

Supporting Statement

A. Justification

1. The Equal Employment Opportunity Commission (EEOC) has a two-stage complaint process for individuals seeking to file a complaint of discrimination. The EEOC requires respondents to file an informal complaint in order for a Federal agency to address an Equal Employment Opportunity (EEO) allegation of discrimination. During the informal stage, the respondent meets with an EEO Counselor, who explains the EEO process, such as the respondent's rights and responsibilities, EEO procedures, basis of complaints, filing requirements, filing deadlines, and Alternative Dispute Resolution options. When filing an informal EEO complaint with a federal agency, the respondent must provide information regarding the incident(s), which includes the name of the respondent, witnesses, locations, dates and times of the incidents. Additionally, the informal complaint must contain a precise statement identifying the actions or practices that form the basis of the discrimination. The Office of Workplace Diversity (OWD) of the Federal Communications Commission (FCC or Commission) collects this information on FCC Form-5621.

Upon completion of the counselling requirement, the EEO Counselor provides the respondent with a Notice of Right to File an EEO Complaint. At this time, the respondent has 15 days to file a formal EEO complaint in order for a Federal agency to address an EEO allegation of discrimination. When filing a formal EEO complaint with a federal agency, the respondent must provide information regarding the incident(s), which includes the name of the respondent, witnesses, locations, dates and times of the incidents. Additionally, the complainant must contain a precise statement identifying the actions or practices that form the basis of the discrimination. The Office of Workplace Diversity (OWD) of the Federal Communications Commission (FCC or Commission) collects this information on FCC Form-5622.

There is some duplication of the information requested when a respondent files both an informal EEO complaint using FCC Form-5621 and a formal EEO complaint using FCC Form-5622. In order to proceed with the formal complaint using Form-5622, we must compare both forms to determine viable claims. To both aid us in our comparison and provide better clarity for the respondent, we have modified and streamlined FCC Form-5622 to reduce duplication.

On November 30, 2022, OMB approved without change the Commission's Justification for Non-Substantive Changes to FCC Informal Complaint of Discrimination Form OMB Control No. 3060-1237 (FCC Form-5621). Specifically, the FCC discovered that

distinguishing sexual and nonsexual harassment on EEO Form 5621 would result in improved data collection and more accurate reporting in distinguishing between harassment cases that are alleged to be non-sexual (i.e., hostile work environment based on protected bases) and the harassment cases that are alleged to be that of a sexual nature (i.e., unwelcome sexual advances, requests for sexual favors). To remedy this issue, the FCC updated the harassment discrimination selection on the informal complaint form to include sexual and non-sexual harassment. As noted above, OMB approved this change on November, 30, 2022 (ICR Reference Number: 202211-3060-023).

The Commission is requesting the Office of Management and Budget (OMB) approval of an extension to this existing collection in order to obtain the full three-year clearance.

Records may include information about respondents, e.g., personally identifiable information or PII, and the use(s) and disclosure of this information is governed by the requirements of the EEOC's government-wide system of records notice or "SORN," EEOC/GOVT-1, Equal Employment Opportunity in the Federal Government Complaint and Appeal Records. There are no additional impacts under the Privacy Act.

Statutory authority for this information collection is contained in 29 U.S.C. §§ 206(d), 633a, 791, and 794a; 42 U.S.C. §§ 2000e-16 and 2000ff-6(f).

2. This information will be used by the OWD to seek resolution of, investigate, and issue Final Agency Decisions regarding allegations of discrimination and/or retribution or reprisals towards FCC employees, former employees or applicants (respondents) for employment at the FCC. Additionally, the Office of General Counsel will use the information to defend allegations of discrimination in hearings before the EEOC and court cases in federal court. The information may also be used by EEOC employees, court personnel, and law enforcement and investigative personnel. Finally, the respondent may use this information in preparation for hearings before the EEOC and cases in the federal courts.
3. Respondents will have the ability to file and gain access to this information both electronically and through paper files. The information will be maintained in an online complaint filing and reporting system. Respondents will have the option to submit their information either electronically or manually. By using the electronic submission portal, respondents will have immediate confirmation of the date their materials are received and will have 24-hour, 7-day access to their information. Additionally, respondents will not have to submit multiple copies of documents when filing electronically. Finally, maintenance of electronic forms permits the OWD to upload the documents to EEOC staff for administrative hearings and receive immediate confirmation of receipt at the EEOC as opposed to using regular mail.

