



DEPARTMENT OF COMMERCE

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Notice of Withdrawal; Reporting Process for Complaint of Employment Discrimination Based on Sexual Orientation Against the Department of Commerce

AGENCY: Office of the Secretary, Office of Civil Rights, Commerce.

ACTION: Notice; withdrawal.

SUMMARY: On Thursday, October 1, 2020, the Department of Commerce (DOC) published a notice entitled, “Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting Process for Complaint of Employment Discrimination Based on Sexual Orientation Against the Department of Commerce.” That notice invited public comments on the proposed, and continuing information collection request for OMB Control Number 0694-0024, Form Number: CD-545. Through the publication of this document, we are withdrawing the request for approval from the Office of Management and Budget (OMB) to collect this information collection.

DATES: The request for public comment preceding submission of the collection to OMB published on October 1, 2020 and ended November 30, 2020.

SUPPLEMENTARY INFORMATION:

In a notice published in the *Federal Register* on October 1, 2020 (85 FR 61923), the Department of Commerce proposed to extend the information collection for the Form CD-545. However, we are withdrawing the request for this collection approval from the Office of Management and Budget (OMB), and instead, we are discontinuing the Form CD-545.

Background

Executive Order (EO) 13087, issued on May 28, 1998, amended EO 11478, *Equal Employment Opportunity in the Federal Government*, to include sexual orientation as a

prohibited basis of discrimination in Federal employment. Consistent with this EO, Department Administrative Order (DAO) 215-11, *Complaint Process for Sexual Orientation Discrimination*, was established in 1999 to provide Department of Commerce employees and applicants for employment with a Department-wide and uniform complaint process by which to seek redress for claims of sexual orientation discrimination. Form CD-545 has been used in connection with the Department of Commerce's *Complaint Process for Sexual Orientation Discrimination*.

At the time DAO 215-11 was established and many years thereafter, Department employees and applicants were unable to pursue sexual orientation discrimination claims under Title VII of the Civil Rights Act of 1964, as amended, and thus could not utilize the process afforded to Federal employees and applicants outlined in Title 29, Code of Federal Regulations (C.F.R.), Part 1614. However, the Supreme Court, in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), recently interpreted the prohibition against sex-based discrimination contained in Title VII of the Civil Rights Act of 1964, as amended, to include sexual orientation discrimination in Federal employment. As such, Department employees and applicants are now able to pursue sexual orientation discrimination claims under Title VII of the Civil Rights Act of 1964, as amended, and may utilize the process afforded to Federal employees and applicants outlined in 29 C.F.R. Part 1614.

In response to the request for public comment, comments were received from Lisa Schnall, Senior Attorney Advisor, Office of Legal Counsel, Equal Employment Opportunity Commission, on November 30, 2020, concerning Form CD-545 (Complaint of Employment Discrimination Based on Sexual Orientation Against the Department of Commerce). In her comments, Ms. Schnall cited the Supreme Court's decision in *Bostock v. Clayton County* holding that the prohibition of sex discrimination in Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination based on sexual orientation, and recommended that the Department of Commerce withdraw Form CD-545, commenting that withdrawing the form would streamline and enhance the efficiency of the complaint process by ensuring that

complaints of protected employment discrimination are reported on an existing form currently in use at the Department of Commerce.

Since the matter of sexual orientation being a form of prohibited sex discrimination has now been decided with finality, we agree that withdrawing Form CD-545 would streamline and enhance the efficiency of the process for raising claims of sexual orientation and are therefore requesting the form's discontinuation.

Paul Redpath, Chief, Program Implementation Division, Office of Civil Rights, Department of Commerce, approved the publication of this Notice in the *Federal Register*.

Dated: December 31, 2020.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020-29254 Filed: 1/5/2021 8:45 am; Publication Date: 1/6/2021]