

Supporting Statement for Paperwork Reduction Act Submission
Equal Employment Opportunity Commission
Office of Federal Operations
OMB Control Number 3046-0046

A. Justification

1. Explain the circumstances that make the collection of information necessary. Include identification of any legal or administrative requirements that necessitate the collection.

In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), and Office of Management and Budget (OMB) regulation 5 C.F.R. § 1320.8(d)(1), the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to OMB a request to approve an existing collection as described below.

The Demographic Information on Applicants form is designed to enable federal agencies to evaluate their employment practices by collecting and analyzing data on the race, national origin, sex and disability status of applicants for both permanent and temporary employment in order to comply with requirements of Equal Employment Opportunity Management Directive 715 (MD-715). MD-715 was promulgated under EEOC’s authority under Title VII and the Rehabilitation Act. Federal agencies may or may not elect to use the form. Applicants for federal employment may or may not elect to complete the form. Therefore, federal agencies’ and applicants use of the form is optional.

Currently the Office of Personnel Management (OPM) publishes forms SF-181, Ethnicity and Race Identification, and SF-256, Self-Identification of Disability, for use in obtaining data from federal employees. This collection would provide identical information from applicants allowing federal agencies to measure the effectiveness of their recruitment efforts.

EEOC is dedicated to ensuring that all segments of American society are represented within the federal workforce. Collection of this data allows federal agencies to develop outreach and recruiting programs to diversify the workforce. Diversification allows the federal workplace to capitalize on differing viewpoints, thereby improving the overall service provided to the public. The federal government’s outreach efforts are important to meeting this goal and without the information received from this collection we will be unable to determine the effectiveness of a federal agency’s recruitment program.

2. Indicate how, by whom, and for what purpose the information is to be used.

Federal agency representatives will use this data to determine if their recruitment efforts are reaching all segments of the population, consistent with federal equal employment opportunity (“EEO”) laws, applicable to these agencies and enforced by EEOC. A more comprehensive assessment of how the form is used is not yet available because USAJobs, the primary source for job postings by federal agencies, has not yet fully integrated the applicant flow form into agency systems. If there has been an impact, it would likely not be meaningfully measured after the FY 2013 MD-715 report submissions.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

EEOC will provide this form in electronic format to interested federal agencies.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in Item 2 above.

While some other federal agencies (or components of such agencies) have obtained OMB's approval for the use of forms collecting data on the race, national origin, sex, and disability status of applicants, it is not an efficient use of government resources for each federal agency separately to seek OMB approval. Accordingly, in order to avoid unnecessary duplication of effort and a proliferation of forms, EEOC seeks approval of a form that can be used by any federal agency that so desires.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize the burden.

The collection of this data will not impact small business or other small entities.

6. Describe the consequence to federal program or policy activities if the collection is not conducted or is conducted less frequently as well as any technical or legal obstacles to reducing burden.

If the collection of this data is not conducted, federal agencies will not be able to evaluate whether recruitment activities effectively are reaching all segments of the relevant labor pool and whether the agencies' selection procedures allow all of the applicants to compete on a level playing field regardless of race, national origin, sex, or disability.

7. Explain any special circumstances that required the collection to be conducted in a manner inconsistent with the guidelines in 5 CFR 1320.6.

The collection is consistent with the guidelines in 5 CFR 1320.6.

8. Provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information received and describe actions taken by the agency in response to these comments. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the date elements to be recorded, disclosed, and reported.

The 60-day notice was published in the Federal Register on February 15, 2013; Vol. 78, No. 32, pages 11175-11179. Four comments were received. The 30-day notice was published on September 13, 2013; Vol. 78, No. 178, pages 56696-56701. No comments were received.

The first commenter was pleased that the revised form used more expansive language and definitions for impairments than that used by OPM's Standard Form 256, thereby taking the focus off the medical condition and putting it on the functional limitation. That commenter believed it would be helpful if EEOC and OPM agreed to revise the SF-256 so that it used the terms and definitions in the revised applicant flow form. A second commenter, however, noted that the list of conditions collected in Section 5.A of the form are similar, but not identical, to the list of targeted/severe disabilities listed on SF-256, while the information in Section 5.C of the form appeared to be similar to the list of non-targeted disabilities on SF-256. That commenter believed it essential that the information collected of applicants mirror the information collected from employees on SF-256 to ensure an appropriate

comparison of the two populations. The commenter recommended that the list of disabilities on the applicant flow form be identical to the SF-256.

We have revised the form so that the types of disabilities listed on the form more closely match those listed on the SF-256. We have updated some of the listed disabilities to include terms that are simpler to understand (for examples, removing much of the parenthetical language used in the SF-256 that describes missing extremities or paralysis).