Electronic filing also enables the EEO staff and EEO Counselors to contact the respondent efficiently with updates and forms. However, in recognition that some respondents cannot file electronically, the OWD will retain the ability for respondents to file complaints manually. This information will be uploaded into the Online EEO Complaint Filing and Reporting System by OWD personnel.

4. There is some duplication of the information in the FCC Form-5621 (Informal Complaint Form) and the FCC Form-5622 (Formal Complaint Form). EEOC Rules require the respondent who has a dispute that may fall under one of the anti-discrimination laws to participate in pre-complaint counselling before filing a complaint. See 29 C.F.R. § 1614.105; U.S. Equal Employment Opportunity Commission, Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110), August 5, 2015. The pre-complaint counselling requires the EEO Counselor to gather information in order to seek a resolution of the dispute as well as provide required information to the respondent. See EEO-MD-110, Chapter 2, Sections III and IV. The information that the respondent provides regarding the dispute as well as the information that the EEO Counselor is required to provide to the respondent during the pre-counselling stage is reflected in FCC Form-5621.

FCC Form-5621 allows the respondent to file an informal complaint in accordance with 29 C.F.R. § 1614.105. Because some of this information may be duplicated at a later time on the FCC Form-5622, if the respondent files electronically, the information will automatically transfer from the FCC Form-5621 to the FCC Form-5622. However, the respondent will be able to update this information because some of the information may have changed since the pre-complaint form was submitted; or there may be additional information that should be included in the formal complaint that was not included in the pre-complaint form.

For respondents who do not file electronically, some of the information regarding the dispute must be duplicated on both forms in order to differentiate the informal complaint documentation from the formal complaint, to review the formal complaint and determine if it can be accepted or dismissed in accordance with 29 C.F.R. §§ 1614.106 - 1614.107. For example, in accordance with 29 C.F.R. § 1614.107(a)(2), the FCC must dismiss a formal complaint if the claim(s) in the formal complaint was/were not raised in the pre-complaint stage. In order to determine if the claim(s) was/were raised at the earlier stage, we must compare the pre-complaint form with the formal complaint form. Thus, some information will be duplicative. For clarity, we have streamlined Form 5622 to reduce duplication to aid us in our comparison.

5. The collection of this information will not have significant economic impacts on small businesses, organizations or other small entities. In order to file a complaint, respondents must provide certain information to allow the FCC to investigate and resolve the dispute/complaint. The use of the Online EEO Complaint Filing and

Reporting system will provide the respondents with the option to use either an electronic or paper filing method.

6. The information must be collected in order to comply with the EEOC's Rules for resolving disputes/complaints involving the anti-discrimination laws. However, the respondent is free to elect not to file an informal or a formal complaint.
7. There are no special circumstances that would cause information to be collected in a manner inconsistent with OMB's guidelines.
8. The FCC solicited public comments on the Paperwork Reduction Action information collection requirements on March 30, 2023 at 88 FR 19141. No comments were received from the public.
9. There will be no payments or gifts to respondents in connection with this information collection.
10. Confidentiality of information will be provided in accordance with the Privacy Act. As noted in Question 1 above, the PII in this information collection is covered by the EEOC's government-wide system of records notice or "SORN," EEOC/GOVT-1, Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.
11. The FCC Form-5621 and FCC Form-5622 require the respondent to provide information regarding the dispute and how the dispute relates to an anti-discrimination law. Additionally, FCC Form-5621 requires the EEO Counselor to annotate the rights and responsibilities that the EEO Counselor advised the respondent. For example, the EEO Counselor advises the respondent on the role of the counselor, different types of complaints, the right to file a complaint, the basis for filing a complaint, avenues of redress, rights and responsibilities, time requirements, the ADR process, informal complaint process, etc. This information ensures the respondent understands the informal and formal complaint process. During the EEO pre-complaint stage, the EEO Counselor advises the respondent that the submission of a complaint with the supporting information is voluntary.

