

NOVEMBER 2008
NO. 1870-0503
ASSURANCE OF COMPLIANCE – CIVIL RIGHTS CERTIFICATE
SUPPORTING STATEMENT

A. JUSTIFICATION

1. Circumstances Making Collection Necessary

This information collection is required by title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. 2000d, 34 C.F.R. 100.4 (prohibits discrimination on the basis of race, color or national origin by any program or activity receiving Federal financial assistance); title IX of the Education Amendments of 1972, as amended (Title IX), 20 U.S.C. 1681, 34 C.F.R. 106.4 (prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance); Section 504 of the Rehabilitation Act of 1973, as amended (Section 504), 29 U.S.C. 794, 34 C.F.R. 104.5 (prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance); the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, 34 C.F.R. 110.23 (prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance); and the Boy Scouts of America Equal Access Act of 2001 (Boy Scouts Act), 20 U.S.C. 7905, 34 C.F.R. 108.8 (requires equal access for the Boy Scouts of America and other designated youth groups to meet at public elementary and secondary schools that receive funds made available through the Department of Education (Department)).

These laws require that applicants for Federal financial assistance from the Department, as well as certain applicants for funds made available through the Department, submit an assurance of compliance to the Department assuring that they will comply with these laws.

2. Use of the Information

OCR uses the signed Assurance of Compliance – Civil Rights Certificate forms to enforce Title VI, Title IX, Section 504, the Age Discrimination Act, and the Boy Scouts Act. Assurances are an efficient and effective tool for achieving compliance with the laws enforced by OCR. Respondents only need to sign the Assurance of Compliance – Civil Rights Certificate once; OCR keeps the signed assurances forms on file.

OCR investigates complaints alleging discrimination by recipients of Federal financial assistance or funds made available through the Department. OCR also conducts agency-initiated cases, typically called compliance reviews, against recipients. In both types of cases, OCR is legally required to seek voluntary resolution of any compliance concerns. If these resolution efforts are not successful, OCR can initiate an administrative hearing or can refer the matter to the United States Department of Justice (DOJ) for enforcement in Federal court. In administrative and litigation proceedings the existence of a signed

assurance form on file establishes that the covered entity is aware of, and agreed to comply with, the applicable civil rights laws.

If OCR gets to the point of initiating an administrative hearing, the assurance of compliance signed by the recipient is entered into the administrative record. In the past, OCR has gone to administrative hearing in cases involving Title VI, Title IX and Section 504. OCR has not yet had to go to administrative hearing in order to enforce the Boy Scouts Act.

In the past, DOJ has asked OCR for a copy of a signed assurance of compliance when DOJ is involved in a case before a federal court. For instance, OCR provided the DOJ Solicitor General's office with copies of the signed assurance of compliance forms from two school districts whose policies were the subject of a case before the United States Supreme Court regarding the use of race in student assignment (*Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 127 S.Ct. 2738 (2007)) and in two Title IX cases before the United States Supreme Court (*Gebser v. Lago Vista Independent School District*, 524 U.S. 274 (1998), and *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).)

3. Use of Technological Collection Techniques

At this time, OCR is unable to accept electronic signatures. Accordingly, OCR would collect the signed Assurance of Compliance forms by traditional (paper) mail.

4. Efforts to Identify Duplication

No other component of the Department collects these particular assurances of compliance with civil rights laws.

5. Methods of Minimizing Burden for Small Entities

This collection of information will not have a significant economic impact on a substantial number of small businesses or other small entities.

6. Consequences if the Collection is Not Conducted

If OCR does not collect signed Assurance of Compliance – Civil Rights Certificate forms, OCR's ability to enforce Title VI, Title IX, Section 504, the Age Discrimination Act, and the Boy Scouts Act will be affected. When entities accept Federal financial assistance from, or funds made available through, the Department, they are subject to these civil rights laws. By providing signed Assurance of Compliance – Civil Rights Certificate forms, these entities agree to comply with the civil rights laws and are put on notice that failure to comply with the civil rights laws could result in the loss of Federal financial assistance or funds made available through the Department.

7. Special Circumstances for Collecting Data in a Unique Manner

None of the eight special circumstances apply to the Assurance of Compliance – Civil Rights Certificate form.

8. Federal Register Notice Soliciting Public Comment

(* To be completed after publication of Federal Register notice? *)

9. Payments or Gifts to Respondents

No payments or gifts are made or provided to any respondent.

10. Assurances of Confidentiality

There are no assurances of confidentiality in the Assurance of Compliance – Civil Rights Certificate form.

11. Additional Justification for Questions of a Sensitive Nature

There are no questions of a sensitive nature on the Assurance of Compliance – Civil Rights Certificate form.

12. Estimates of the Hour Burden

Estimating the number of respondents is difficult. Respondents only need to sign the Assurance of Compliance – Civil Rights Certificate form once. OCR keeps the signed Assurance of Compliance – Civil Rights Certificate forms on file, and the signed forms apply to all future applications by the respondents for Federal financial assistance from, or funds made available through, the Department. Once OCR has a completed Assurance of Compliance – Civil Rights Certificate form from a respondent, OCR does not ask that respondent again for another completed form.

