to the filing of a complaint) to help determine whether OFCCP is the right Federal agency to handle the matter and to notify employers only when a complaint is filed.¹⁴

As a first step, an applicant or employee of a contractor, an authorized representative, or a third party (“submitter”) will submit a pre-complaint inquiry providing basic information on their allegation(s) and contact information.¹⁵ When OFCCP receives a pre-complaint inquiry, OFCCP staff will review the inquiry to determine (1) whether the allegations are timely;¹⁶ (2) whether the

(10) calendar days. In accordance with the MOU, OFCCP acts as EEOC’s agent when receiving, investigating, and processing complaints dual filed under Title VII and E.O. 11246. Complaints that fall within the jurisdiction of both Section 503 and the ADA are considered dually filed under Section 503 and the ADA. OFCCP must notify the contractor/respondent that it has received a complaint/charge within ten (10) days of receipt of the complaint (*see* 41 CFR 60-742.5).

¹³ *See* Federal Contract Compliance Manual (FCCM), Chapter 6C02, Providing Contractor the 10-Day Notice Letter, available at <https://www.dol.gov/agencies/ofccp/manual/fccm/6c-complaint-receipt-and-perfection/6c02-providing-contractor-10-day> (last accessed Mar. 23, 2023).

¹⁴ The pre-complaint inquiry does not constitute a complaint under OFCCP’s regulations since it does not include all the required elements for a complaint. *See* 41 CFR 60-1.23, 41 CFR 60-300.61(b), and 41 CFR 60-741.61(c) (describing what information must be included in a complaint). If the matter proceeds to the complaint stage, OFCCP will process the complaint and provide notice to contractors pursuant to our complaint processing regulations at 41 CFR 60-1.24, 41 CFR 60-300.61, and 41 CFR 60-741.61.

¹⁵ Filing a pre-complaint inquiry does not extend the deadline for filing a complaint with OFCCP. OFCCP will provide special instructions to potential complainants who have 60 days or fewer in which to file a timely complaint. OFCCP will provide these instructions on a designated page on OFCCP’s website. Additionally, OFCCP has added a notice to the “Important Deadlines” section of the instructions on the pre-complaint inquiry form to direct those who are within this timeframe to OFCCP’s website for special instructions.

¹⁶ Complaints pursuant to E.O. 11246 must be filed within 180 days from the date of the alleged discrimination, unless the time for filing is extended by the OFCCP Director for good cause shown. Some examples of what might be good cause include, the existence of some extraordinary circumstance that prohibited filing before the deadline such as a significant health issue, military deployment, incarceration, or possibly being unaware of the discrimination. Complaints pursuant to VEVRAA and Section 503 must be filed within 300 days unless the time for filing is extended for good cause shown. *See* 41 CFR 60-1.21, 41 CFR 60-300.61(a), and 41 CFR 60-741.41(b).

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inquiry falls under OFCCP’s jurisdiction;¹⁷ and (3) whether the inquiry should be referred to another agency or closed for lack of jurisdiction.¹⁸ OFCCP staff may also contact the submitter for clarification or to learn more about the allegations.

If OFCCP determines it would likely investigate the matter, OFCCP will provide the submitter with information on filing a complaint (Form CC-4), including information on the anti-retaliation protections under the authorities the agency enforces. If OFCCP determines that it would refer the matter to another agency, it will provide the submitter with information on the referral and send a copy of the pre-complaint inquiry to the other agency for review. If OFCCP determines that the allegations provided in the inquiry are untimely or are not within OFCCP’s authority, OFCCP will contact the submitter to explain why OFCCP would likely not investigate the matter if a complaint were filed. The decision whether to then move forward and file a complaint with OFCCP remains with the submitter. Once OFCCP receives a completed complaint form, OFCCP will assign the matter for investigation, and OFCCP will notify the employer (contractor) of the complaint and investigation.