As stated above, the FCC Form-5622 requires the respondent to provide information regarding the dispute and how the dispute relates to an anti-discrimination law. This information will be used to determine whether the respondent has stated a claim in accordance with 29 C.F.R. § 1614.103 and 29 C.F.R. § 1614.106. Although the provision of this information is voluntary, if the respondent is claiming discrimination under one of the anti-discrimination laws, the respondent must provide sufficient information to state a claim.

12. The average number of informal complaints filed for Fiscal Years 2020, 2021 and 2022 was 9. Typically, respondents complete the forms themselves. The total annual burden hours for the 9 complaints is 29 hours. The Commission estimates that 9 respondents will file an informal complaint annually and that the *average* burden per response is 3.24 hours. The Commission estimates that 70% of the respondents (6) will complete and file the form themselves without assistance. The Commission estimates the average per response for respondents to complete the form without assistance is approximately 2.5 hours.

Informal Complaint Form							
Fiscal Year	Annual Filings	Pro Se Respondents	Representative	Frequency of Response	Response Time	Total Responses	Total Response Time
2020	17	12		1	2.5 hours	12	30
			5		5 hours	5	25
2021	6	4		1	2.5 hours	4	10
			2		5 hours	2	10
2022	4	3		1	2.5 hours	3	7.5
			1		5 hours	1	5
Total	27					27	87.5
Average	9						3.24
Annual							29

Total Respondents: 9 informal complaints

Total Annual Responses: 9 informal complaints

Total Annual Burden Hours: 9 informal complaints x 3.24 hours = 29 hours

The average number of formal complaints filed for Fiscal Years 2020, 2021 and 2022 was 7. Typically, respondents complete the forms themselves. The total annual burden hours for the 7 complaints is 24 hours. The Commission estimates that 7 respondents will file a formal complaint annually and that the *average* burden per response is 3.45 hours. The Commission estimates that 62% of the respondents (4) will complete and file the form themselves without assistance. The Commission estimates the average per response for respondents to complete the form without assistance is approximately 2.5 hours.

Formal Complaint Form							
Fiscal Year	Annual Filings	Pro Se Respondents	Representative	Frequency of Response	Response Time	Total Responses	Total Response Time
2020	14	9		1	2.5 hours	9	22.5
			5		5 hours	5	25
2021	4	2		1	2.5 hours	2	5
			2		5 hours	2	10
2022	3	2		1	2.5 hours	2	5
			1		5 hours	1	5
Total	21					21	72.5
Average	7						3.45
Annual							24

Total Respondents: 7 formal complaints

Total Annual Responses: 7 formal complaints

Total Annual Burden Hours: 7 formal complaints x 3.45 hours = 24 (rounded up)

Cumulative Total for FCC Form-5621 (Informal Complaints) and FCC Form-5622 (Formal Complaints):

Total Respondents: 9 informal complaints + 7 formal complaints = 16 complaints

Total Annual Responses: 9 informal complaints + 7 formal complaints = 16 complaints

Total Annual Burden Hours: 29 hours + 24 hours = 53 hours

13. The remaining 29.5% (3) of respondents will hire a law firm to complete and file the informal complaint form. The typical fee is \$400 an hour for representation, plus the cost of supplies (envelopes, postage, cover letter, etc.). For those respondents hiring a law firm, we estimate a burden of approximately 5 hours for the attorney to discuss the dispute with the respondent, prepare the form, coordinate the response with the respondent and file the form with the Commission. Thus, the Commission estimates the cost for the preparation and submission of the form is \$2,000 per response and \$6,000 annually for all responses.