Occasionally, OCR receives requests for blank Assurance of Compliance – Civil Rights Certificate forms. These requests could be made by, for example, a new charter school that has not previously completed the form. Additionally, if OCR determines, during the course of investigating a complaint alleging a violation of a civil rights law, that a particular recipient of Federal financial assistance has not completed an Assurance of Compliance - Civil Rights Certificate form, OCR would require that the form be signed as part of a resolution agreement. In the past OCR has received an average of 50 or so completed forms a year. Since OMB approval would cover 3 years, our best estimate for the total number of respondents is (3 years) x (50 respondents per year) = 150.

Three years ago the Department mailed out Assurance of Compliance – Civil Rights Certificate forms to approximately 16,000 LEAs and SEAs to collect assurances in connection with the then-recent publication of the regulations implementing the Boy Scouts Act. In January of 2009, the Department issued a second request to those entities for which OCR had no record of receipt of a signed assurance. To date we have received

approximately 9,700 signed Assurance of Compliance – Civil Rights Certificate forms from these mailings. The respondents in that follow-up process have not been included in the number of respondents in item 16 of the Information Collection Submission Worksheet, Part I.

Because respondents only need to sign the Assurance of Compliance - Civil Rights Certificate form once, we have calculated a one-time, rather than an annual, hour burden for each respondent. The one-time hour burden in order to read and sign the Assurance of Compliance - Civil Rights Certificate form is estimated to be 20 minutes per respondent. Thus, the total number of estimated burden hours for collecting and reporting the information over the three year period for which the Assurance of Compliance – Civil Rights Certificate would be approved is estimated to be 50 burden hours: (150 recipients) x (.33 hours per recipient). The total annual hours, for one year of the three year approval period, is estimated to be 16.67 burden hours: (50 recipients) x (.33 hours per recipient).

13. Estimate of the Annual Cost Burden to Respondents

There are no startup costs.

14. Estimates of Cost to Federal Government

None.

15. Reasons for Change in Burden

This is a one-time collection and there is no need to collect signed Assurance of Compliance – Civil Rights Certificate forms from entities that have already submitted a signed form. The estimated number of respondents has dropped from the 2005 submission because, in its current estimate, OCR did not include those entities from whom the Department previously sought to collect assurances regarding the Boy Scouts Act.

The Boy Scouts Act applies to public elementary and secondary schools, local educational agencies (LEAs), and State educational agencies (SEAs) that receive Federal funds made available through the Department. The Boy Scouts Act regulations require that these entities submit an assurance of compliance with the Boy Scouts Act. Ultimately, in July of 2006, approximately 16,000 Assurance of Compliance – Civil Rights Certificate forms were mailed out to LEAs and SEAs to collect assurances in connection with the then-recent publication of the regulations implementing the Boy Scouts Act. 71 Fed. Reg. 14994 (March 24, 2006). (OCR did not require each individual school to submit an assurance of compliance, as the assurance from the LEA covers all the schools in that school district.) In January of 2009, the Department issued a second request to those entities for which OCR had no record of receipt of a signed assurance. To date we have received approximately 9,700 signed Assurance of Compliance – Civil Rights Certificate forms from these mailings. In addition to the approximately 6,300

responses we are in the process of collecting from the 2006 and 2009 mailings, we expect an additional 50 responses a year, as described below.

Each year OCR receives some requests for an Assurance of Compliance to execute and mail back to the Department. As explained in Number 12, these requests could be made, for example, by a new charter school that has not previously completed the form. Additionally, if OCR determines, during the course of an investigation, that a recipient has not completed an Assurance of Compliance – Civil Rights Certificate form, OCR would require that the form be signed as part of a resolution agreement. In the past OCR has received an average of 50 or so completed forms a year. Since OMB approval of the Assurance of Compliance – Civil Rights Certificate form would cover 3 years, our estimate for the total number of respondents is (3 years) x (50 respondents per year) = 150.

16. Plans for Tabulation and Publication

Signed Assurance of Compliance - Civil Rights Certificate forms will not be published.

17. Seeking Approval for Not Displaying the OMB Expiration Date

The Department seeks approval for not displaying an expiration date on the Assurance of Compliance - Civil Rights Certificate form. The assurances provided on the Assurance of Compliance - Civil Rights Certificate form apply to any Federal financial assistance from, or funds made available through, the Department for which a respondent may apply. A respondent only has to submit a signed Assurance of Compliance - Civil Rights Certificate form to OCR once, no matter what funds or financial assistance it seeks from the Department. The display of an expiration date on the Assurance of Compliance - Civil Rights Certificate form will cause confusion concerning the length of time for which the assurance is valid, in that it will imply that respondents have to submit new assurances after the expiration date.

18. Exceptions to the Certification Statement In Item 19 in OMB Form 83-I.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The Assurance of Compliance - Civil Rights Certificate form does not employ statistical methods.