

Supporting Statement A
Recordkeeping and Reporting Requirements for the
Elementary-Secondary Staff Information Report (EEO-5)
(OMB Control No. 3046-0003)

Introduction

The Equal Employment Opportunity Commission (EEOC or Commission) is submitting to the Office of Management and Budget (OMB) a request for a three-year extension without change of a currently approved collection, the Elementary-Secondary Staff Information Report (EEO-5).

The EEO-5 is conducted to fulfill the reporting responsibility of public elementary and secondary school systems or districts subject to Title VII of the Civil Rights Act of 1964, as amended (Title VII). As part of this requirement, the reporting public elementary and secondary school systems or districts, including public charter schools and state education associations or agencies, provide data on their full-time staff, part-time staff, in a total of 18 job assignments, by sex and by race/ethnic groups to the EEOC.

The EEOC uses EEO-5 data to investigate charges of employment discrimination against public elementary and secondary school systems or districts. The data are also used for research. The data are made available to the public, in aggregate format, at the national and state level at www.eeoc.gov.

A. Justification

1. Legal and Regulatory Requirements

The legal basis for the Elementary-Secondary Staff Information Report (EEO-5) 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), (Title VII) 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 therefrom as the Commission shall prescribe by regulation or order. . .” Accordingly, the EEOC issued regulations, 29 C.F.R. §§ 1602.39 and .41-.45, prescribing the reporting and related record retention requirements for public elementary and secondary school systems or districts. 29 C.F.R. § 1602.39 requires school districts to make or keep all records necessary for completion of an EEO-5 submission and retain those records for three years. 29 C.F.R. § 1602.41 requires EEO-5 filers to retain a copy of each filed EEO-5 report for three years. These requirements are related to recordkeeping, which is part of standard administrative practices, and as a result, the EEOC believes that any impact on burden would be negligible and nearly impossible to quantify. Also see Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000d-1; 34 C.F.R. 100.6(b)), Title IX of the Education Amendment of 1972 (20 U.S.C. 1681, 1682; 34 C.F.R. 106.71), and Section 203(c) of the Department of Education Organization Act of 1979 (20 U.S.C. 3413(c)). Public elementary and

secondary school systems or districts have been required to submit EEO-5 reports annually from 1974 to 1981 and then biennially in even years from 1982 to the present. The individual reports are confidential. EEO-5 reports may not be made public by the Commission prior to the institution of a lawsuit(s) under Title VII in which the individual report(s) is involved.

2. Use of Collected Information

The EEO-5 collection is used by the EEOC to investigate charges of employment discrimination against public elementary and secondary school systems or 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, EEO-5 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. EEO-5 data are made available to the public, in aggregate format, at the national and state level at www.eeoc.gov. EEO-5 reports are shared with the Department of Justice and the Department of Education (Office for Civil Rights).

3. Use of Information Technology

The EEO-5 is collected primarily electronically through one of two ways: (1) online web-based application system or (2) online web-based upload of an electronic CSV data file. 7,082 respondents reported EEO-5 data for the 2018 collection. Of these, approximately 97 percent filed electronically online according to the EEOC's EEO-5 data collection contractor. Of the 7,082 respondents, 6,190 or 87.4 percent filed EEO-5 data electronically through the online application system; 659 or 9.3 percent of respondents filed EEO-5 data electronically by uploading an electronic file through the online system; and 233 or 3.3 percent of the respondents filed EEO-5 data through paper submission. Online electronic filing remains the most popular, efficient, accurate, and secure means of reporting for respondents required to submit the EEO-5. The EEOC has also made online electronic filing much easier for respondents. The EEOC will provide technical assistance to any filers who have difficulty responding online electronically. Accordingly, the EEOC will continue to encourage EEO-5 filers to submit data through online electronic filing and will only accept paper records from filers who have secured permission to submit data via paper submission.

4. Description of Efforts to Identify Duplication

While the Department of Education requires school districts to retain demographic data on staffing there is no reporting requirement. The EEOC requires biennial reporting, and the EEO-5 reports collected by the EEOC are shared with the Department of Education.

Additionally, the Department of Education's National Center for Education Statistics (NCES) collects employer demographics for public elementary and secondary school

systems and districts. However, the data gathered are not duplicative of the EEOC's EEO-5 collection.

5. Impact on Small Business

The EEO-5 collection does not have an impact on small businesses, as it is collected from public school systems or districts.

6. Consequences of Collecting Information Less Frequently

Because the EEO-5 collection is an integral part of the Title VII enforcement process, failure to collect the EEO-5 would reduce our ability to enforce Title VII. The EEO-5 data have been integrated into the EEOC's enforcement process. Collecting EEO-5 data less often would impair enforcement decisions by reducing the reliability of the data due to a lag between the employment statistics provided by school systems or districts at the time of reporting and when the EEO-5 data are used. This problem is likely to be most pronounced among school systems or 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 EEO-5 collections would also impose some processing costs on the EEOC because more work would be needed to update mailing lists. The EEO-5 data are only collected biennially. Since employment characteristics are dynamic, collecting EEO-5 data less often would significantly reduce data utility.

7. Special Circumstances

This information collection does not require any special circumstances.

8. Consultation Outside the Agency

The 60-day Federal Register notice was published on November 19, 2020 (85 FR 73701) in order for the public to comment on this proposed collection. One comment was received from the public; however, it was not considered responsive as it did not address the EEO-5 collection. Also, the EEOC regularly consults with a wide variety of data users interested in EEOC data.