A third commenter had specific suggestions for revising the language used in section 5.A of the form. It urged that the term “severe” be replaced with the term “significant,” as the term “severe” often is associated with negative or stigmatizing views about disability. The commenter was concerned that many individuals with disabilities might not identify themselves as having a “severe” condition. The commenter also requested that we drop the word “severe” from our description of “severe intellectual disability,” noting that while individuals with intellectual disabilities may experience a variety of limitations, all such disabilities contain impairments in functioning that are of such significance that they warrant being included on the list of targeted disabilities. The commenter also requested that we replace the term “psychological” with “psychiatric” when describing disorders such as bipolar, schizophrenia, PTSD, and major depression.

We find the recommendations suggested by this commenter reasonable and have adopted them in the revised form. We have replaced “severe” with “significant” and changed “psychological” to “psychiatric.” We have removed “severe” from the description of intellectual disability.

Finally, the commenter questioned the utility of including Section 5.B, the questions derived from the American Community Survey (ACS). The commenter believed that the questions fail to identify many individuals with disabilities with other types of functional limitations. It requested the addition of another question in that section that would state: “difficulty with everyday activities such as interacting with others, thinking, preparing food, taking medications, or managing finances.”

The fourth commenter also took issue with including Section 5.B on the form. It believed the limited list of functional limitations presented in this section does not reflect likely workplace concerns and does not collect information that would be useful in tracking information on applicants with disabilities. The commenter was concerned that applicants might be dissuaded from responding truthfully to questions regarding their difficulty in concentrating, remembering, or making decisions. Including such questions would, in this commenter’s opinion, undermine the EEOC’s goal of providing more accurate information about applicants and employees with disabilities. Moreover, the commenter believed that the ACS questions, which include questions on one’s bathing or dressing limitations, might be considered intrusive and potentially inappropriate in the context of applicant data collection.

In response to these comments, we have revised the form to remove the ACS questions. While the ACS questions provide meaning data concerning functional limitations, the questions would in part duplicate the inquiry in section 5.A. Additionally, after discussions with OMB and OPM, we believe that the data collected through the ACS questions would be best compared to the onboard federal workforce rather than applicants for employment. OPM stated that it would determine the feasibility of surveying the federal workforce to obtain ACS disability data.

The fourth commenter generally supported the efforts of the Commission to change the form in order to obtain a broader range of data regarding applicants for employment. However, the commenter had concerns regarding the limited format utilized in the proposed form. First, in order to avoid confusion, this commenter recommended using the term “disabilities and/or health conditions.” The commenter was concerned that the proposed form appeared to separate out disabilities from serious health

conditions, thereby implying that the conditions listed in Section 5.C might be something other than “disabilities.” The commenter was concerned that this might send a message that individuals with certain disabilities were more likely to gain federal employment than individuals who had other disabilities. It further noted that many applicants with disabilities not on the list in Section 5.A could still be considered for employment under the special hiring authority set out in Schedule A at 5 C.F.R. § 213.3102(u). The commenter was concerned that by separating the disabilities in Section 5.C from those in Section 5.A, the form might undermine efforts to ensure that all members of the disability community are aware of their eligibility for hiring under Schedule A.

The fourth commenter was also concerned that the proposed form’s lack of specificity regarding the types of other disabilities and health conditions traditionally collected by the Federal government through SF-256 would make it difficult to link current data with historical data. This commenter recommended asking applicants for employment to identify their specific disabilities or serious health conditions even if they did not fall within the list generally known as targeted disabilities in Section 5.A. The commenter believed this important for several reasons. According to the commenter, collecting information about all disabilities and serious health conditions allows linkages with other data (including data from the SF-256) in such a way that appropriate comparisons may be made. The current SF-256 asks employees to identify whether they have many different types of disabilities and health conditions. The commenter was concerned that by not collecting the same type of specific disability data for applicants, future comparisons of the data related to hiring rates would not be possible and trend analysis would be undermined. Moreover, this commenter believed that the designation of which disabilities are considered significant or targeted disabilities may change over time, and that by collecting only summary information on the non-targeted disabilities, future comparisons of data might be precluded. Finally, the commenter stated that failing to collect information on specific non-targeted disabilities would run counter to the broad definition of disability established by the ADA Amendments Act.

In response to the concerns raised by the fourth commenter, the Commission has made a number of changes in the form. First, the revised form no longer separates out the other serious health conditions in Section 5.C from the list of disabilities in Section 5.A. Instead, we have added the question about disabilities and other serious health conditions to the list set out in the original form in Section 5.A. This should alleviate any concerns that non-targeted disabilities or health conditions are being treated differently than the targeted disabilities. We have also included a paragraph on the form directly under the newly revised Section 5.A which explains that, if an applicant has checked any of the boxes listed in the new Section 5.A, he or she may be eligible for hiring under Schedule A, with a link for more information on Schedule A hiring. Thus, applicants who check the “other disability or serious health condition” box will know that they may be able to utilize Schedule A hiring authority.