The two-step intake process will benefit workers because it allows individuals to contact OFCCP about their concerns prior to filing a complaint. This provides an opportunity for OFCCP to explain to the potential complainant whether the allegations are timely and covered by the authorities the agency enforces and to make clear that the employer will be notified of the complaint once it is filed and that complainants have protections from retaliation. An important benefit of this approach is that OFCCP will only notify employers if the individual decides to file a complaint. This helps to protect workers who, despite the prohibition on retaliation, might experience adverse action or other negative treatment in the workplace when the employer learns they filed a complaint with a Federal agency, even when the complaint is later closed or OFCCP does not investigate the matter.

Under this approach, OFCCP will not be required to provide notice to employers where an individual decides not to file a complaint. This will also benefit employers, so that they are not unnecessarily notified of a matter that the agency will not investigate.

Changes to the Complaint Form

In addition to the pre-complaint inquiry form, OFCCP seeks approval for several changes to the existing complaint form, including formatting changes for consistency with the new pre-complaint inquiry form. Additional proposed changes to the complaint form include:

¹⁷ The employer must be a contractor with a Federal contract that meets certain dollar thresholds. See “Jurisdictional Thresholds,” https://www.dol.gov/sites/dolgov/files/ofccp/posters/Infographics/files/JurisdnThresholds-7_ENGESQA508c.pdf (last accessed Mar. 23, 2023).

¹⁸ For example, if the inquiry does not fall within OFCCP’s authorities, OFCCP may close the inquiry or refer the matter to another agency that covers the alleged action. OFCCP also generally refers individual E.O. 11246 complaints to EEOC and retains complaints alleging class or systemic discrimination pursuant to a Memorandum of Understanding with EEOC, Memorandum of Understanding among the U.S. Department of Labor, the Equal Employment Opportunity Commission, and the U.S. Department of Justice,” Nov. 3, 2020, <https://www.eeoc.gov/memorandum-understanding-among-us-department-labor-equal-employment-opportunity-commission-and-us>, (last accessed Mar. 23, 2023). OFCCP refers Section 503 complaints that also fall under the jurisdiction of the Americans with Disabilities Act (ADA) to EEOC in accordance with the complaint processing at 41 CFR 60-742.5.

- Revising the name of the form for clarity.
- Adding a space for OFCCP to input the pre-complaint inquiry number, which OFCCP will assign to each pre-complaint inquiry the agency receives.
- Adding a question on whether the individual has already submitted a pre-complaint inquiry.
- Moving the instructions, public burden statement, and privacy act statement to the body of the form. Currently, these items are on a separate instruction sheet that accompanies the form.
- Revising the instructions for simplicity and clarity and to more explicitly inform the complainant that OFCCP is required by law to notify the employer of the complaint and to include instructions for online filing and contacting OFCCP for assistance.
- Revising the instructions to clarify that an individual can contact OFCCP if they believe a contractor is in violation of other OFCCP contractor obligations.
- Removing the request that the complainant identify their phone number as “Home,” “Work,” or “Cell.”
- Removing the alternate contact field. The complainant will have already provided an alternate contact on the pre-complaint inquiry that OFCCP can use for this purpose.
- Adding “(Optional)” to the question “Do you have a representative?” to clarify that representation by an attorney, another person, or an organization is not required to file a complaint with OFCCP.
- Adding a space for the complainant to provide the name and email address of a human resources point of contact, if known. To make clear that this is not required to file a complaint with OFCCP, it is marked as “(Optional).” OFCCP added this in response to a comment received during the 60-day public comment period, further discussed below.
- Adding a question in the section where the complainant identifies the employer to ask if the location is the same location where the discriminatory acts occurred. This change will assist OFCCP in assigning the complaint to the correct office for intake and investigation.¹⁹
- Adding an inquiry about the date(s) of the potential discrimination. The current form requests this information as part of general narrative about the discriminatory acts and in the section where the complainant must provide the name of the employer. Adding a separate inquiry will better ensure the complainant is providing this information and will enable OFCCP to better assess the timeliness of the allegations.
- Revising the form questions so that the complainant and OFCCP can better identify allegations of retaliation. For example, OFCCP has added specific examples of protected activities that the complainant can check off on the form. This will assist in clarifying what constitutes retaliation under the authorities enforced by OFCCP. Although the complaint narrative requests this information, it is often not provided or not clearly articulated by the complainant.
- Removing the sub-categories under the race and national origin options in response to the question “On what basis do you believe the employer discriminated against you?”²⁰ If

¹⁹ OFCCP assigns complaints for investigation to OFCCP regional offices for intake and to regional or field offices for investigation based on the location where the alleged discrimination occurred.

