



DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Renewal of the Approval of Information Collection Requirements;

Comment Request

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). The program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to obtain approval from the Office of Management and Budget (OMB) for renewal of the information collection for its complaint program. OFCCP is requesting OMB approval for two information collection instruments: revisions to the existing “Form CC-4, Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor” (Form CC-4) and a new instrument, “Form CC-390 Pre-Complaint Inquiry for Employment Discrimination Involving a Federal Contractor or Subcontractor” (Form CC-390). The current OMB approval for Form CC-4 expires on May 31, 2023. A copy of the proposed information collection request can be obtained by contacting the office listed below in the “FOR FURTHER INFORMATION CONTACT” section of this notice or by accessing it at www.regulations.gov.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

Electronic comments: The federal eRulemaking portal at www.regulations.gov.

Follow the instructions found on that website for submitting comments.

Mail, Hand Delivery, Courier: Addressed to Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, N.W., Room C-3325, Washington, D.C. 20210.

Instructions: Please submit one copy of your comments by only one method. For faster submission, we encourage commenters to transmit their comment electronically via the www.regulations.gov website. Comments that are mailed to the address provided above must be postmarked before the close of the comment period. All submissions must include OFCCP's name for identification. Comments submitted in response to the notice, including any personal information provided, become a matter of public record and will be posted on www.regulations.gov. Comments will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, N.W., Room C-3325, Washington, D.C. 20210. Telephone: (202) 693-0103 or toll free at 1-800-397-6251. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services. Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. Background: OFCCP administers and enforces the three equal employment opportunity authorities listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

These authorities prohibit employment discrimination by Federal contractors and subcontractors and require them to take affirmative action to ensure that equal employment opportunities are available regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, Federal contractors and subcontractors are prohibited from discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers. Federal contractors and subcontractors are further prohibited from harassing, intimidating, threatening, coercing, or discriminating against individuals who file a complaint, assist or participate in any OFCCP investigation, oppose any discriminatory act or practice, or otherwise exercise their rights protected by OFCCP's laws.

No private right of action exists under the authorities that are enforced by OFCCP, i.e., a private individual may not bring a lawsuit against an employer (or prospective employer) for noncompliance with its contractual obligations enforced by OFCCP. However, any employee of, or applicant for employment with, a federal contractor or subcontractor may file a complaint with OFCCP alleging discrimination or failure to comply with other OFCCP contractor obligations. Currently, OFCCP encourages such employees and applicants to file their complaints by completing its complaint form ("Form CC-4"). OFCCP investigates certain complaints and refers others to agencies that may have jurisdiction. For example, if a complaint is filed under E.O. 11246 or

section 503, OFCCP may refer it to the U.S. Equal Employment Opportunity Commission (EEOC).¹ OFCCP retains all complaints filed under VEVRAA.

Where OFCCP investigates a complaint and finds one or more violations of equal opportunity requirements, the agency engages in conciliation with the contractor to resolve the matter. Where that is not successful, OFCCP determines whether to bring an enforcement action through an administrative or judicial proceeding.

OFCCP is proposing to modify its complaint intake procedures to adopt a two-step complaint intake process. EEOC has long utilized a two-step intake process.² OFCCP proposes that as a first step, applicants and employees of contractors, their authorized representatives, or third parties would submit to OFCCP a pre-complaint inquiry providing basic information on their allegation(s) and contact information (Form CC-390). When OFCCP receives a pre-complaint inquiry, OFCCP will assess (1) whether the allegations are timely; (2) whether the inquiry falls under OFCCP's jurisdiction; and (3) whether the inquiry should be investigated, closed or referred to another agency. If OFCCP determines it would likely investigate the matter, OFCCP will provide the inquiry submitter ("submitter") with information on filing a complaint (Form CC-4), including information on the anti-retaliation protections under the authorities OFCCP enforces. If OFCCP determines that OFCCP would refer the matter to another agency, it will provide the submitter with information on the referral and send a copy of the pre-complaint inquiry to the other agency for review. If OFCCP determines that the allegations provided in the inquiry are untimely or are not within OFCCP's authority, OFCCP will contact the submitter to explain why OFCCP would likely not investigate the matter if a complaint were filed. The decision to file a complaint with OFCCP lies

¹ See 41 CFR 60-1.24(a) and 41 CFR 60-742.5.

² See EEOC, *How to File a Charge of Employment Discrimination*, <https://www.eeoc.gov/how-file-charge-employment-discrimination> (last accessed Dec. 9, 2022) (describing EEOC's pre-charge inquiry and charge filing process).

with the submitter. Once OFCCP receives a completed complaint form, OFCCP will assign the matter for investigation, and OFCCP will notify the employer (contractor) of the complaint and investigation. By implementing this new process, OFCCP will improve the efficiency of its complaint intake process.

OFCCP is requesting approval of Form CC-390, which applicants and employees of contractors, their authorized representatives, or third parties will use to submit a pre-complaint inquiry. Additionally, OFCCP is requesting approval for changes to the existing Form CC-4, including formatting changes for consistency with the proposed pre-complaint inquiry form and clarifying revisions to portions of the form to improve useability.

Under E.O. 11246, section 206(b) provides the authority for collection of complaint information. The implementing regulations that specify the content of this information collection are found at 41 CFR 60-1.23. Under VEVRAA, the authority for collecting complaint information is at 38 U.S.C. 4212(b) and the implementing regulations that specify the content of VEVRAA complaints, are found at 41 CFR 60-300.61(b). The statutory authority for collecting complaint information under section 503 is at 29 U.S.C. 793(b), and the implementing regulations that specify the content of section 503 complaints are found at 41 CFR 60-741.61(c). This information collection request covers the recordkeeping and reporting requirements for Form CC-4 and Form CC-390.

II. Review Focus: OFCCP is particularly interested in comments that:

- Evaluate the proposed pre-complaint inquiry form and the proposed changes to the complaint form;
- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

III. Current Actions: OFCCP seeks the approval of these information collection instruments in order to carry out its responsibility to enforce the affirmative action and nondiscrimination provisions of the three authorities it administers.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: Complaint Involving Employment Discrimination by a Federal Contractor or Subcontractor.

OMB Number: 1250-0002.

Agency Number: None.

Affected Public: Business or other for profit; individuals.

Total Respondents: 1,618 respondents for the pre-complaint inquiry; 100 respondents for the formal complaint.

Total Annual Responses: 1,618 respondents for the pre-complaint inquiry; 100 respondents for the formal complaint.

Average Time per Response: .25 hour for the pre-complaint inquiry; 1 hour for the formal complaint.

Estimated Total Burden Hours: 505 hours.

Frequency: On occasion.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$1,648.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Christopher S. Seely,
*Deputy Director, Division of Policy and Program Development,
Office of Federal Contract Compliance Programs.*

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