

Supporting Statement for Recordkeeping under Title VII and the ADA

A. Justification

1. The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, as amended (Title VII), which prohibits discrimination against individuals on the basis of race, sex, national origin and religion, and Title I of the Americans with Disabilities Act (ADA), which prohibits discrimination against qualified individuals with disabilities. Section 709 of Title VII, 42 U.S.C. § 2000e-8, and section 107(a) of the ADA, 42 U.S.C. § 12117, authorize the EEOC to issue recordkeeping regulations that are deemed reasonable, necessary or appropriate to the enforcement of the Acts. The Commission has issued recordkeeping regulations pursuant to those statutory sections which are found throughout 29 C.F.R. Part 1602. Copies of the statutory and regulatory provisions are attached.
2. Recordkeeping is necessary to the enforcement of Title VII and the ADA. The retained records are examined, as necessary, by EEOC investigators during the investigation and conciliation of charges of discrimination prohibited by these Acts. Should the records not be retained, EEOC's ability to investigate, issue determinations, conciliate and litigate will be unduly complicated, and in some cases, defeated.
3. This collection of information does not involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, and the EEOC has not considered using information technology to reduce the burden because this is a recordkeeping requirement which does not require reporting or the creation of any records. All employers with 15 or more employees are subject to Title VII and ADA proscriptions on discrimination in employment.
4. There is not any duplication because the EEOC is not imposing a reporting requirement or mandating that any additional records be kept.
5. See items 3 and 4 above.
6. Should the records not be retained, or retained for a shorter period of time, the EEOC's ability to investigate, issue determinations, conciliate and litigate will be unduly complicated and in some cases, defeated.
7. There are no special circumstances.
8. As required by 5 C.F.R. § 1320.8(d), EEOC published a notice in the Federal Register on February 22, 2010 at page 7596-7597 soliciting comments on the proposed extension of our recordkeeping regulations prior to their submission

to OMB. See FR Volume 75, Number 34. No public comments were received.

Over the years, the EEOC has attended numerous conferences comprised of advocacy groups and employers concerning enforcement of Title VII and the ADA. EEOC also presents many forums for discussion of enforcement issues through its various outreach, training and assistance to small business programs.

In 1990, the following individual was consulted:

Wanda Kirby, Regional Administrator
California Department of Fair Employment and Housing
322 West First Street
Los Angeles, California 90012
(213) 620-2610

And in 1991, we consulted with the following two individuals:

Alfonso Ludi
National Aeronautics and Space Administration
Washington DC 20546
(202) 453-2175

David S. Fortney
Deputy Solicitor for National Operations
U.S. Department of Labor
Office of the Solicitor
Washington, DC 20210

Since then, EEOC has consulted with the U.S. Department of Labor (DOL) on our respective agency recordkeeping regulations, and coordinated with the Office of Federal Contract Compliance Programs (OFCCP) of the DOL on their proposed recordkeeping regulations to eliminate the possibility of unnecessary duplication.

EEOC has also met with representatives of the OFCCP, the Employment Standards Administration, the Wage and Hour Administration, the Solicitor's Office and other components of DOL to discuss various aspects of our agency recordkeeping requirements.

9. EEOC does not provide payments or gifts to respondents.
10. EEOC does not provide an assurance of confidentiality as the regulations do not require employers to disclose any information to the Commission. Any of the records maintained pursuant to the regulations that are subsequently

disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of sections 706(b) and 709(e) of Title VII which are incorporated by reference into the ADA.

11. There are no questions of a sensitive nature; in fact, there are no questions of any nature involved in this collection as it is a recordkeeping requirement only.
12. Under Title VII and ADA, the requirements are limited to record retention. This requirement does not ask these respondents to provide any of these records. In order to estimate the hour burden for retaining these records we made some assumptions.

First, firms do not engage in a special process in order to meet Title VII and ADA requirements specifically. We assume that firms already have access and collect records required under Title VII and the ADA during the employment process. Additionally, this information is collected automatically through electronic means or by the entries by the employees. Therefore firms with processes in place incur little or negligible cost in collecting this information. Once collected, the information is automatically retained up until the firm decides to destroy the information.

Second, newly formed firms may incur a small cost in time when installing and learning how to use their automated data collection systems. Although the information required under Title VII and ADA is collected automatically, we assume some effort and time has to be expended so that employers can familiarize themselves with the requirements of the Act and inform/train all employees who handle the data about these requirements. Once this cost is incurred, we assume that the employer will never face this cost again. We assume that 10 minutes of time would be spent for this familiarization process.

We thus calculated the annual hour burden based on the number of new firms with 15 or more employees that enter the market annually. Using 2006 data from the Small Business Administration, we estimated that there are 96,013 firms¹ that would incur costs pertaining to the Act. Assuming ten minutes of time per firm, we estimate that the total annual hour burden is 16,002. This figure would be reported in box 13 parts (c) and (d) of form 83-1.

¹ Data from SBA estimated that there were a total of 670,058 firm births in 2005-2006, "Employer Firm Births and Deaths by Employment Size of Firm, 1989-2006" Source: Office of Advocacy, U.S. Small Business Administration, from data provided by the U.S. Bureau of the Census, Statistics of U.S. Business, downloaded February 1, 2010, <http://www.sba.gov/ADVO/research/data.html>. Using data about firm size from the SBA, we estimated that about 14 percent of all small businesses have 15 or more employees. Therefore, 14 percent of 670,058 lead to an estimated 96,013 new firms with 15 or more employees.

13. There is no additional annual cost to the employers as this is a recordkeeping requirement which does not require reporting or the creation of any new documents.
14. There is no cost to the Federal Government as the EEOC is requesting the extension of a recordkeeping requirement.
15. There are no program changes or adjustments.
16. No results will be published.
17. EEOC is not seeking approval for non-display of the OMB approval date for this collection.
18. There are no exceptions to EEOC's certification statement.