²⁰ The current CC-4 form allows the complainant to identify from the following race categories: American Indian or Alaska Native and then indicate tribal affiliation (write-in), Asian, Black or African American, Native Hawaiian or Other Pacific Islander, or White. The current CC-4 form allows the complainant to identify from the following

OFCCP investigates the complaint, OFCCP will obtain the specific information as part of the investigation. Many complainants may also include the information in their narrative. Additionally, while the current race categories on the form align with the current OFCCP regulations and the 1997 OMB Federal Standard, they do not align with the current EEO-1 categories.

- Adding language to the “Have you filed these allegations of employment discrimination with another federal or local agency?” question to provide examples of agencies (“e.g., Equal Employment Opportunity Commission or state or local Fair Employment or Human Rights Commission”), to add an “I’m not sure” option, and to request the e-mail address of the agency contact and the case number (if known). Providing examples will assist the complainant in selecting the correct response. The addition of the “I’m not sure” option will permit complainants to select this option in situations where they may have inquired about a complaint with another agency, but they are unsure if the complaint was formally filed. The e-mail address and case number will help OFCCP contact the agency and determine the status of the complaint.
- Removing the question “Do you think the discrimination includes or affects others?” This question is now included on the pre-complaint inquiry form, and the narrative section of the complaint form requests information on what harm the complainant or others suffered because of the employer’s actions and who was in the same or similar situation and how they were treated. Therefore, this is no longer necessary on the complaint form. Removing this field reduces duplication between the two forms.
- Revising some of the questions in the narrative section to enhance clarity and the likelihood the complainant will provide the information OFCCP needs for complaint intake and investigation, including:
 - Revising the question about what harm the complainant or others suffered as a result of the employer’s actions to remove the word “alleged.” Words like “alleged” may imply 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. The use of this word may have a chilling effect on complainants and could ultimately deter victims from filing legitimate complaints.
 - Revising the question about Federal contracts to remove the phrase “that you worked for.” This change is to clarify that employees who are still working for the employer may file a complaint.
 - Removing references to “your” employer, as complaints may also be brought by applicants or third parties.
 - Clarifying that the complainant should provide the dates of discriminatory acts.
- Revising the formatting of the form to improve accessibility for individuals with disabilities.

2. Use of Collected Materials

Applicants and employees of contractors, authorized representatives, or third parties may file complaints of employment discrimination with OFCCP pursuant to E.O. 11246, Section 503, and VEVRAA. As a first step, these individuals will submit a pre-complaint inquiry form providing

national origin categories: Hispanic or Latino or Other.

basic information on their allegation(s) and contact information. OFCCP staff will use the pre-complaint inquiry form to assess whether OFCCP is likely to investigate the allegations (*e.g.*, assessing whether the allegations are timely and under OFCCP’s jurisdiction and determining whether the inquiry should be closed or referred to another agency). If OFCCP determines it is likely to investigate the matter, OFCCP will contact the individual to provide information on filing a complaint using the complaint form. The complaint form helps guide complainants in providing important information about their discrimination allegations. OFCCP will use the information in the complaint forms to initiate complaint investigations against contractors.

3. Use of Information Technology

According to the Government Paperwork Elimination Act (GPEA, P.L. 105-277, 1998), by October 2003, Government agencies must generally provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable. OFCCP fulfills its GPEA requirements by permitting individuals to utilize electronic submission for pre-complaint inquiries and complaints. OFCCP encourages electronic submission and estimates that currently approximately 90 percent of complaints are submitted electronically by facsimile or email while the other 10 percent are submitted by mail. OFCCP anticipates the proportion of pre-complaint inquiries submitted electronically will remain unchanged.

