

Department of Education Guidance on the Collection and Reporting of Racial and Ethnic Data about Students, Teachers, and Education Staff

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

This supporting statement addresses the one-time paperwork burden associated with complying with the Department of Education Guidance on the Collection and Reporting of Racial and Ethnic Data about Students, Teachers and Education Staff. The estimated burden includes the one-time burden associated with the initial change to the new requirements regarding racial and ethnic identification and reporting. The Department's final guidance also encourages, but does not require, educational institutions and other recipients to provide all individuals with an opportunity for re-identification. In accordance with OMB requirements, this document also addresses the potential burden if all educational institutions and other recipients choose to provide an opportunity for re-identification and all individuals elected to re-identify.

Background

On October 19, 2007, the Department of Education published final guidance on the methods for the collection and reporting of racial and ethnic data on students, teachers, and education staff. The changes are necessary in order to implement the Office of Management and Budget's (OMB) 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (1997 Standards).¹ The 1997 Standards instituted a number of changes for how Federal agencies collect racial and ethnic data.

This final guidance applies to the collection of individual-level data and to the reporting of aggregate racial and ethnic data to the Department. Aggregate data mean the total racial and ethnic data reported to the Department by educational institutions and other recipients. The data are collected from individuals and reported in the aggregate to the Department. This final guidance directly addresses three sets of issues:

¹ See OMB, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58781 (October 30, 1997); <http://www.whitehouse.gov/omb/fedreg/1997standards.html>.

- o How educational institutions will collect racial and ethnic data from students and staff;
- o How educational institutions will aggregate racial and ethnic data when reporting those data to the Department; and
- o How data on multiple races will be reported and aggregated under the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB).

In addition, this final guidance provides information regarding the implementation schedule for these changes. Educational institutions and other recipients will be required to implement this guidance by the fall of 2010 for information regarding school year 2010-2011.

The 1997 Standards include several important changes:

- o Under the 1997 Standards, a two-question format is strongly encouraged when collecting racial and ethnic data; *i.e.*, individuals first indicate whether or not they are of Hispanic/Latino ethnicity; then, individuals may select one or more races from the five racial categories.
- o OMB revised the minimum set of racial categories by separating the category “Asian or Pacific Islander” into two separate categories — one for “Asian” and one for “Native Hawaiian or Other Pacific Islander.” Therefore, under the 1997 Standards, there are five racial categories:
 - o American Indian or Alaska Native,
 - o Asian,
 - o Black or African American,
 - o Native Hawaiian or Other Pacific Islander, and
 - o White.
- o For the first time, individuals have the opportunity to identify themselves as being of or belonging to more than one race. In the 2000 Census, 2.4 percent of the total population (or 6.8 million people) identified themselves as belonging to two or more racial groups. For the population under 18 years old, 4.0 percent (or 2.8 million children) selected two or more races.²
- o In an effort to allow individuals -- rather than a third party -- to report their race and ethnicity, the 1997 Standards strongly encourage “self-identification” of race and ethnicity rather than third party “observer identification.”

The Department’s final guidance adopted OMB’s recommended two-part question format. It modifies the Department’s standards for racial and ethnic reporting so that educational institutions and other recipients will be required to collect racial and ethnic data from individuals (e.g., students, teachers, staff members) using a two-question format as recommended by OMB.

² See United States Census Bureau, *The Two or More Races Population: 2000*, Census 2000 Brief, at p. 9 (November 2001) (hereinafter “The Two or More Races Population”); <http://www.census.gov/prod/2001pubs/c2kbr01-6.pdf>.

The Department will require educational institutions and other recipients to allow students (typically students' parents or guardians, at the elementary and secondary level) and staff to self-identify their race and ethnicity from the categories listed above unless self-identification is not practicable or feasible. The five racial and two ethnic categories are the minimum number of categories that educational institutions and other recipients will be required to use. Any additional categories that educational institutions and other recipients choose to use to collect information must be subcategories of these categories (such as Japanese, Chinese, Korean, and Pakistani are subcategories of Asian). Individuals would then be able to select one or more of these subcategories.

The Department will continue our current practice for handling the reporting of individuals who do not self-identify a race or an ethnicity. Elementary and secondary educational institutions will continue to use observer identification when a respondent (typically a student's parent or guardian) refuses to self-identify his or her race and/or ethnicity. The Department will not include a "race and/or ethnicity unknown" category in its aggregate elementary and secondary collections of racial and ethnic data. The Integrated Postsecondary Education Data System (IPEDS) will continue to include a "race and/or ethnicity unknown" category for reporting aggregate data from postsecondary institutions. Similarly, the Rehabilitation Services Administration (RSA) will continue to use a "race and/or ethnicity unknown" category for reporting aggregate data. This "race and/or ethnicity unknown" category will not appear on forms provided to postsecondary students and staff or RSA clients and staff.

