

SUPPORTING STATEMENT
OMB No: 1610-0001

DHS Individual Complaint of Employment Discrimination, DHS Form 3090-1

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

It is the policy of the Government of the United States to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age, disability, protected genetic information, sexual orientation, or status as a parent, and to promote the full realization of equal employment opportunity (EEO) through a continuing affirmative program in each agency.

Persons who claim to have been subjected to these types of discrimination, or to retaliation for opposing these types of discrimination or for participating in any stage of administrative or judicial proceedings relating to them, can seek a remedy under Title VII of the Civil Rights Act (Title VII) (42 U.S.C. 2000e et seq.) (race, color, religion, sex, national origin), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 et seq.) (age), the Equal Pay Act (29 U.S.C. 206(d)) (sex), the Rehabilitation Act (29 U.S.C. 791 et seq.) (disability), the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff et seq.) (genetic information), and Executive Order 11478 (as amended by Executive Orders 13087 and 13152) (sexual orientation or status as a parent).

The Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL) adjudicates discrimination complaints filed by current and former DHS employees, as well as applicants for employment to DHS. The complaint adjudication process for statutory rights is outlined in the Equal Employment Opportunity Commission (EEOC) regulations found at Title 29, Code of Federal Regulations Part 1614 and EEO Management Directive 110. For complaints regarding sexual orientation or status as a parent, DHS follows the same procedures as for statutory rights, to the extent permitted by law.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The recordkeeping provisions are designed to ensure that a current employee, former employee, or applicant for employment claiming to be aggrieved or that person's attorney provide a signed statement that is sufficiently precise to identify the aggrieved individual and the agency and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the

complainant or the representative can be contacted. The complaint form is used for original allegations of discrimination but also for amendments to underlying complaints of discrimination. The form also determines whether the person is willing to participate in mediation or other available types of alternative dispute resolution (ADR) to resolve their complaint; Congress has enacted legislation to encourage the use of ADR in the federal sector and the form ensures that such an option is considered at this preliminary stage of the EEO complaint process.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

A complainant may access the complaint form on the agency web site and may submit a completed complaint form electronically to the relevant Component's EEO Office. The complaint form can then be directly uploaded into the DHS EEO Enterprise Complaints Tracking System, also known as "iComplaints."

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in 2 above.

For each new allegation of discrimination, a complainant must file a complaint with the agency that allegedly discriminated against the complainant. 29 C.F.R. 1614.106(a). Accurate and timely processing in accordance with EEOC regulations require DHS to obtain current employment and contact information directly from the complainant.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe the methods used to reduce the burden.

The burden of compliance with the information collection requirement does not impact small businesses or other small entities.

6. Describe the consequence to Federal program or policy activities if the collection is or is not conducted less frequently, and any technical or legal obstacles to reducing the burden.

The information collection frequency specified in the DHS complaint form is the minimum amount necessary and appropriate for the agency to determine whether the allegations should be accepted for investigation, dismissed due to procedural grounds, or partially accepted and partially dismissed.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- requiring respondents to submit more than an original and two copies of any document;
- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- requiring the use of statistical data classification that has not been reviewed and approved by OMB;
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can prove that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The requirements are within the guidelines set forth in 29 C.F.R. 1614.106.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection before submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to those comments specifically address comments received on cost and hour burdens.

Describe 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, revealed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that mitigate against consultation in a specific situation. These circumstances should be explained.

As required by the Paperwork Reduction Act of 1995 (PRA-95), the Agency issued a 60 Day Federal Register notice on May 2, 2011 at 76 FR 24503, soliciting comments from the public and other interested parties on the information collection requirements contained in the DHS complaint form. The Agency has not received any comments on this information collection.

As required by the Paperwork Reduction Act of 1995 (PRA-95), the Agency issued a 30 Day Federal Register notice on July 18, 2011 at 76 FR 42131, soliciting comments from the public and other interested parties on the information collection requirements contained in the DHS complaint form. The Agency has not received any comments on this information collection.