As part of OFCCP’s ongoing commitment to complying with Section 508 of the Rehabilitation Act, a remediated version of the pre-complaint inquiry form and complaint form will be available on OFCCP’s website. The forms will be offered in hard copy for those who need to submit via mail, but electronic submission is the preferred method of providing this information.

4. Description of Efforts to Identify Duplication

Some fields, such as the name and contact information of the person completing the form and the name and contact information of the employer, appear on both the pre-complaint inquiry form and the complaint form. Requesting this information again on the complaint form is necessary because OFCCP’s regulations require this information to be included on the formal complaint that is filed with the agency and shared with the contractor.²¹ Further, requesting this information again at the complaint stage is necessary to ensure that the information has not changed since the submission of the pre-complaint inquiry.

5. Impact on Small Businesses

OFCCP complaints are not filed by business entities but by non-business entities such as applicants and employees of contractors, authorized representatives, or third parties. Therefore,

²¹ See 41 CFR 60-1.23, 41 CFR 60-300.61(b), and 41 CFR 60-741.61(c).

this information collection does not have a significant economic impact on a substantial number of small entities.

6. Consequences of a Less Frequent Collection

There is no schedule for the collection of this information. Nonetheless, if OFCCP did not collect this information, there could be a detrimental impact on its ability to carry out its mission and enforce the non-discrimination protections and affirmative action obligations in E.O. 11246, Section 503, and VEVRAA.

7. Special Circumstances

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

8. Consultation Outside the Agency

On January 18, 2023, OFCCP published a 60-day notice in the Federal Register (88 FR 2971) inviting the public to submit comments on this proposed information collection. The agency received three comments during the 60-day period. OFCCP received one comment from an employer association and two comments from individuals. In response to the comments, OFCCP made two minor changes to the pre-complaint inquiry form and one minor change to the revised complaint form that were proposed with the 60-day notice.

The employer association supported OFCCP's proposal to create a two-step complaint process with a new pre-complaint intake phase followed by the filing of a formal complaint. The employer association recommended adding a statement to the instructions on the pre-complaint inquiry form to specifically state that filing the pre-complaint inquiry form does not toll the requisite time period for an individual to file a formal complaint with the agency and provided suggested language. OFCCP agrees that it is important to make clear that submitting a pre-complaint inquiry to OFCCP does not pause or otherwise change the submitter's deadline to file a formal complaint. The proposed pre-complaint inquiry form communicates this in multiple ways, including an "Important Deadlines" section of the instructions. To further clarify this, OFCCP has added a sentence to the proposed pre-complaint inquiry form stating that "submitting this inquiry form does not extend the time period for filing a complaint." OFCCP will also emphasize the importance of complaint timelines in its communications to potential complainants, through such means as Frequently Asked Questions on the OFCCP website. The employer association also requested that the agency issue new guidance (*i.e.*, a directive or updating the Federal Contract Compliance Manual (FCCM)) for OFCCP staff to prevent improper inquiries by the agency during the pre-complaint intake process, such as conducting a "pre-investigation" of any potential claims against an employer before a formal complaint has been filed. OFCCP notes that the agency will be providing detailed guidance and training to all staff on the new pre-complaint inquiry form and two-step complaint intake process. OFCCP will continue to update the FCCM, as applicable.

One of the individual commenters requested that OFCCP add a space on the complaint form for the complainant to provide an email address for a human resources point of contact, if known. OFCCP considered this suggestion and has added spaces to the complaint form for the name and email address for a human resources point of contact and marked the fields as optional. If a complainant has this information, it could assist OFCCP in complaint processing. However, this information is not required to file a complaint with OFCCP.

