

From: [Seth Galanter](#)
To: [DOL_PRA_PUBLIC](#)
Cc: [Smyth, Michel - OASAM OCIO](#)
Subject: Re: OMB Control Number 1225-0077 (Nondiscrimination Compliance Information Reporting)
Date: Tuesday, September 26, 2017 4:44:51 PM

Michel Smyth:

This is a response to the ICR announced in the Federal Register on August 30, 2017, entitled "Nondiscrimination Compliance Information Reporting," Control Number 1225-0077. Thank you for the opportunity to comment.

My primary suggestions relate to aligning some of the secondary documents with the clearer language that appears in sections 38.35 and 38.41(c) of the regulations, and the CRC Complaint Information and Privacy Act Form (PRA Attachment 8), which I refer to below as "CIF."

The regulations and CIF help the potential complainants and member of the general public by making clear and disaggregating the various types of discrimination that fall under the categories of sex and national origin. I would suggest that two of the other proposed documents – the Sample Discrimination Complaint Form for recipients (PRA Attachment 12) ("DCF") and the Discrimination Complaint Log Instructions (Unnumbered Attachment) ("Instructions"). – should follow suit.

DCF: Unlike the updated regulations, the second full paragraph (the sentence starting "It is against the law") on page 1 of the DCF does not contain any parentheticals or other text clarifying that sex includes pregnancy, childbirth and related medical conditions, transgender status, and gender identity; and that national origin includes limited English proficiency. Likewise, unlike the CIF, the check boxes on page 2 of the DCF do not provide separate options clarifying that sex includes pregnancy, childbirth and related medical conditions, transgender status, and gender identity; and that national origin includes limited English proficiency. To the contrary, the text boxes for sex and national origin do not seem to contemplate such complaints (and thus dissuade people from filing such complaints), by asking people to specify their national origin (without suggesting that one could complain about language access issues on this line) and sex (as either male or female).

Instructions: In row G on page 3, the Instructions ask the recipient to enter the grounds that were the basis of the complaint, but does not contain any parentheticals or other text clarifying that sex includes pregnancy, childbirth and related medical conditions, transgender status, and gender identity; and that national origin includes limited English proficiency. Further, the examples given for sex and national origin reinforce the implicit suggestion that these terms do not extend, for example, to pregnancy or language access discrimination. (Finally, row G cites only to the 1999 regulations and should be updated.)

These omissions in the DCF and Instructions could mislead members of the public about their rights and may discourage the filing of potentially valid complaints. DOL shouldn't expect people to identify, for example, that discrimination on the basis of sexual orientation or on the basis of medical conditions due to childbirth could both be types of "sex" discrimination. Even if the regulations were later to be amended (which, of course, has not yet occurred), giving people the additional choices reflected in the CIF would avoid discouraging people from filing complaints at all, and would give CRC and recipients, respectively, the opportunity to clarify whether the complaint falls within other legal prohibitions (such as sex stereotyping or disparate impact on the basis of national origin).

I therefore recommend that the language of both documents incorporate more of the already cleared language of the regulations and the CIF in order to enhance the quality, utility, and clarity of the information to be collected.

I submit this comment on behalf of myself.

Seth Galanter