

*SUPPORTING STATEMENT AND JUSTIFICATION:
PAPERWORK REDUCTION ACT SUBMISSION*
**Recordkeeping Requirements of the Uniform Guidelines
on Employee Selection Procedures
29 C.F.R. Part 1607**

1. Circumstances Making the Collection of Information Necessary

The Uniform Guidelines on Employee Selection Procedures (UGESP) were issued in 1978 by the Equal Employment Opportunity Commission (EEOC or Commission), the Department of Labor (DOL), the Department of Justice (DOJ), and the Office of Personnel Management (OPM), under Title VII and Executive Order 11246. UGESP also details methods for validating tests and selection procedures that are found to have a disparate impact.

Further legal and administrative bases for the UGESP recordkeeping requirements are as follows:

a. Equal Employment Opportunity Commission

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

29 C.F.R. Part 1607

b. Office of Federal Contract Compliance Programs, Department of Labor

Executive Order 11246, as amended

41 C.F.R. Part 60-3

c. Department of Justice

28 C.F.R. Part 50

d. Office of Personnel Management

5 C.F.R. Part 300

2. Purpose and Use of the Information

The information collection provisions contained in UGESP only involve recordkeeping, as described at 29 C.F.R. § § 1607.4, 1607.15. This information is used by the federal agencies that issued UGESP in investigating, conciliating, and litigating charges or complaints of employment discrimination; by complainants in establishing violations of federal equal employment opportunity laws; and by respondents in defending against allegations of employment discrimination. UGESP does not include any reporting requirements.

3. Use of Information Technology and Burden Reduction

While there is a burden associated with the UGESP recordkeeping provisions, it varies considerably as a result of an organization's size. For instance, since UGESP provides for simplified recordkeeping for small employers (those with 100 or fewer employees), the burden on these organizations is less than that imposed on larger organizations. In recent years, the widespread automation of employment recordkeeping by larger employers has reduced the burden of routine recordkeeping. UGESP does not include any reporting requirements.

4. Efforts to Identify Duplication and Use of Similar Information

UGESP's recordkeeping provisions were developed jointly, by four federal EEO enforcement agencies, to eliminate conflict and duplication. The information maintained pursuant to the recordkeeping provisions is not readily available from any other source.

5. Impact on Small Business or Other Small Entities

Title VII of the Civil Rights Act of 1964, as amended, covers employers with fifteen or more employees. However, UGESP has reduced recordkeeping requirements for employers who employ 100 or fewer employees, and these small employers are not required to keep applicant data on a job-by-job basis or to make adverse impact determinations. See 29 C.F.R. § 1607.15(A)(1).

6. Consequences of Collecting the Information Less Frequently

The recordkeeping provisions of UGESP enable employers and other persons to determine if selection procedures used as a basis for making employment decisions have an adverse impact on a legally protected race, sex, or ethnic group. UGESP also establishes different ways to validate selection procedures. The information is used by the UGESP agencies in their enforcement activities; by complainants in establishing violations of federal equal employment opportunity laws; and by respondents in defending against allegations of employment discrimination. When conducting compliance reviews, OFCCP uses this information, along with other workplace indicators, to determine compliance with E.O. 11246. These records are not available from any other source.

7. Special Circumstances

Not applicable.

8. Comments in Response to the Federal Register Notice

The EEOC published a notice as required by 5 C.F.R. § 1320.8(d) in the Federal Register on March 25, 2008 giving notice of its intent to submit to the Office of Management and Budget (OMB) a request to approve a renewal of an information collection. The notice published in the Federal Register specifically requested comments in response to four PRA questions relating to

respondent cost and burden. In response to the notice, nine entities submitted comments: five federal agencies; two organizations representing businesses; one nonprofit advocacy group; and one economic consultant.

(1) Necessity for the proper performance of the Commission's functions, including practical utility.

Several commenters stated that UGESP data is necessary and useful for enforcement and for self-monitoring of EEO compliance. One group emphasized the importance of UGESP recordkeeping to the Commission's enforcement functions. Another commenter emphasized the utility of the recordkeeping requirement to EEOC's sister agencies, especially OFCCP.

(2) Accuracy of the burden, including the validity of the methodology and assumptions used.

Several commenters stated that their organizations already use an automated and/or electronic system to collect applicant and employee demographic information, so that the recordkeeping burden associated with UGESP was minimal. Some commenters noted that UGESP also requires analyses of selection procedures for disparate impact, but the recordkeeping requirements in this PRA notice do not involve those activities and the EEOC's burden estimate only assesses the time and cost associated with the recordkeeping requirements. Finally, the burden estimate is based on government statistics, which are publicly available and routinely updated in light of current economic indicators.

3) Quality, Utility and Clarity of the Information

Since the instant proposal is to renew UGESP without change, the proposal will neither enhance nor detract from the quality of the applicant data currently available, which several commenters characterized as valuable. Some commenters observed that, as a largely technical rule, UGESP is highly complex and that the records it requires are too complex.

4) Minimization of the Burden on Those Who are to Respond

Several commenters that already collect applicant data with an electronic check box submission said that the burden of UGESP is minimal. Other parties emphasized the significant burden of analyzing applicant and selection rate data under UGESP.