Another individual commenter opposed the creation and implementation of a pre-complaint inquiry form. The commenter expressed concern that the pre-complaint inquiry creates additional burden for potential complainants as they must provide similar information at the pre-complaint inquiry stage and again if they choose to file a complaint. In response, OFCCP notes that requesting similar information on the pre-complaint inquiry form and the complaint form is necessary because OFCCP’s regulations require certain information to be included in the formal complaint that is filed with the agency and shared with the contractor.²² The pre-complaint inquiry alone does not initiate the formal complaint process. Further, requesting this information at the complaint stage is necessary to ensure that the information has not changed since the pre-complaint inquiry was submitted. Also, as noted above, OFCCP only assigned 4.9% of the complaints it received in FY 2022 for investigation (due to lack of jurisdiction, referrals to other agencies, *etc.*). Accordingly, OFCCP anticipates that only some pre-complaint inquiries will proceed to a formal complaint.

The commenter also asserted that the proposed process puts potential complainants at risk for missing complaint filing deadlines. OFCCP agrees that it is important to notify complainants of their filing deadlines. The proposed form already includes certain language highlighting the complaint filing deadlines. To further address this concern, OFCCP will provide special instructions to potential complainants who have 60 days or fewer in which to file a timely complaint. These instructions will direct them on how to expedite the pre-complaint inquiry process and file a formal complaint. OFCCP will provide these instructions on a designated page on OFCCP’s website. Additionally, OFCCP has added a notice to the “Important Deadlines” section of the instructions on the pre-complaint inquiry form to direct those who are within this timeframe to OFCCP’s website for special instructions.

This commenter also asserted that most complainants notify the employer before they file and therefore, OFCCP’s claim that the two-step complaint process helps protect a potential complainant from retaliation is incorrect. In response, OFCCP notes that there is no requirement for a complainant to notify their employer before speaking with OFCCP or before filing a complaint with OFCCP. While some complainants may notify the employer, this is not the case for all workers. Further, all applicants and employees – regardless of whether they notified the employer of their intent to file a complaint or not – are protected from retaliation and can benefit from learning more about these protections during the complaint filing process.

The commenter also stated that OFCCP’s justification for proposing such a process “can’t be based solely on the notion that another agency [EEOC] uses a similar process.” In response, OFCCP notes that it is proposing this new process to improve the complaint intake process for potential complainants and OFCCP, as discussed in detail earlier in this statement. Further,

²² See 41 CFR 60-1.23, 41 CFR 60-300.61(b), and 41 CFR 60-741.61(c).

OFCCP does believe that having a process that aligns more closely with EEOC is beneficial, as both agencies are parties to an MOU on coordinating the receipt, investigation, and processing of dual filed complaints.²³

The commenter also disagreed with OFCCP’s proposal to notify employers only after receiving a complaint. As discussed above, OFCCP would first review the pre-complaint inquiry to determine (1) whether the allegations are timely; (2) whether the inquiry falls under OFCCP’s jurisdiction; and (3) whether the inquiry should be referred to another agency or closed for lack of jurisdiction. If OFCCP determines it would likely investigate the matter, OFCCP will provide the submitter with information on filing a complaint (Form CC-4), including information on the anti-retaliation protections under the authorities the agency enforces. The commenter disagreed with this approach, stating that “disputes between an employee and employer have been resolved, even when a specific entity may not have direct jurisdictional oversight of the employer.”

In response, OFCCP notes that sending notice that a complaint has been filed to an employer over which OFCCP does not have jurisdiction unnecessarily consumes both agency and employer resources. It also causes confusion for the potential complainant and employer about whether OFCCP is moving forward with the complaint, and unnecessarily subjects workers to potential retaliation. With the proposed two-step process, OFCCP will be able to direct the potential complainant to the appropriate agency with which to file their complaint. Further, as noted above, the decision to file a complaint with OFCCP lies with the submitter of the pre-complaint inquiry. Thus, if the potential complainant wanted their employer to be notified, they can still choose to move forward with filing a complaint. For these reasons, OFCCP has decided to move forward with the proposal.

9. Gifts or Payments

OFCCP does not provide gifts or payments to respondents.

10. Confidentiality of Information

Some of the information contractors submit to OFCCP during a complaint investigation may be considered business confidential information. OFCCP will treat records provided by the contractor as confidential to the maximum extent the information is exempt from public disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552. OFCCP will evaluate all information requests pursuant to the public inspection and disclosure provisions of FOIA and DOL’s implementing regulations at 29 CFR part 70.

