

**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 6,190 respondents reporting biennially and approximately 97 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 became 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 October 29, 2012 informing the public of the request for a three year extension of a currently approved 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.¹

13. None

14. Estimated cost to the federal government will be: \$190,000 contract cost (based on a competitive bid process from prior years.)

15. This question asks for program changes/adjustments to cost and/or hour burden – since there should be no change to either since the last approval in August, this answer should state that there is no change to the burden estimates.

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

¹ 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.

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