Second, we have created a new optional Section 5.A.1, which would provide those applicants who wish to identify their other disabilities or serious health conditions the option of doing so. Section 5.A.1 consists of a list of disabilities and other serious health conditions that the applicant may indicate that he or she has currently. This list closely corresponds to the other disabilities and health conditions listed on the SF-256. By allowing for an option to specifically identify the types of disabilities or serious health conditions listed in 5.A.1, the form now provides an opportunity for disability data collection between applicants to the federal workforce and those hired by the federal government. However, by keeping this list optional and available only should the applicant check the appropriate box in Section 5.A, and by providing the option to indicate that the applicant does not wish to identify a disability or serious health condition, the Commission believes it will receive more accurate data on the total number of applicants with disabilities.

Finally, this commenter voiced its support for the way the form collects information on intellectual disabilities, in particular the distinction made between intellectual disabilities, developmental disabilities and traumatic brain injury. The commenter believes that the separation of these types of disabilities will result in increased self-identification rates and therefore more accurate data. The commenter also suggested adding a parenthetical pointing out that the Commission, by breaking out certain types of disabilities from the category of “intellectual disabilities,” does not mean that the term “intellectual disabilities” will have a narrower scope for other purposes.

We do not believe that adding developmental disability and traumatic brain injury to our list of disabilities in Section 5.A would lead applicants to believe that we are narrowing the scope of the term intellectual disability. The Commission therefore has not added the parenthetical.

9. Explain decision to provide any payment or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The voluntary responses are requested pursuant to Public Law 93-579 (“Privacy Act of 1974”) for individuals completing federal records and forms that solicit personal information. The authority is Title 5 of the U.S. Code, Sections 1302, 3301, 3304, and 7201.

The voluntary responses play no part in the selection of who is hired. The responses are not provided to any panel rating the applications, selecting officials, anyone who can affect the application, or to the public. Data relating to an individual applicant is not generally provided to officials involved in the selection unless it meets an exception under the Privacy Act. Rather, the information is used in summary form to determine trends over many selections within a given occupational or organizational area. Responses from this form are not placed in an official personnel file.

This collection is also covered by OPM’s System of Record Notice (OPM/GOV-7), which in part states:

Note 1 --These data are maintained under conditions that ensure that the individual's identification as to race, sex, national origin, or disability status does not accompany that individual's application nor is otherwise made known when the individual is under consideration by a selecting official.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

a. To disclose information to the Equal Employment Opportunity Commission (EEOC), in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform Guidelines on Employee Selection Procedures (1978), or other requirements imposed on agencies under EEOC authorities in connection with agency Equal Employment Opportunity programs.

b. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with the processing of appeals, special studies relating to the civil service and other merit systems in the executive branch, investigations into allegations of prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

c. By the Office or employing agency maintaining the records to locate individuals for personnel research or survey response and in the production of summary descriptive statistics and analytical

studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

d. To disclose information to a Federal agency in response to its request for use in its Federal Equal Opportunity Recruitment Program to the extent that the information is relevant and necessary to the agency's efforts in identifying possible sources for minority recruitment.

e. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

f. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is party to a judicial or administrative proceeding.

g. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

h. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

i. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant cooperative agreement, or job for the Federal Government.

11. Provide additional information for any questions of a sensitive nature, such as sexual behavior and attitude, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the question necessary, the specific uses to be made of the information is requested, and any steps to be taken to obtain their consent.

There are no questions of a sensitive nature.

12. Provide estimates of the hour burden of collection of information.

Because of the predominant use of online application systems, which require only pointing and clicking on the selected responses, and because the form requests only six questions regarding basic information, the EEOC estimates that an applicant can complete the form in approximately 3 minutes or less. Based on past experience, we expect that 5,800 applicants will choose to complete the form.

Once OMB approves the use of this common form, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form.

13. Provide an estimate of the total annual cost burden to respondents or record keepers resulting from the collection.

For Respondents: Because of the increasing use of online application systems, which require only pointing and clicking on the selected responses, and because the form requests only six questions regarding basic information, the EEOC estimates that an applicant can complete the form in approximately 3 minutes.

14. Provide estimates of annualized cost to the Federal government. Also provide a description of the method used to estimate cost, which should include quantification of hours, operational expense, and any other expense that would not have been incurred without this collection of information.

The estimated annual cost to the federal agencies is not known. A more comprehensive assessment of how the cost of the form is not yet available because USAJobs, the primary source for job postings by federal agencies, has not yet fully integrated the applicant flow form into agency systems. Once the form is fully integrated, we do not expect that there will be an additional cost to agencies.

15. Explain reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

We are changing this form to a common form where each agency choosing to use the form would account for the burden associated with their use of the form..

16. For collection of information whose results will be published, outline the plans for tabulation and publication.

The data will be compiled and utilized in the federal agencies' MD-715 reports that are submitted in aggregate annually to the EEOC by January 31st.

17. If seeking approval not to display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

EEOC is not requesting that the expiration date not be displayed.

18. Explain each exception to the certification statement identified in item 19 of OMB Form 83-I.

No exceptions.

Attachments:

Federal Register 30-day notice