OFCCP safeguards and protects personally identifiable information it receives to the maximum extent allowable under the law in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a). Both the pre-complaint inquiry form and the complaint form contain a Privacy Act disclosure statement to inform the person or organization providing the information of OFCCP’s

²³ In accordance with the MOU, OFCCP acts as EEOC’s agent when receiving, investigating, and processing complaints dual filed under Title VII and E.O. 11246. Complaints that fall within the jurisdiction of both Section 503 and the ADA are considered dually filed under Section 503 and the ADA.

authority to collect the information, the purpose of the information collection and how OFCCP will use it, to whom OFCCP may disclose the information outside of the agency and for what purpose, and that providing the information is voluntary and the possible consequences of not providing the information.

11. Questions of a Sensitive Nature

Although the pre-complaint inquiry form and the complaint form do not specifically request sensitive or protected information, the person completing the form may disclose such information when describing the circumstances that led to submitting the inquiry or to filing the complaint. As noted above, a Privacy Act disclosure statement is included on both forms.

12. Information Collection Hour Burden

OFCCP received 2,075 complaints in FY 2022, 1,531 complaints in FY 2021, and 1,248 complaints in FY 2020. This results in an average of 1,618 complaints over the last three fiscal years. OFCCP estimates that it takes applicants and employees of contractors, authorized representatives, or third parties approximately 15 minutes (.25 hour) to complete and submit the pre-complaint inquiry form. OFCCP estimates a total burden of 405 hours to complete and submit the pre-complaint inquiry form (1,618 x .25 hour).

OFCCP assigned 102 complaints for investigation in FY 2022, 114 complaints for investigation in FY 2021, and 83 complaints for investigation in FY 2020. This results in an average of 100 complaints assigned for investigation over the last three fiscal years. OFCCP estimates that it takes approximately 1 hour for someone to complete and submit the complaint form or to send a signed letter. OFCCP estimates a total burden of 100 hours to complete and submit the complaint form or send a signed letter (100 pre-complaint inquiries assigned for investigation x 1 hour).

OFCCP estimates a total burden of 505 hours for the complaint process (405 hours for pre-complaint inquiries + 100 hours for complaints). The total monetized burden cost is \$21,452 (505 hours x \$42.48).²⁴ OFCCP updated the monetized burden estimate provided in the 60-day notice in the *Federal Register* to use the most recent total compensation data available from the United States Department of Labor, Bureau of Labor Statistics.

13. Information Collection Cost Burden

OFCCP estimates that approximately 90 percent of pre-complaint inquiries and complaints are submitted electronically while the other 10 percent are submitted by mail. OFCCP assesses a cost for the 10 percent of pre-complaint inquiries and complaints submitted by mail. OFCCP estimates the average cost of copying at \$.16 per page²⁵ and estimates the average cost of mailing

²⁴ OFCCP uses the total compensation (wages and salaries + total benefits) for civilian workers as reported in *Employer Costs for Employee Compensation*, December 2022, United States Department of Labor, Bureau of Labor Statistics, Table 1, https://www.bls.gov/news.release/archives/ecec_03172023.pdf (last accessed Mar. 23, 2023).

²⁵ Based on the average copying cost at major paper supply stores as of Mar. 23, 2023.

a USPS Priority Mail, flat rate envelope at \$9.65.²⁶ OFCCP updated the estimate provided in the 60-day notice in the *Federal Register* based on the current average copying cost at major paper supply stores and the current USPS rates.

The cost per pre-complaint inquiry is estimated at \$1013 (\$.48 for copying three pages + \$9.65 for mailing). OFCCP estimates the cost of mailing 162 pre-complaint inquiries at \$1,641 (162 pre-complaint inquiries x \$10.13).

The cost per complaint is estimated at \$10.29 (\$.64 for copying four pages + \$9.65 for mailing). OFCCP estimates the cost of mailing 10 complaints at \$103 (10 complaints x \$10.29).

