

SUPPORTING STATEMENT

U.S. DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS AGREEMENT APPROVAL PROCESS FOR USE OF COMPLAINT FORM CC-4

OMB No.1250-0002

A. JUSTIFICATION

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for administering three equal opportunity laws:

- Executive Order 11246, as amended (EO 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA)

EO 11246 prohibits federal contractors and subcontractors¹ from discriminating in employment on the basis of race, color, religion, sex, sexual orientation, gender identity, and national origin. It also requires contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. Additionally, EO 11246 prohibits contractors from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers. EO 11246 applies to contractors holding a federal government contract or subcontract of more than \$10,000, or federal government contracts or subcontracts that have, or can reasonably expect to have, an aggregate total value exceeding \$10,000 in a 12-month period. EO 11246 also applies to federal government bills of lading, depositories of federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. savings bonds.

Section 503 prohibits discrimination by covered contractors against individuals on the basis of disability, and requires affirmative action on behalf of qualified individuals with disabilities. Section 503 requirements apply to federal contracts and subcontracts in excess of \$15,000.²

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. VEVRAA requires contractors to take affirmative action to hire, advance in employment and otherwise treat protected veterans without discrimination. VEVRAA requirements apply to federal contracts and subcontracts of \$150,000 or more.³

¹ Hereinafter, the use of the term "contractor" includes any contractors and subcontractors covered by the laws enforced by OFCCP. For EO 11246, the term includes federally assisted construction contractors.

² 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).

Pursuant to the upcoming expiration of OMB No. 1250-0002, this information collection request (ICR) seeks approval of OFCCP's complaint information collection form, titled "Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor ("complaint form" or "Form CC-4"). This ICR also seeks approval of the revised complaint form and accompanying instructions page to reflect two amendments to Executive Order 11246: (1) Executive Order 13762, which added "sexual orientation" and "gender identity" as protected bases⁴ and (2) Executive Order 13665, which added a basis to protect any applicant or employee who inquires about, discusses, or discloses compensation.⁵ There are no substantive changes to the complaint form that impact burden.

1. LEGAL AND ADMINISTRATIVE REQUIREMENTS

No private right of action exists under EO 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 use a complaint form to file a complaint with OFCCP alleging discrimination or failure to comply with affirmative action obligations.⁶ OFCCP investigates these complaints and retains the discretion whether to pursue administrative or judicial enforcement.

To file a complaint with OFCCP, a complainant or authorized representative may complete Form CC-4. Alternatively, a complainant may send a letter including the name, address, and telephone number of the complainant, the name and address of the contractor or subcontractor and a description of the acts considered to be discriminatory and any other pertinent information.

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, 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.

³ 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).

⁴ *See*, Executive Order 13672, Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity, 79 FR 42971 (July 23, 2014).

⁵ *See*, Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information, 70 FR 20749 (April 11, 2014).

⁶ Under Section 503 of the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Act of 1974 individuals may file a complaint based on a contractor's failure to comply with its affirmative action obligations. *See*, 41 CFR 60-300.61(a) and 41 CFR 60-741.61(b).

OFCCP may refer complaints filed on bases covered under Executive Order 11246 or Section 503 to the U.S. Equal Employment Opportunity Commission (EEOC) as described in the most recent formal agreement entered into by OFCCP and the EEOC.⁷ Complaints filed under Section 503 may be referred to EEOC using the procedures found at 41 CFR 60-742.5(d) and 29 CFR 1641.5(e). OFCCP investigates all complaints filed under VEVRAA.

2. USE OF COLLECTED MATERIAL

The complaint form is used by OFCCP staff as the first step in the initiation of a complaint investigation. If the complaint is timely and appears to raise discrimination or retaliation issues within OFCCP's jurisdiction, then a complaint investigation is initiated. A standardized complaint form helps guide complainants in providing important information about their discrimination allegations and reduces the time it takes OFCCP staff to determine jurisdiction. This form improves efficiency in responding to complainants and in initiating investigations.

3. USE OF INFORMATION TECHNOLOGY

Complainants can download or electronically submit the complaint form via OFCCP's Web site at <http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>. As part of OFCCP's ongoing commitment to complying with Section 508 of the Rehabilitation Act, OFCCP will be submitting a remediated pdf version of the complaint form as a non-material change to the ICR, once the form's content has been approved by OMB and the form has been remediated.

4. DESCRIPTION OF EFFORTS TO IDENTIFY DUPLICATION

Information collected on the complaint form is unique to the individual complainant and no duplication is possible.

5. IMPACT ON SMALL BUSINESSES

OFCCP complaints are not filed by business entities but by non-business entities such as individuals or organizations. Therefore, this information collection does not have a significant economic impact on a substantial number of small entities.

6. CONSEQUENCES IF INFORMATION WERE COLLECTED LESS FREQUENTLY

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 EO 11246, Section 503, and VEVRAA.

7. SPECIAL CIRCUMSTANCES

⁷ OFCCP has a Memorandum of Understanding with EEOC that includes coordinated processing of EO 11246 complaints, "Coordination of Functions; Memorandum of Understanding," 76 FR 71029 (Nov. 16, 2011). *See also*, 41 CFR 60-1.24(a).

