

**Supporting Statement
Recordkeeping and Reporting Requirement for the
Elementary-Secondary Staff Information EEO-5 Report
(EEOC Form 168A)**

A. Justification

1. The legal basis for the Elementary-Secondary Staff Information EEO-5 Form and recordkeeping requirements is Section 709 (c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), which requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. The EEOC has issued regulations, 29 CFR §§1602.41-45, which set forth the reporting requirements for public primary and secondary school systems. Elementary and secondary public schools systems and districts have been required to submit EEO-5 reports since 1974 (biennially in even numbered years since 1982). The individual reports are confidential.

In addition, the Office for Civil Rights, Department of Education is subject to the authority of Sections 601 and 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, 2000d-1; sections 901(b) and (c) and section 902 of Title IX of the Civil Rights Act of 1964, Education Amendments of 1972, 20 U.S.C. §§ 1681, 1682. See also 34 C.F.R. §§ 106.71, 100.6.

The legal basis for the National Center for Education Statistics, Department of Education is Section 404 of Title IV of the Improving America's Schools Act of 1994, National Education Statistics, 20 U.S.C. § 9003.

2. The EEO-5 data are used by the EEOC to investigate charges of employment discrimination against public elementary and secondary school districts. The data are used to support EEOC decisions and conciliations, in systemic program activities, EEOC studies of this sector of the work force and by researchers who request data for academic studies.

The data are also shared with other Federal agencies, particularly the Department of Education's Office for Civil Rights and National Center for Statistics. The Office for Civil Rights uses the data in conjunction with the OCR 101/102 survey (pupil enrollment) to enforce Title VI of the Civil Rights Act of 1964. The data are used in litigation, to review the records of school districts under court order to desegregate, to evaluate voluntary desegregation plans, and to analyze pupil and teacher assignments to target districts for investigation. The Center for Statistics uses the data for their ongoing publication series. The EEO-5 data are also shared with the Department of Justice. The data are provided to other Federal agencies as both hard copy forms and in electronic format.

Under Section 709(d) of Title VII, EEOC is required to supply survey data free of charge to State and Local Fair Employment Practices Agencies (FEPAs). These FEPA agencies use the data to resolve charges of discrimination within their jurisdiction and for research.

3. The EEO-5 report is collected through a web base on-line filing system. There are approximately 7,500 respondents reporting biennially and 58% of these respondents file on-line. The on-line filing system has reduced the burden hours.
4. While the Department of Education collects some staffing data from public primary and secondary schools it is not sufficiently comprehensive to serve the same needs as the EEO-5. In fact, the EEO-5 is shared with the Department of Education.
5. The EEO-5 Report survey is not collected from private employers and it is only collected from public employers.
6. The above option cannot be used by EEOC because the survey is required by law. Section 709 (c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports there from as required by the EEOC. Accordingly, the EEOC has issued regulations, 29 CFR § § 1602.39-45, which set forth the reporting requirements for public primary secondary school systems. Elementary and Secondary public schools systems and districts have been required to submit EEO-5 reports since 1974 (biennially in even numbered since 1982). The individual reports are confidential. In order to help reduce burden, respondents are encouraged to file the report via on-line filing system. Since employment characteristics are dynamic, collecting the data less often would significantly reduce data utility.
7. There are no special circumstances that require the collection of EEO-5 information to be conducted in a manner inconsistent with the general information guidelines in 5 CFR 13206.
8. See attached Federal Register Notice dated April 18, 2008. One comment was received from the public. The **one** comment suggested that the request for three year extension for the EEO-5 should be denied because the U. S. Department Education collects the same data using different race and ethnic definitions, and consequently would force districts to keep two sets of records. However, the rationale here is not quite correct. The Education Department collects data on students by race ethnicity while EEOC collects race and ethnicity data on staffing. The following list of respondents were contacted for outside consultation in prior years:

Wallace W. Henderson
State Budget Director
Florida Department
of Administration
(904) 224-4111

James T. Burch
Assistant Superintendent
North Carolina Superintendent
of Public Instruction
(919) 733-4143

Harvey B. Scribner
Chancellor
City of New York
Board of Education
(201) 596-4143

Dean S. Hartman
Director of Statistics
Pennsylvania Department of
Education (717) 787-7575

Frank W. Cannaday
Supervisor, Research and
Statistics
Arkansas Department of
Education
(501)371-1461

9. EEOC's employees are prohibited by law from providing any payment or gifts to respondents, other than remuneration of contractors or grantees.
10. All reports and information from individual reports are subject to the confidentiality provisions of Section 709(e) of Title VII, and may not be made public by EEOC prior to the institution of any proceeding under Title VII. However, aggregate data may be made public in a manner so as not to reveal any particular jurisdiction's statistics. Barring prohibitive State or local legislation, a political jurisdiction may make its EEO-5 Report public at any time.
11. The EEO-5 Report does not solicit any questions for respondents of a sensitive nature.
- 12.

Annual Respondent Burden Hours: 10,000
Annual Employer Burden Costs: \$190,000

The burden hours are based on the assumption that 1.3 hours are required to complete the form. The cost assumes \$19 per hour cost for entering the data.

13. There are no cost changes for the total annual cost burden to respondents or recordkeepers resulting from this collection. Jurisdictions have been completing this form for a number of years.

14. Estimated cost to the federal government is: \$170,000 contract cost. (This is based on recent competitive bid process.)

15. The changes in # 14 are due to recent competitive bid numbers.

16. Time Schedule for Information Collection and Publication

Reporting Period for Data	October 1
Filing Deadline	November 30
Follow-up Communication	January 31
Preliminary Data Tape	May 31
Final Data Tape	August 31
Table Preparation	September 30

17. This approval is not requested.

18. No exceptions are requested.

19. This approval is not requested.