The total cost for the 10 percent of pre-complaint inquiries and complaints submitted by mail is \$1,744 (\$1,641 for pre-complaint inquiries + \$103 for complaints).

14. Cost to the Federal Government

OFCCP estimates the burden for processing the pre-complaint inquiry form at 1.25 hours per submission. This estimate includes: 1 hour for administrative staff to determine whether the inquiry is timely, meets jurisdiction, and whether it should be referred or closed and .25 hours for a manager to sign off on the disposition.

Grade/ Step	Wage Rate ²⁷	Time (hours)	Total (wage rate x hours)
6/4	\$27.56	1	\$27.56
14/4	\$76.36	.25	\$19.09
Cumulative labor cost per pre-complaint inquiry			\$46.65

OFCCP estimates the burden for processing the complaints received at 2 hours per submission. This estimate includes: 1 hour for administrative staff to interview the individual to confirm allegations; .75 hours for an employee to prepare correspondence about accepting the complaint and assigning it to a field office, and .25 hours for a manager to review and sign the documents.

Grade/ Step	Wage Rate ²⁸	Time (hours)	Total (wage rate x hours)
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²⁶ Based on the price of Priority Mail flat rate envelope, <https://www.usps.com/ship/mail-shipping-services.htm> (last accessed Mar. 23, 2023).

²⁷ Average hourly rates are from the Office of Personnel Management (OPM) 2023 General Schedule Salary Table and including 45% for fringe benefits, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/GS_h.pdf (last accessed Mar. 23, 2023).

²⁸ *Id.*

6/4	\$27.56	1	\$27.56
13/4	\$64.61	.75	\$48.46
14/4	\$76.36	.25	\$19.09
Cumulative labor cost per complaint			\$95.11

The cost to OFCCP for processing pre-complaint inquiries is estimated at \$75,480 (1,618 pre-complaint inquiries x \$46.65). The cost to OFCCP for processing complaints is \$9,511 (100 complaints x \$95.11). The total cost to OFCCP is \$84,991 (\$75,480 + \$9,511). OFCCP updated the estimate provided in the 60-day notice in the *Federal Register* to use 2023 wage rates.

15. Program Changes or Burden Adjustments

OFCCP is requesting OMB approval of 505 burden hours which is a decrease in burden from the previous approval of 897 hours. OFCCP is requesting OMB approval of \$1,744 in costs which is an increase in costs from the previous approval of \$169. Changes in burden and costs from OMB's last review, which concluded in May 2020, are reported in the tables below.

Activity	Currently Approved Hours	Requested Change	Explanation
Pre-Complaint Inquiry Form	N/A	Increase of 405 hours	OFCCP is introducing the pre-complaint inquiry form as part of a two-step process to decrease the total burden for this collection.
Complaint Form	897	Decrease of 797 hours	The decrease is the result of the small percentage of complaints (less than 10%) that are assigned for investigation. This is the number OFCCP uses to determine who would file a formal complaint using the two-step process.
Total Reporting Burden	897	Decrease of 392 hours	The decrease in total reporting burden is a result of implementing the two-step process. As described in Paragraph 12, completing the pre-complaint inquiry is less burdensome than completing the formal complaint.

Summary of Costs	Currently Approved Cost Dollars	Requested Change	Explanation
Total Estimated Annual Costs	\$169	Increase of \$1,575	The increase in the cost for this collection is the result of an increase in the average number of complaints received in the last three years and an increase in the cost for mailing. In this ICR, OFCCP estimates the cost for mailing using a USPS Priority Mail, flat rate envelope instead of a standard letter with stamp. OFCCP also emphasizes that the 10 percent estimate for pre-complaint inquiries and complaints submitted by mail is likely an overestimation.

16. Publication of Data for Statistical Use

OFCCP will not publish the data collected on the pre-complaint inquiry form or complaint form.

17. Approval Not to Display the Expiration Date

The agency will display the expiration date of this collection.

18. Exception to the Certification Statement

OFCCP is not seeking exceptions to the certification statement in this information request.

B. STATISTICAL METHODS

This information collection does not use statistical methods.