

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

**A. Justification**

1. The legal bases for the Elementary-Secondary Staff Information (EEO-5) form and recordkeeping requirements are Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), which imposes the requirement that “[e]very employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports there from as the Commission shall prescribe by regulation or order. . .” Accordingly, the EEOC issued a regulation, **29 C.F.R. §1602.39-45**, which sets forth the reporting and related recordkeeping requirements for public Elementary and Secondary school systems and districts with 100 or more employees. Elementary and Secondary public school systems and districts have been required to submit EEO-5 reports since 1974 (biennially in even numbered years since 1982). Also see, Title VI of the Civil Rights Act of 1964 (42 USC 2000d, 2000d-1; 34 CFR 100.6(b)), Title IX of the Education Amendment of 1972 (20 USC 1681, 1682; 34 CFR 106.71), and Section 203(c) of the Department of Education Organization Act of 1979 (20 U.S.C. 3413(c)). The individual reports are confidential and may not be made public by the Commission prior to the institution of lawsuit(s) under Title VII in which the individual reports are involved.
  
2. The EEO-5 data are used by the EEOC to investigate charges of employment discrimination against public elementary and secondary school districts. Generally analyses are conducted in conjunction with a charge of discrimination and comparisons are formed with comparative school districts. The data are used to support EEOC decisions and conciliations, and in systemic program activities. For example, data are used to evaluate and categorize charges and to determine the appropriate investigative approaches. Further in the process, the data can also be analyzed to provide additional proof as the investigation proceeds. Aggregated data are provided generally to the public and in some instances specialized data bases are developed for academic researchers.  
  
The data are shared with the Department of Justice and the Department of Education. Pursuant to §709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO-5 data are also shared with eighty-six State and local Fair Employment Practices Agencies (FEPAs) for their enforcement efforts.
  
3. The EEO-5 report is collected through a web based on-line filing system. There are 7,218 respondents reporting biennially and approximately 58 percent of these respondents file on-line. The on-line filing system has reduced the burden hours.

4. While the Department of Education requires school districts to retain demographic data on staffing there is no biennial reporting requirement. EEOC requires biennial reporting and in 2010 districts were allowed to report to EEOC in the race and ethnic categories required by the Department of Education and in 2012 these categories will be the standard reporting requirement. In fact, the EEO-5 is shared with the Department of Education.
5. The EEO-5 Report survey is not collected from private schools, which file EEO-1 reports.
6. Because the data is an integral part of the Title VII enforcement process, failure to collect the data would reduce our ability to enforce Title VII. The data has been integrated into the enforcement process. Collecting the data less often would impair enforcement decisions by reducing the reliability of the data as there will be a lag between the employment statistics provided by employers when reporting and when the data is used. This problem is likely to be most pronounced among school districts with fluctuations in employment. It is important to make certain that employment decisions are consistent with law when increases or decreases in employment occur. A gap of more than two years between data collections would also impose some processing costs on EEOC because more work would be needed to update mailing lists. The data is only collected biennially. Since employment characteristics are dynamic, collecting the data less often would significantly reduce data utility.
7. None of the above special circumstances will be used to collect the EEO-5 Report.
8. A Federal Register Notice was published on July 2, 2012, informing the public of the request for emergency revision of a currently approved collection. EEOC plans to publish the normal 60- and 30-day PRA notices before its next request for OMB approval of this collection.
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 may not be made public by EEOC prior to the institution of any proceeding under Title VII, as provided by Section 709(e) of Title VII. The Department of Education's Office for Civil Rights, however, possesses the authority to release these reports and information to the public, in privacy-protected form, in a manner that reveals particular jurisdiction's data. In addition, aggregate data may be made public by EEOC, but only in a manner so as not to reveal any particular jurisdiction's statistics.
11. The EEO-5 Report does not solicit any information of a sensitive nature from respondents.

12.

	REPORTS FILED	ESTIMATED BURDEN PER REPORT	ESTIMATED TOTAL BURDEN HOURS	COSTS PER HOUR	ESTIMATED TOTAL BURDEN
Previous Burden Estimate	7,218	4.5	32,481	\$19	\$617,139
CURRENT ESTIMATE	6,190	2.5	15,475	\$19	\$294,025

Burden hours are assumed to be 2.5 hours per form at a cost of \$19.00 per hour.<sup>1</sup>

13. Jurisdictions have been completing this form for a number of years, so the cost per hour will be similar, but burden should decrease as explained below.
14. Estimated cost to the federal government will be: \$190,000 contract cost (based on a competitive bid process from prior years.)
15. EEOC is requesting approval to revise the race and ethnicity categories on the reporting form to be more consistent with OMB's race and ethnicity standards.