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

8. CONSULTATION OUTSIDE THE AGENCY

On July 1, 2016, OFCCP published a 60-day notice in the *Federal Register*, 81 FR 43254, inviting comments on the proposed renewal for this information collection request. No public comments were received.

9. GIFTS OR PAYMENTS

OFCCP does not provide gifts or payments to respondents.

10. CONFIDENTIALITY OF INFORMATION

OFCCP complies with the Privacy Act by maintaining confidentiality of the information collected on the complaint form. However, during a complaint investigation, the agency will provide a copy of the complaint form to the contractor and the information contained on the form may be used in the course of settlement negotiations with the contractor and/or in the course of presenting possible disclosure to opposing counsel. Before providing a copy of the complaint form, the agency redacts it to protect confidential information that would easily identify someone other than the complainant. A Privacy Act disclosure statement is included in the instructions for the complaint form, which explains the protections afforded to the information collected on the complaint form and describes how the information may be used in settlement negotiations, verified or disclosed. The Systems of Records Notice (SORN) that covers the CC-4 is DOL\OFCCP-2 Office of Federal Contract Compliance Programs. See, 81 FR 47418 (July 21, 2016).

11. QUESTIONS OF SENSITIVE NATURE

Although the complaint form does not specifically request sensitive or protected information, the complainant may disclose such information when describing the circumstances that led to filing the complaint. As noted above, a Privacy Act disclosure statement is included in the instructions with the form.

12. INFORMATION COLLECTION HOUR BURDEN

OFCCP received 790 complaints in fiscal year (FY) 2013, 699 complaints in FY 2014, and 769 complaints in FY 2015, which amount to an average of 753 complaints over the last three fiscal years. Based on its experience with complainants and staff, OFCCP estimates that it takes approximately one hour for the completion and submission of the complaint form. OFCCP projects that this information collection will impose a burden of 753 hours to respondents (average rate of 753 annual complaints multiplied by one hour).

OFCCP estimates that the cost of completing the CC-4 is \$16,671 (i.e., 753 hours multiplied by \$22.14 per hour). OFCCP assumes the maximum cost burden of completing a complaint form by calculating in the cost estimate that all complainants lose an hour of work to file a complaint.

Total Respondents	Number of Responses per Respondent	Average Burden per Respondent (in Hours)	Total Burden Hours	Hourly Wage Rate*	Total Burden Costs
753	1	1	753	\$22.14	\$16,671

*OFCCP used the average amount that private industry employers spend in employee wages and salaries as reported in *Employer Costs for Employee Compensation*, December 2015, United States Department of Labor, Bureau of Labor Statistics, Table 5, available at http://www.bls.gov/schedule/archives/ecec_nr.htm.

13. INFORMATION COLLECTION COST BURDEN

There are no capital or start-up costs or total operation, maintenance or purchase of services components with filing a complaint. The cost for the complainant is estimated at \$0.82 (\$0.47 for a stamp to mail the complaint; \$0.30 for paper and copying the two sheets of paper; and \$0.05 for an envelope). OFCCP receives an annual average of 753 complaints and estimates that approximately 90 percent of complaints are submitted electronically by facsimile or email while the other 10 percent are submitted by mail. Therefore, OFCCP estimates that the 10 percent, or 75 complaints, will cost complainants \$61.50 annually (75 complaints multiplied by \$0.82).

14. COST TO FEDERAL GOVERNMENT

The cost to the Federal Government (OFCCP) for receiving the forms, reviewing them for jurisdiction and timeliness, and determining their disposition is estimated at \$59,645.13 (753 complaints multiplied by a cumulative labor cost of \$79.21 per complaint).

The Federal labor cost reflects the 2.25 hours it takes OFCCP staff to process the form and includes one hour for an administrative support staff (GS-6) to review the complaint and check jurisdiction, one hour for a professional staff (GS-13) to verify the jurisdiction and prepare correspondence, and 0.25 hours for a manager (GS-14) to review and sign the documents. This cost was determined by surveying OFCCP's regional offices on the amount of time it takes to process a complaint. The calculation for the labor costs are detailed below.

Grade/ Step	Wage Rate	Time (hours)	Total (wage rate x hours)
6/10	\$19.62	1	\$19.62
13/10	\$46.00	1	\$46.00
14/10	\$54.36	0.25	\$13.59
Cumulative labor cost per complaint			\$79.21

15. PROGRAM CHANGES OR BURDEN ADJUSTMENTS

The minimal increase in burden occurred because OFCCP, on average over the past three years, received 6 more complaints than estimated in the prior approved ICR package. The small increase in burden hours is detailed in the chart below.

	Responses	Burden Hours
Current	747	747
Proposed	753	753
Adjustment increase	+6	+6

16. PUBLICATION OF DATA FOR STATISTICAL USE

OFCCP will not publish the data collected under this request.

17. APPROVAL NOT TO DISPLAY THE EXPIRATION DATE

OFCCP is not seeking approval to not display the expiration date in this information request.

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.