States will continue to have discretion in determining which racial and ethnic groups will be used for accountability and reporting purposes under NCLB.

The final guidance encourages, but does not require, educational institutions and other recipients to allow all students, staff, and faculty the opportunity to re-identify their race and ethnicity under the 1997 Standards.³ Permitting re-identification will provide all students and staff the opportunity to self-identify more than one race and to report separately their racial and ethnic identities. It will also allow all individuals who previously identified themselves as within the Asian or Pacific Islander category the opportunity to select either "Asian" or "Native Hawaiian or Other Pacific Islander," thereby conforming racial and ethnic information to the 1997 Standards.

The Department's final guidance strongly encourages (rather than requires) re-identification because we recognize the considerable cost that re-identification would entail. Also, the 1997 Standards do not require existing records to be updated. However, the Department's guidance reflects our expectation that most educational institutions and other institutions will provide all respondents the opportunity to re-identify their race and ethnicity under the 1997 Standards.

³ This recommendation is consistent with the recommendations of the Education Information Advisory Committee of the Council of Chief State School Officers and the Policy Panel on Racial/Ethnic Data Collection, a panel sponsored by the National Postsecondary Education Cooperative, of the National Center for Educational Statistics and the National Science Foundation in April 1999. Both have recommended that all respondents be permitted to identify their race and ethnicity under the 1997 Standards.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The Department uses racial and ethnic data to conduct research and statistical analysis, to formulate public policy positions, to provide information to the public and to members of Congress, to measure accountability and student achievement, to inform civil rights enforcement activities, and to monitor the identification and placement of students in special education.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision of adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The maintenance and reporting of this data will use information technology but the initial collection of the data will require educational institutions and other recipients to request that individuals select and certify their race and ethnicity from the available data categories.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use of the purposes described in Item 2 above.

This data is not now being collected and reported in the required form.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

When the educational institutions and other recipients report data to the Department, the abilities of each reporting entity are considered in the arrangements to report these data. It is not the size of the reporting entity but instead it is the level of development of the reporting entity's education information systems that determines the capacity needed to electronically transfer education data.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Students (or at the elementary and secondary level, typically students' parents or guardians) are typically asked their race and ethnicity upon entrance or application to an educational institution or other recipient's program. Staff members provide this information upon employment or application for employment. The data cannot be collected less frequently than that.

7. Explain any special circumstance that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more often than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

This information collection activity does not have special circumstances that would include any of the requirements listed above.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instruction and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department has been examining its options for implementing the 1997 Standards for some time. Department staff have met or spoken with a variety of individuals and organizations representing educational institutions and other recipients to ascertain their needs and interests. They have said that revisions to the collection of racial and ethnic data will impose a substantial burden on educational institutions and other recipients as they adopt new data systems or modify existing data systems, prepare new forms, and train staff to implement these changes.

Educational institutions and other recipients also say they would prefer that the Federal agencies involved in data collection all use the same aggregate categories so that the burden of implementing changes is minimized and educational institutions and other recipients are not forced to provide different and/or inconsistent racial and ethnic data to Federal agencies. In response to these repeated requests, the Department waited to establish our implementation plan until after the Equal Employment Opportunity Commission (EEOC) proposed its final implementation plan.⁴

During the 60-day public comment period, ED received a few questions and comments from states, school, and individuals. Besides seeking clarifications and encouraging the Department to publish the additional instructions, examples, and instruction that were promised in the final guidance there were a couple of comments concerning the estimated paperwork burden which is the focus of this paperwork clearance exercise. One state said the federal estimate of paperwork burden fell within their estimates of the burden their state would have while another state said that the federal estimate “has been grossly underestimated.” That state suggested their burden would be “at least double the amount” used by the Department. This state reemphasized the position it took when it commented on the final guidance, that the federal government should provide funding to support the implementation of these changes. The third state provided its estimates of burden and costs but it was not readily discernable how their estimate compared to the federal estimate. Given the split decision of those who commented, the Department does not believe it needs to change its burden estimates. The Department will be providing extra guidance in the form of a Dear Colleague letter within a few months.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

There is no remuneration for any respondent or participant.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

Assurances of confidentiality will be provided to the respondents to protect individually identifiable student information required under applicable statutes and regulations, as appropriate. ED appreciates the concern about protecting the privacy of personally