When examining the changes in burden hours there are a few dimensions that have to be considered. Table 1 shows the simple comparison between prior and current estimates.

**TABLE 1: SIMPLE COMPARISON BETWEEN PRIOR AND CURRENT ESTIMATES**

<sup>1</sup> Estimated burden hours were calculated by multiplying the number of reports expected to be filed annually (6,190 in 2010) by the estimated average time to complete and submit each report (2.5 hours) forms for each form (6,190 X 2.5 = 15,475). Relying on an estimate of \$19 per hour results in a total burden cost of \$294,025 (15,475 burden hours X 19.00 per hour). The rate of \$19 per hour is based on the hourly pay rate of human resources assistants of \$18.22 (*Occupational Employment Statistics, Occupational Employment and Wages, May 2010, 43-4161 Human Resources Assistants, Except Payroll and Timekeeping*, <http://data.bls.gov/cgi-bin/print.pl/oes/current/oes434161.htm> 6/30/2011, Last Modified Date: May 17, 2011, U.S. Bureau of Labor Statistics, Division of Occupational Employment Statistics) \$18.22 was rounded to \$19 to account for instances where higher paid staff perform this work.

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			17,006		

Two factors are contributing to the burden reduction. The first is the decrease in reports filed and the second is the estimated burden per report.

The impact of the reduction in reports filed is captured in Table 2. If we apply the reduced sample size to the prior estimated burden of 4.5, there is a reduction in burden of **4,626** (32,481-27,855) without accounting for any reduction in burden hours.

<b>TABLE 2: REDUCTIONS TO THE REDUCED REPORTS</b>			
	REPORTS FILED	ESTIMATED BURDEN PER REPORT	ESTIMATED TOTAL BURDEN
SAMPLE SIZE	6,190	4.5	27,855
REDUCTON DUE TO SAMPLE SIZE			4,626

There is also a reduction in burden due to districts that filed using the alternative report in 2010. This is displayed in Table 3. There were 241 districts that used the alternative report. These districts all saved about two hours of burden time, for a total of **482** in savings.

<b>TABLE 3: REDUCTIONS DUE TO 2010 ALTERNATIVE REPORTING</b>			
	RELEVANT REPORTS	REDUCTION IN BURDEN HOURS	REDUCED TOTAL BURDEN
REDUCTION DUE TO ALTERNATIVE REPORTING	241	2	482

The third area of savings is the 11,898 hours due to reporting in a manner consistent with the Department of Education’s record keeping requirements. This is displayed in Table 4. The remaining reporting districts of 5,949 (6,190-241) save two hours in reporting when they move

to the revised report creating a savings in burden of **11,898**. This is the amount reported to OMB in EEOC's August 2012 Preliminary Report on Reducing Reporting and Paperwork Burden.

<b>TABLE 4: REDUCTIONS DUE TO 2012 ALTERNATIVE REPORTING</b>			
	RELEVANT REPORTS	REDUCTION IN BURDEN HOURS	REDUCED TOTAL BURDEN
BURDEN REDUCTION	5,949	2	11,898

Table 5 summarizes the four sources of burden reduction.

<b>TABLE 5: SUMMARY OF REDUCTIONS</b>	
TYPE OF REDUCTION	REDUCED TOTAL BURDEN
REDUCTON DUE TO SAMPLE SIZE	4,626
REDUCTION DUE TO ALTERNATIVE REPORTING	482
BURDEN REDUCTION	11,898
TOTAL REDUCTION	17,006

Note that when all three sources of reduction are added they equal the 17,006 reduction noted in Table 1 which compares prior burden estimates and current burden estimates. One might ask why the two other factors were not included in the EEOC's Preliminary Report to OMB on Reducing Reporting and Paperwork Burden. The reduction in sample size of reports filed was clearly not the result of any action taken by EEOC to reduce the burden, so it was not appropriate to include that figure in the report. Also, the reduction due to alternative reporting was completed prior to June 22, 2012, and therefore not eligible for inclusion in the EEOC's Preliminary Report to OMB on Reducing Reporting and Paperwork Burden.

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. This approval is not requested.
19. No exceptions are requested.