

*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. The Guidelines, found at 29 C.F.R. Part 1607, are designed to assist employers to comply with requirements of federal law prohibiting employment practices that discriminate on the basis of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures. In support of the UGESP requirements, the regulations require that employers collect and keep race, sex, and ethnicity information about each of their applicants. Employers can do this by a variety of means, including adding questions to their application forms, asking applicants to provide such data on a separate form or in person, or asking applicants to input it into an electronic application system. 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 data collection and 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. However, EEOC, DOL, and DOJ can demand and inspect those records under their respective investigative authorities (for example, in connection with any investigation of a employment discrimination charge, EEOC has the right to access and copy any relevant documents, 42 U.S.C. §§ 2000e-8(a) and 2000e-9).

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. Employers may collect and keep the race, sex, and ethnicity records required by UGESP wholly electronically. 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 August 3, 2011, 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, one entity submitted comments.

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

The commenter argued that the UGESP is merely advisory, not mandatory, and noted that UGESP may be a good idea because the guidelines help ensure that employers' selection procedures do not result in discrimination. EEOC is pleased that the commenter agrees that UGESP is useful, and notes that the Commission has always considered the UGESP requirements to be mandatory if employers want to insure that EEOC will not find them to be in violation of the employment discrimination statutes.

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

The commenter did not comment on the accuracy of the burden.

3) Quality, Utility and Clarity of the Information

The commenter did not comment on the quality, utility, and clarity of the information.

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

While the commenter acknowledges that the UGESP recordkeeping requirement is reduced for employers of 100 or fewer employees, the commenter notes that it is burdensome for employers of between 125 and 250 employees in multiple establishments to comply with the recordkeeping requirement for employers of more than 100 employees. EEOC has carefully considered the comment and decided that the requirement for employers of 125 to 250 employees is not unduly burdensome.

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. 67 Fed. Reg. 49338, at 49341 (July 30, 2002).

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, government contractor, labor organization, or employment agency covered by the federal equal employment opportunity laws.

Respondents: 899,580

Responses: 1,294,042,500

Recordkeeping Hours: 10,783,687 per year.

Number of Forms: None.

Form Number: None.

Frequency of Report: None.

Abstract: The Uniform Guidelines provide fundamental guidance for all Title VII-covered employers about the use of employment selection procedures. 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 Executive Order 11246 to investigate, conciliate, and litigate charges of employment discrimination; and by complainants to establish violations of Federal equal employment opportunity laws. While there is no data available to quantify these benefits, the collection of accurate applicant flow data enhances each employer's ability to address any deficiencies in recruitment and selection processes, including detecting barriers to equal employment opportunity.

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 ethnicity 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 899,580, which combines estimates from private employment,¹ the public sector,² colleges and universities,³ and referral unions.⁴

¹ "Employer Firms, Establishments, Employment, Annual Payroll and Receipts for Small Firm Size Classes, 2007 (<http://www.sba.gov/advo/research/data.html#us>).

² "Government Employment & Payroll" (statistics on number of federal, state, and local government civilian employees and their gross payrolls for March 2008); "2008 State & Local Government" (data for 50 state governments and all local governments); Individual Government Data File (<http://www.census.gov/govs/apes/index.html - 2010>). The number of government entities was adjusted to only include those with 15 or more employees.

³ Postsecondary Institutions in the United States: Fall 2007; Degrees and Other Awards Conferred: 2006-07; and 12-Month Enrollment: 2006-07, (<http://nces.ed.gov/pubsearch/pubsinfo.spp?pubid=2008159rev>).

⁴ EEO-3 Reports filed by referral unions in 2008 with EEOC.

This burden assessment is based on an estimate of the 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 1,294,042,500, which is based on a National Organizations Survey⁵ average of approximately 35 applications for every hire and a Bureau of Labor Statistics data estimate of 36,731,900 annual hires.⁶ It includes 161,300 applicants for union membership reported on the EEO-3 form for 2008.

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 -- sex, race/ethnicity, and an identification number (a total of approximately 13 keystrokes); the employer would need to transfer information received to a database 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 1,294,042,500 paper and electronic applications per year (as calculated above), the resulting UGESP burden hours would be 10,783,687. Based on a wage rate of \$13.65 per hour for the individuals entering the data, the collection and storage of applicant demographic data would come to approximately \$147,197,332 per year for Title VII-covered employers. We expect that the foregoing assumptions are over-inclusive, because many employers have electronic job application processes that should be able to capture applicant flow data automatically.

While the burden hours and costs for the UGESP recordkeeping requirement seem very large, the average burden per employer is relatively small. We estimate that UGESP applies to 899,580 employers, approximately 822,000 of which are small firms (entities with 15-500 employees) according to data provided by the Small Business Administration Office of Advocacy.⁷ If we assume that a firm with 250 employees (in the mid-range of the 822,000 small employers) has 20 job openings per year and receives an average of 35 applications per job opening, the burden hours to collect and store applicants' sex and race/ethnicity data would be 5.8 hours per year, and the costs would be \$79.11 per year. Similarly, if we assume that an employer with 1,500 employees has 125 job openings to fill each year, and receives 35 applications per opening, the burden hours would be 36.5 hours per year and the annual costs would be \$498.23.

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

⁵ The National Organizations Survey is a survey of business organizations across the United States in which the unit of analysis is the actual workplace, (<http://www.icpsr.umich.edu/icpsrweb/ICPSR/studies/04074>).

⁶ Bureau of Labor Statistics Job Openings and Labor Turnover Survey –2010—(<http://www.bls.gov/jlt/data.htm>) adjusted to only include hires by firms with 15 or more employees.

⁷ See Firm Size Data at <http://sba.gov/advo/research/data.html#us>.

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. We do not believe that employers buy human resources software packages specifically and only to collect UGESP required applicant data. They buy such software to keep track of their human resources information generally, comply with all federal, state and local government recordkeeping requirements, and for other reasons specific to their business or enterprise. They can use this same software to collect and preserve race, sex, and ethnicity data on their applicants. Right now, we think that the majority of employers do not have automated applicant systems. Again, we believe that those that have such systems purchase them for other purposes. In short, we believe the costs associated with using software for UGESP recordkeeping are de minimis and not quantifiable.

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 decreased from 14,822,194.89 (March 2008) to 10,783,687 (August 2011) per year. 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. We expect that the assumptions relied on to calculate the burden hours are over-inclusive, because many employers have electronic job applications processes that should be able to capture applicant flow data automatically.

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.