⁴ See EEOC, Agency Information Collection Activities: Notice of Submission for OMB Review; Final Comment Request (EEO-1), 70 FR 71294 - 71303 (November 28, 2005) (hereinafter “EEOC Notice”); this notice is on the Internet at the following address: <http://www.eeoc.gov/eeo1/>

identifiable information and is fully committed to meeting all legal requirements to protect information submitted in accordance with the final guidance, both in how it uses the data within ED, and, in the future, how it may disseminate that information to states, LEAs, and others. Each program office that collects personally identifiable information will provide the assurance of confidentiality for their collection(s) in accordance with the Privacy Act.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The Department does not consider there to be any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. Nonetheless, based on comments received from the public in response to the proposed guidance published in the *Federal Register*, we recognize that some individuals may consider questions about their race or ethnicity to be of a sensitive or private nature. As more fully set-forth in Part I. A. of the final guidance published in the *Federal Register*, the final guidance satisfies OMB's requirement to establish consistent government-wide guidance at the Federal level for collecting and reporting racial and ethnic data and is designed to obtain more accurate information about the increasing number of students who identify with more than one race.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.**
- **If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.**
- **Provide estimates of annualized cost to respondents of the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.**

The Department recognizes that implementing the changes required by OMB to improve the quality of racial and ethnic data will result in an additional burden to educational institutions and other recipients. In developing this final guidance, we have sought to minimize the burden of implementation on educational institutions and other recipients, while developing guidance that would result in the collection of comprehensive and accurate racial and ethnic data that the Department needs to fulfill its responsibilities.

Although the actual selection of race and ethnicity by an individual is very quick, the estimation of 15 minutes for each individual to designate or re-designate his or her race and ethnicity includes the individual respondent’s handling time to review the form and instructions, and to complete and return the form. It also includes all administrative time related to the collection and reporting of the data including the keying of this information into automated systems and the filing of these forms into recordkeeping systems. This burden estimate includes an average of 160 hours for each of the schools to create, handle, and process the forms as well as an additional 160 hours for the establishment of policy and overall management of the process at the local and state education agencies.

These estimates are summarized in the following table:

**Estimated Paperwork Burden for Designation and/or
Redesignation of Race/Ethnicity**

Paperwork Burden Activities	Number of Respondents	Hours per Respondent	Burden Hours
Changing the records of elementary and secondary students, teachers, and support staff.	55,714,000 ⁵	0.25	13,928,500
Changing the records of postsecondary students, teachers, and support staff.	19,900,000	0.25	4,975,000
Changing the records of other recipients and support staff.	1,000,000	0.25	250,000
Administering the change forms at the elementary, secondary, and postsecondary schools.	129,797	160.0	2,076,752
Administering the change forms by other recipients.	80	160.0	12,800
Administering the change process at the local and state education agencies.	14,442	160.0	2,310,720
Three-year Totals	76,758,319		23,553,772
Average Burden Hours Each Year			7,851,257

Every year educational institutions and other recipients collect racial and ethnic data from their students, faculties, and staffs as part of their usual and customary procedures to provide education services. This usual and customary collection of racial and ethnic data

⁵ On IES/NCES web site “Projections of Education Statistics to 2015” for the 2010-11 school year there are expected to be 49,415,000 public school children and 3,299,000 teachers. Round estimate of 3,000,000 additional administrators and staff.

does not constitute a “burden” under the Paperwork Reduction Act regulations at 5 CFR 1320.3(b)(2). This regulation provides that “the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the “burden” if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.” Therefore, if the Department had not published final guidance changing the manner that racial and ethnic data is collected by the Department, educational institutions and other recipients would not report any burden hours related to the usual and customary collection and reporting of racial and ethnic data from individuals. However, in light of the changes made in the final guidance, the total possible burden associated with these activities related to educational institutions or other recipients collection of racial and ethnic data must be estimated as a completely new burden. In estimating this burden, we further note that almost half of this burden will be borne by the parents and guardians of the elementary and secondary school students as they provide this new or revised information for their children. Much of the remainder of this burden will be created in the extra few minutes per individual that we estimate administrators will use to make this change, attend policy meetings and carry out other record keeping activities. Since the final guidance permits educational institutions and other recipients to make the change during a three-year transition period, this burden will not be created all at one time but will be spread over the three-year implementation period as determined by the individual educational institutions and other recipients.

The Department believes that after the initial collection of this data is completed, the continuing collection of this data will be part of the usual and customary business procedures of education institutions and other recipients. Accordingly, after this three-year transition period, there is expected to be no “burden” associated with this data requirement since the total effort to continue to collect this racial and ethnic data will be part of the usual and customary business operations of every educational institution and other recipient.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14.)

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.**

- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

It is expected that the transition period will allow educational institutions and other recipients the time to incorporate any necessary system changes as part of their normal system enhancement process with no substantial additional systems development costs.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

There are no anticipated costs to the government. Any changes will be covered as part of business and information system operations and maintenance.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

This is a new, one time collection of data. After the initial data is collected the paperwork burden associated with this data collection is expected to drop to zero as the collection of this data becomes part of the usual and customary procedures of educational institutions and other recipients.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There are no plans for the publication of these data.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This collection guidance will display the OMB approval number when it is issued.

18. Explain each exception to the certification statement identified in Item 20, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

ED is requesting no exemptions from the Certification.