9. Explain any decision to provide any payments or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided to respondents.

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

Complainants are provided a Privacy Act statement noting the purposes and uses of the information collected. No assurance of confidentiality is provided, because the collection is governed by EEOC Management Directive 110 (Federal Sector Complaint Processing Manual, which provides that “[O]nce the formal EEO complaint is filed, the complaint file, or part of it, may be shared with those who are involved and need access to it. This includes the EEO Officer, agency EEO officials, and possibly persons whom the aggrieved person has identified as being responsible for the actions that gave rise to the complaint. The identity of the aggrieved person does not remain confidential in the formal complaint process.” EEOC Management Directive 110 provides that EEO complainants be so informed by an EEO counselor prior to the initiation of a formal complaint.

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. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

Some relevant private information is required to be reported, because the complainant must provide allegations that are sufficiently precise to describe the action(s) or practice(s) that form the basis of the complaint. The information collected is the minimum amount necessary and appropriate for the agency to determine whether the allegations should be accepted for investigation, dismissed due to procedural grounds, or partially accepted and partially dismissed. The complainant is informed during the informal counseling phase that to pursue his or her EEO claim, he or she must fill out a formal written complaint of employment discrimination so that it can be determined whether the complaint was timely filed, whether the allegations are within the purview of the EEOC regulations, to provide a factual basis for the complaint, and to reach a decision on the complaint. Consent is obtained by providing an explanation of the EEO complaint process during the informal phase, having an “exit interview” with an EEO Counselor when possible, and by having the requirement that there be a formal, signed written complaint.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- Show the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burdens, and explain the reasons for the variance. General estimates should not include burden hours for customary and usual business practices.
- If this request for approval covers more than one form, provide separate hour burdens estimates for each form and aggregate the hour burden in Item 13 of OMB Form 83-1.
- Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.
- **Based on an average of the formal EEO complaints filed at DHS during Fiscal Years 2004 through 2009, there are approximately 1,200 respondents each year. We estimate the information collection to take approximately 30 minutes.**

$$1,200 \text{ respondents} \times 1/2 \text{ hour} = 600 \text{ burden hours}$$

13. Provide an estimate of the total annual cost burden to respondents or record-keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

There are no capital, start-up or maintenance and record keeping costs associated with this information collection.

14. Provide estimates of the annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 into a single table.

The cost to the Federal Government would be the EEO Complaint Manager's (GS-14, Step 1) hourly wage rate (\$50.41) multiplied by the time it takes to ask for a collection of information (30 minutes (0.50 hours)) or \$25.21 per response x 1200 respondents/year. Therefore the estimated annual cost to the Federal Government is \$30,246.

Other operational expenses, such as equipment, overhead, and support staff expenses, would have occurred without this collection of information requirements and are considered normal operating expenses.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

There is no change or adjustment to the burden associated with the collection of information associated with the DHS complaint form.

DHS is proposing to make one change to the DHS complaint form. This change is the need to add a new checkbox that says “pregnancy” under and slightly intended from the existing checkbox that says “sex” on the form. Pregnancy discrimination is a form of sex discrimination, which is covered under Title VII. So this information is already included in data gathered in EEO complaints; adding the separate check box just more clearly identifies a sub-category. This form modification is in accordance with new instructions from EEOC -- requiring all government agencies to specifically identify this type of information on our complaint forms.

16. For collections of information whose results will be published, outline plans for tabulations, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

No individual information collected will be published. Pursuant to statute, some general tabulations and compilations of complaints are prepared for use by other government agencies and the public. These reporting requirements encompass annual reports to the EEOC (e.g., EEOC Management Directive 715 – Annual EEO Program Status Report, and EEOC Form 462 – Annual Federal EEO Statistical Report of Discrimination Complaints) and quarterly and annual public reports required by the Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) (5 U.S.C. 2301 note).

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

DHS is not seeking such approval.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-1.

DHS is not seeking any exceptions.