



NATIONAL
INDUSTRY
LIAISON
GROUP

April 4, 2014

VIA INTERNET SUBMISSION

Debra A. Carr
Director, Division of Policy, Planning and Program Development
Office of Federal Contract Compliance Programs
U.S. Department of Labor
Room C-3325
200 Constitution Avenue, NW
Washington, DC 20210

**Re: NILG Comment on OFCCP's Proposed Extension
of the Approval of Information Collection for
Complaint Form CC-4**

Control Number 1250-0002

Dear Director Carr:

The National Industry Liaison Group ("NILG") Board welcomes the opportunity to comment on the proposal to extend the Office of Management and Budget approval of the Information Collection: Complaint Form CC-4, Complaint of Employment Discrimination by Federal Government Contractors and Subcontractors ("Complaint Form").

By way of background, the NILG was created over 27 years ago as a forum for the Office of Federal Contract Compliance Programs ("OFCCP") and federal contractors to work together to ensure equal opportunity in the workplace. Throughout the country, local Industry Liaison Groups ("ILGs") have formed to further this unique partnership of public and private sector cooperation to proactively advance workplace equal employment opportunity. The NILG Board is comprised of elected members representing the local ILGs from across the country. Over the years, the NILG and the ILGs, which are comprised of thousands of small, mid-size and large employers across the country, have reached out to OFCCP and other agencies, such as the Equal Employment Opportunity Commission ("EEOC") and Veterans Employment and Training Service ("VETS"), with mutual goals of fostering a non-discriminatory workplace. In response to the Proposal, the NILG seeks to present the views of local ILGs and their members.

We commend the OFCCP for, and share its commitment to, promoting equal employment opportunity. In our comments below, we offer observations and suggestions designed to ensure that all applicants and employees are provided equal employment opportunity while, at the same time, balancing the contractor community's legitimate interest in ensuring future actions undertaken by the OFCCP are based upon accurate information and minimize administrative burdens.

I. Protected Veteran Status Should Not Be Included As Basis of Prohibited Discrimination

The Vietnam Era Veterans' Readjustment Assistance Act ("VEVRAA") provides that covered contractors shall "take affirmative action to employ and advance in employment qualified covered veterans." 38 U.S.C. § 4212(a). The statute further provides that veterans who believe a contractor has not complied with these obligations may file a complaint with the Secretary of Labor. 38 U.S.C. § 4212(b). VEVRAA does not prohibit discrimination against covered veterans. Although the OFCCP's regulations prohibit discrimination on the basis of protected veteran status, 41 C.F.R. § 60-300.21(a), we respectfully submit that they are an overly broad expansion of the clear language of the statute and that the regulatory provisions prohibiting discrimination are not a valid exercise of the agency's authority.

Congress has repeatedly made its intention to prohibit discrimination clear by expressly using that language, i.e., "discrimination," in its statutes. *See, e.g.*, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a); Americans with Disabilities Act, 42 U.S.C. § 12112; Age Discrimination in Employment Act, 29 U.S.C. § 623; Rehabilitation Act, 29 U.S.C. § 793(d); Employee Retirement Income Security Act, 29 U.S.C. § 1182; Equal Pay Act, 29 U.S.C. § 206(d); Family and Medical Leave Act, 29 U.S.C. § 2615(a)(2); Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1855. In light of the plethora of statutes where Congress has explicitly prohibited discrimination, its failure to do so in VEVRAA can only be considered an intentional omission. Accordingly, the NILG submits that the Complaint Form should indicate that the OFCCP may only investigate complaints regarding contractors' failure to "take affirmative action to employ and advance in employment" qualified protected veterans and that it cannot investigate complaints of discrimination on the basis of protected veteran status. Further, all references to discrimination on the basis of protected veteran status should be deleted from the Complaint Form and Instructions.

II. The NILG Recommends Specific Changes to the Complaint Form.

In general, the NILG applauds the OFCCP for making the Complaint Form easier to read and understand. The document is definitely more user-friendly in its proposed form. The NILG does, however, have several specific recommended changes to the language used in the Complaint Form.

A. Name of Complaint Form

In its proposal, the OFCCP proposes to change the name of the Complaint Form to “Complaint of Discrimination in Employment by Federal Contractors or Subcontractors.” However, the name on the proposed form itself is different: “Complaint of Discrimination in Employment by Federal Government Contractors or Subcontractors.” Regardless of which version the OFCCP is proposing to use, the NILG respectfully suggests that both are unwieldy and confusing. The phrasing actually makes it appear as if the complaint is being registered “by” a federal contractor instead of against it. To provide conciseness and clarity, the NILG suggests the form be called “Complaint of Employment Discrimination Involving Federal Contractor or Subcontractor.”

B. Fourth Question on Complaint Form

The fourth question on the left side of the Complaint Form asks, “Why do you believe this company or employer discriminated against you?” The Complaint Form then provides the various bases on which discrimination is prohibited, i.e., race, gender, etc. The question asked is confusing because the use of the word “why” indicates the complainant is being asked to explain the reasons why he or she believes the employer discriminated against him or her instead of the bases of the alleged discrimination. Thus, the NILG recommends that the question be rephrased to “On what bases do you contend this employer discriminated against you? (Check all that apply).”

C. Protected Veteran Status

In the event that the OFCCP declines to remove discrimination against protected veterans from the Complaint Form, the NILG encourages the OFCCP to require complainants to identify the category of protected veteran by which they assert coverage. This information is important to contractors in responding to and defending against such complaints, and complainants should be required to attest to their precise protected status when submitting their complaint.

D. Your Complaint

On the top of the second page of the Complaint Form, the complainant is asked to “describe below what you believe the employer did or failed to do to cause discrimination or retaliation.” Again, this question could be written more concisely and precisely: “What is the basis for your allegation that this employer discriminated or retaliated against you?”

E. Attorney or Representative

The Complaint Form asks complainants to provide the contact information for any attorney, person, or organization representing them. After this information, the Complaint Form asks who the OFCCP should contact about the complaint -- the complainant or the representative. The NILG submits that it would be more efficient and appropriate to ask “If you have an attorney, person, or organization representing you in connection with this complaint and would like us to contact them for additional information, please provide their contact information below.”

III. The NILG Recommends Specific Changes to the Instructions.

The references to Title VII and the ADA in the Non-Retaliation Section should be eliminated from the Instructions. The OFCCP does not enforce these laws and their inclusion here could be confusing and misleading. Accordingly, the NILG recommends that the Instructions reference only the statutes and regulations that the OFCCP enforces and over which it has jurisdiction.

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We thank the OFCCP in advance for its consideration of our comments and suggestions. If the Agency should wish to discuss this request, please contact Mickey Silberman, NILG Board Counsel, at (303) 225-2400 or silbermanm@jacksonlewis.com.

Respectfully submitted,

The National Industry Liaison Group Board