Total Cost to Respondent for FCC Form-5621 (Informal Complaint):

- (a) Total annualized capital/startup costs: None.
- (b) Total annual costs (O&M): \$6,000
- (c) Total annualized cost requested: \$6 ,000

Cost to the Respondent:

3 respondents x 5 hours x \$400 attorney/hour = \$6,000

Total Cost to Respondent: \$6,000

The remaining 38% (3) of respondents will hire a law firm to complete and file the formal complaint form. The typical fee is \$400 an hour for representation, plus the cost of supplies (envelopes, postage, cover letter, etc.). For those respondents hiring a law firm, we estimate a burden of approximately 5 hours for the attorney to discuss the dispute with the respondent, prepare the form, coordinate the response with the respondent and file the form with the Commission. Thus, the Commission estimates the cost for the preparation and submission of the form is \$2,000 per response and \$6,000 annually for all responses.

Total Cost to Respondent for FCC Form-5622 (Formal Complaint):

- (b) Total annualized capital/startup costs: None.
- (b) Total annual costs (O&M): \$6,000
- (c) Total annualized cost requested: \$6,000

Cost to the Respondent:

3 respondents x 5 hours x \$400 attorney/hour = \$6,000

Total Respondent Cost: \$6,000

Total Cost to Respondent for FCC Form-5621 and FCC Form-5622: \$6,000 + \$6,000
= \$12,000

14. Cost to the Federal Government

Upon receipt of the form, the Commission uses the completed form at varying stages to prepare memoranda, orders, provide copies to the EEOC and district court, to compile data for reports, etc. Accordingly, the Commission staff use the forms throughout the year to perform their duties.

FCC Form-5621 estimated to be filed: 9

9 forms x 25 hours @ \$71.88 per hour (GS-14 Step 5) for processing By an EEO Specialist	\$16,173.00
9 forms x 35 hours @ \$84.55 per hour (GS-15 Step 5) for review By an Attorney Advisor	\$26,633.25
9 forms x 10 hours @ \$35.27 per hour (GS- 9 Step 5) for copying & distribution By a Staff Assistant	\$3,174.30
9 forms x 10 hours @ \$60.83 per hour (GS-13 Step 5) for counseling By an EEO Counselor	\$5,474.70
Total	\$ 51,455.25

FCC Form-5622 estimated to be filed: 7

7 forms x 100 hours @ \$71.88 per hour (GS-14 Step 5) for processing By an EEO Specialist	\$50,316.00
7 forms x 100 hours @ \$84.55 per hour (GS-15 Step 5) for review By an Attorney Advisor	\$59,185.00
7 forms x 25 hours @ \$35.27 per hour (GS-9 Step 5) for copying, distribution By a Staff Assistant	\$6,172.25

7 forms used in investigations

@\$3,542.75 per investigation

\$24,799.25

Total

\$ 140,472.5

**Total Cost to the Federal Government: \$51,455.25 + \$140,472.50 =
\$191,927.75**

15. The Commission is reporting adjustments to this information collection. The total number of respondents and total annual responses decreased by 7, the total annual burden hours decreased by 14 hours and the total annual costs increased by \$4,000. These calculations are based on the most currently available data to the Commission.

16. The Commission will publish data regarding the number of complaints filed, and demographic information in the quarterly Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR) Reports on the FCC's internet and intranet sites. Additionally, the Commission will publish data regarding the number of complaints filed and demographic information in the annual No FEAR Act Reports to the Department of Justice, Office of Personnel Management, the EEOC and Congressional Offices. The Commission will also publish data regarding the number of complaints filed, demographic information, and discrimination basis information in the annual Form 462 Report submitted to the EEOC. However, no personally identifiable information is included in the data that is submitted in connection with any of these reports.

17. OMB control numbers and expiration dates for the Commission's information collection requirements assigned by OMB pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13 can be found at <https://www.reginfo.gov/public/do/PRAMain> See 47 CFR § 0.408.

18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.