9. Explanation of any Payment or Gift to Respondents

UGESP involves no payments or gifts to respondents.

10. Assurance of Confidentiality Provided to Respondent

Information that is maintained under UGESP, and that is collected during the course of an EEOC investigation, is subject to the confidentiality provisions of Sections 706(b) and 709(e) of Title VII, 42 U.S.C. § § 2000e-5(b) and 2000e-8(e). These provisions make it unlawful “to make public” information obtained during the course of investigation, inspection, or conciliation. The files also are contained in an EEOC Privacy Act System of Records, EEOC-3.

11. Justification for Sensitive Questions

This collection of information includes questions regarding an individual’s gender, race, and ethnicity. This type of information may be viewed as sensitive personal information.

This demographic data is necessary for covered employers to assure that they are complying with Title VII and Executive Order 11246; by the federal agencies that enforce Title VII and Executive Order 11246; and by complaints to establish violations of federal equal employment opportunity laws. These records are not available from any other source.

Employers should advise applicants that identification by race, gender and ethnicity is sought, not for employment decisions, but for recordkeeping in compliance with federal law. Self-identification forms should be kept separately from the employment application and must not be a basis for employment decisions. Self-identification is voluntary.

12. Estimate of Hour Burden Including Annualized Hourly Costs

Collection Title: Recordkeeping Requirements of the Uniform Guidelines on Employee

Selection Procedures, 29 CFR part 1607, 41 CFR part 60-3, 28 CFR part 50, 5 CFR part 300.

OMB Number: 3046-0017.

Type of Respondent: Businesses or other institutions; federal government; state or local governments and farms.

North American Industry Classification System (NAICS) Code: Multiple.

Standard Industrial Classification Code (SIC): Multiple.

Description of Affected Public: Any employer, federal government contractor, labor organization, or employment agency covered by the federal equal employment opportunity laws.

Respondents: 846,156.

Responses: 846,156.

Recordkeeping Hours: 14,822,194.89.

Number of Forms: None.

Form Number: None.

Frequency of Report: None.

Abstract: The records addressed by UGESP are used by respondents to assure that they are complying with Title VII and Executive Order 11246; by the Federal agencies that enforce Title VII and/or Executive Order 11246 to investigate, conciliate and litigate charges of employment discrimination; and by complainants to establish violations of Federal equal employment opportunity laws.

Burden Statement: There are no reporting requirements associated with UGESP. The burden being estimated is the cost of collecting and storing a job applicant's gender, race and ethnic data. The only paperwork burden derives from this recordkeeping.

Only employers covered under Title VII and Executive Order 11246 are subject to UGESP. For the purpose of burden calculation, employers with 15 or more employees are counted. The number of such employers is estimated at 846,156, which combines estimates from private employment, the public sector, colleges and universities, and referral unions.

This burden assessment is based on an estimate of the total number of job applications submitted to all Title VII-covered employers in one year, including paper-based and electronic applications. The total number of job applications submitted every year to covered employers is estimated to be 1,778,663,387, which is based on a National Organizations Survey average of approximately 35.225 applications for every hire and a Bureau of Labor Statistics data estimate of 50,490,000 annual hires. It also includes 153,137 applicants for union membership reported on the EEO-3 form for 2006.

The employer burden associated with collecting and storing applicant demographic data is based on the following assumptions: applicants would need to be asked to provide three pieces of information –gender, race, ethnicity, and an identification number (a total of approximately 13 keystrokes); the employer would need to transfer information received to a data base either manually or electronically; and the employer would need to store the 13 characters of information for each applicant. Recordkeeping costs and burden are assumed to be the cost of entering 13 keystrokes.

Assuming that the required recordkeeping takes 30 seconds per record, and assuming a total of 1,778,663,387 paper and electronic applications per year, the resulting UGESP burden hours would be 14,822,194.89. Based on a wage rate of \$12.29 per hour for the individuals entering the data, the collection and storage of applicant demographic data would come to approximately \$182,164,775.20 per year for Title VII-covered employers.

13. Estimate of Total Annual Cost Burden to Respondents or Recordkeepers

There are a variety of software products now available to respondents to assist them in a range of human resources functions, including recordkeeping, for smaller and larger employers. These products can be customized to provide individual users with particular services. For example, an employer can select options that would enable recordkeeping of a large number of applicants. The costs associated with these products will vary in relation to the services selected by the employer.

14. Annualized Cost to the Federal Government

There is no cost to the federal government for enforcement as UGESP does not include a reporting requirement.

15. Explanation for Program Changes or Adjustments

In estimating the burden costs and hours associated with this collection of information, the burden hours increased from 1,450,000 (August 1999) to 14,822,194.89 (March 2008). This adjustment was the result of changes in workplace data, such as the number of respondents, employees, and job seekers. In addition, the Commission took account of the increased computerization of records.

16. Plans for Tabulation and Publication

Not applicable.

17. Reasons Display of OMB Expiration Date is Inappropriate

Not applicable.

18. Exception to Certification

Not applicable.