

February 2020

Supporting Statement

A. Justification

1. In 1998, the United States Supreme Court emphasized that Title VII of the Civil Rights Act of 1964 was designed to encourage the creation of anti-harassment policies and effective grievance mechanisms. *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). Following the *Burlington* and *Faragher* decisions, the Equal Employment Opportunity Commission (EEOC) encouraged employers to establish anti-harassment policies and complaint procedures covering all forms of unlawful harassment. Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors, No. 915.002, Section II (1999).

In 2003, the EEOC issued policy guidance and standards to federal agencies for establishing and maintaining effective affirmative programs of Equal Employment Opportunity (EEO) under Section 717 of Title VII and effective affirmative action programs under Section 501 of the Rehabilitation Act. Equal Employment Opportunity, Management Directive 715 (EEO-MD-715), Section 2 (2003). Moreover, the EEOC encourages agencies to take all steps necessary to prevent harassment from occurring. *See e.g.* 29 C.F.R. § 1604.11(f). In order to process, track, and maintain the confidentiality of Anti-Harassment requests, the Federal Communications Commission's (FCC or Commission) Office of Workplace Diversity (OWD) and the Office of the Managing Director's Human Resources Management (HRM) will jointly collect this information on FCC Form 5632 (Anti-Harassment Intake Form).

The Commission is requesting the Office of Management and Budget's (OMB) approval of this new information collection in order to obtain the full three-year clearance.

Records may include information about claimants, e.g., personally identifiable information or PII, and the use(s) and disclosure of this information is governed by the requirements of a system of records notice or “SORN,” EEOC/GOVT-1, “Equal Employment Opportunity (EEO) 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 the Civil Rights Act of 1964 § 7, as amended, 42 U.S.C. § 2000e; Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621-634; Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101-12213; Rehabilitation Act of 1973, as amended, 29. U.S.C. § 501 et seq.

2. This information will be used by OWD and HRM to process, track, and maintain the confidentiality of Anti-Harassment Intake Form requests.
3. Claimants will have the ability to file and gain access to this information both electronically and through paper files. Initially, the information will be maintained in a paper filing system. Over the next several years, the FCC will transition to an online filing and reporting system. By using the electronic submission portal, claimants will have immediate confirmation of the date their materials are received and will have 24-hour, 7-day access to the electronic portal to upload and download documentation and view the status of their requests.

However, in recognition that some claimants cannot file electronically, HRM will retain the ability for claimants to file requests manually. This information will be uploaded into the Online Request portal by HRM personnel.

4. There is no duplication of information in the Anti-Harassment Intake Form. 29 C.F.R. § 1604.11(f) urges agencies to take all steps necessary to prevent harassment from occurring. As such, Internal Anti-Harassment Programs are designed to take immediate and appropriate corrective action before the conduct for a protected class rises to the level of illegality. In addition, this Anti-Harassment Program covers conduct broader than the legal definition of unlawful harassment. Accordingly, information collected on the Anti-Harassment Intake Form is regarded as new

information for purposes of providing anti-harassment services within the Anti-Harassment Program.

5. The collection of this information will not have significant economic impacts on small businesses, organizations or other small entities. In order to determine whether the Anti-Harassment Program is appropriate, claimants must provide certain information to allow the FCC's HRM to conduct a case-by-case analysis.
6. The information must be collected in order to comply with the Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e (2019); Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621-634 (2015); Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2019).
7. There are no special circumstances associated with this information collection.
8. The Commission solicited public comments on the Paperwork Reduction Act information collection requirements on August 1, 2019 at 84 FR 37871. No comments were received from public.
9. There will be no payments or gifts to claimants in connection with this information collection.
10. The FCC will keep the information private to the extent permitted by law.
11. The information requested in the Anti-Harassment Intake Form assists the FCC in determining whether harassing conduct has occurred and what immediate corrective actions must be taken. Specifically, the FCC Form 5632 (Anti-Harassment Intake Form) provides information regarding allegations of the inappropriate or harassing conduct, the individuals allegedly engaged in the harassing conduct, witnesses, relevant documents, and the corrective action sought.

Although the provision of this information is voluntary, if the claimant fails to submit the information, HRM may be unable to ascertain if the claimant's reporting is appropriate for corrective action consistent with the Civil Rights Act of 1964 § 7, 42 U.S.C. § 2000e (2019); Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §§ 621-634 (2015); Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2019).

12. The Anti-Harassment Intake Form is a new form. OWD and HRM estimates the average number of Anti-Harassment Intake Form requests to be filed is 5. Typically, claimants complete the forms themselves. The Commission estimates that 5 claimants will file an Anti-Harassment Intake Form annually and that the *average* burden per response is 3 hours. This response time includes obtaining documentation from personnel, preparing and reviewing the request. The Commission estimates that 80% (4) of the claimants will complete and file the form themselves without assistance. The Commission estimates the average per response for claimants to complete the form without assistance is approximately 3 hours. The Commission estimates that 20% (1) of the claimants will complete and file the form themselves after consultation with an attorney. The Commission estimates the average per response for claimants to complete the form including consultation with an attorney is approximately 6 hours. The Commission estimates that 3 hours is allotted to the consultation with the attorney for the Anti-Harassment Intake Form.

Alternative Dispute Resolution Intake Form			
Annual Filings (Responses)	Frequency of Response	Average Response Time (Hours)	Annual Burden Hours
4	1	3	12
1	1	6	6

Total Claimants: 5 requesters
 Total Annual applications: 5 requests
 Total Annual Burden Hours: 18 hours

13. The remaining 20% (1) of the claimants will hire a law firm or outside agency to assist the claimant with completing the Anti-Harassment form. The typical fee is \$300 an hour for representation for the law firm or outside agency to represent the claimant. We estimate that it will take a

total of approximately 13.5 hours for the attorney to discuss the request with, and represent the claimant in reporting, investigation and corrective action. Of the 13.5 hours, 3 of those hours include 3 hours of consultation from the claimant with the attorney. Thus, the Commission estimates the cost for the preparation of the submission and representation for the Anti-Harassment Intake form by a law firm or outside agency on behalf of the claimant is \$4,050.

Total Cost to Claimant for FCC Form 5632 (Anti-Harassment Form):

(a) Total annualized capital/startup costs: None.

(b) Total annual costs (O&M): \$4,050.

(c) Total annualized cost requested: \$4,050.

Cost to the Claimant:

1 claimant x 13.5 hours x \$300 attorney/hour = \$4,050.

Total Cost to claimant: \$4,050.

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 5632 estimated to be filed: 5

5 forms x 85 hours

@ \$74.86 per hour (GS-15 Step 5) for processing	=
\$31,815.50	
By an attorney advisor	
5 forms x 80 hours	
@ \$74.86 per hour (GS-15 Step 5) for processing	=
\$29,944.00	
By a supervisor	
5 forms x 20 hours	
@ \$74.86 per hour (GS-15 Step 5) for review and reporting	=
\$7,486.00	
By a manager	

Total = **\$69,245.50**

Total Cost to the Federal Government: \$31,815.50 + \$29,944.00 + \$7,486.00 = \$69,245.50

15. This is a new information collection request resulting in a program change/increase to the total claimants of 5, total annual responses of 5 and total annual burden hours of 18 hours. These estimates will be added to OMB's Active Inventory.

16. The Commission will publish data regarding the number of requests filed and demographic information in the annual Federal Equal Employment Opportunity Statistical Report of Discrimination Complaints (EEOC Form 462) and the annual Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act) Report. However, no personally identifiable information is included in the data that is submitted in connection with any of these reports.

17. The Commission is not seeking to limit display of the expiration date of the OMB approval nor requesting an exception to the compliance certification in 5 C.F.R. § 1320.9 and related provisions of 5 C.F.R. § 1320.8(b)(3).

18. There are no exceptions to the Certification Statement.

B. Collections of Information Employing Statistical Methods:

No statistical methods are employed.