9. Gifts or Payments

The EEOC's employees are prohibited by law from providing any payments or gifts to respondents, other than remuneration of contractors or grantees.

10. Confidentiality of Information

No reports, or information or data from individual EEO-5 reports, may be made public by the 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 a particular jurisdiction’s data. Aggregate EEO-5 data are made available by the EEOC at the national and state level, but in a manner so as not to reveal any particular school system or district data. Due to small cell sizes, some values have been suppressed to prevent the release of identifiable confidential information.

11. Questions of a Sensitive Nature

The EEO-5 collection does not solicit any information of a sensitive nature from respondents.

12. Information Collection Burden Hours and Costs

Collection Title: Elementary-Secondary Staff Information Report (EEO-5).

OMB-Number: 3046-0003.

Frequency of Report: Biennial, even years.

Type of Respondent: Public elementary and secondary school systems or districts with 100 or more employees within the 50 U.S. states and District of Columbia.

Description of Affected Public: Public elementary and secondary school systems or districts with 100 or more employees within the 50 U.S. states and District of Columbia.

Responses: 7,082.

Reporting Hours: 120,901.07 per biennial collection.

Burden Cost Burden: 4,055,001.76 per biennial collection.

Federal Cost: \$240,120.85 per biennial collection.

Number of Forms: 1.

Form Number: EEOC Form 168A.

TABLE 1 - ESTIMATE OF BIENNIAL BURDEN FOR EEO-5 REPORT					
	Hourly wage rate	Burden hours per district^a	Burden hour cost per district	Total burden hours	Total burden hour cost
	N =7,082				
Computer Support Specialist (IT Professional/Data Processing Specialist)	26.33	3.43	\$90.28	24,281.35	\$639,327.82
Director of School Finance (Financial	62.45	0.14	\$8.92	1,012.02	\$63,200.51

Managers)					
Executive Clerical Staff	26.35	2.93	\$77.17	20,740.35	\$546,508.10
Human Resource Specialist	29.77	5.43	\$161.61	38,445.35	\$1,144,517.93
Payroll Specialist	19.49	1.43	\$27.84	10,117.35	\$197,187.06
Senior Human Resource Managers	56.11	3.43	\$192.38	24,281.35	\$1,362,426.28
Superintendent (School Management Occupations)	50.33	0.29	\$14.38	2,023.33	\$101,834.07
SUB TOTAL		17.07	\$572.58	120,901.07	\$4,055,001.76

a Burden Hours are rounded to the tenth decimal place in this publication.

Note: Burden Hours per district were determined through interviews with a stratified heterogeneous mixture of school districts used to estimate burden, as noted in the approved 2018 Paperwork Reduction Act package.

The EEOC has updated its methodology for calculating annual burden to reflect the different staff responsible for preparing and filing the EEO-5. The EEOC's revised burden estimate reflects that the bulk of the work in biennially preparing an EEO-5 report is performed by computer support specialists, executive administrative staff, and payroll and human resource professionals; the revised estimate also includes time spent by school district finance professionals and superintendents who, in a few cases, may consult briefly during the reporting process. After accounting for the time spent by the various employees who have a role in preparing an EEO-5, the EEOC estimates that a school district will spend 17.07 hours to prepare the report and estimates that the aggregate biennial hour burden for all respondents is 120,901.07. The cost associated with the burden hours was calculated using hourly wage rates obtained from the Department of Labor¹ for each job identified above as participating in the submission of the report; using those rates, we estimate that the burden hour cost per school district will be approximately \$572.58, while the estimated total biennial burden hour cost for all 7,082 school districts will be \$4,055,001.76.

13. Information Collection Cost Burden

There is no cost for respondents. It is believed that the costs associated with collecting, managing and reporting data are de minimis and not quantifiable.

14. Cost to Federal Government

¹ Median hourly wage rates were obtained from the Bureau of Labor Statistics (see U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, <http://www/bls.gov/ooh/>)

The estimated biennial cost to the federal government will be \$240,120.85, based on competitive bid process from prior years. The estimate is based on 1% of a GS15/4 salary; 5% of a GS15/3 salary; 20% of GS14/5 salary; and 20% of a GS15/4 salary and associated contract costs.

15. Program Changes or Burden Adjustments

The total burden hour and burden hour cost estimates have been adjusted from the previous clearance. The total biennial burden hour estimate increased from 102,839 in the previous clearance to 120,901 (an increase of 18,062 burden hours). This is due to an increase in the number of estimated respondents per biennial collection, which increased from 6,024 in the previous clearance to 7,082. The increased estimate is based on the number of responses received for the 2018 EEO-5 collection.

16. Publication of Data for Statistical Use²

Time Schedule for Information Collection and Publication³:

Reporting Period for Data	early September
Filing Deadline	November 30th
First non-response prompt	early December
Second non-response prompt	mid-December
Final non-response prompt	early January
Preliminary Data Delivery	February
Final Data Delivery	March
Table Preparation	April

17. Approval Not to Display Expiration Date

The EEOC is not seeking approval to not display the expiration date for this collection of information.

18. Exceptions to the Certification Statement

² The 2020 EEO-5 collection has been delayed until calendar year 2021 due to the COVID-19 pandemic. The 2020 EEO-5 collection is scheduled to open in July 2021. The filing deadline is scheduled for mid-September. Follow-up letters will be sent from September through October. The data will be cleaned October through December and data are tentatively scheduled to be published in February 2022.

³ This Time Schedule for Information Collection and Publication will be implemented beginning with the 2022 EEO-5 data collection, which will open in calendar year 2022.

The EEOC is not seeking any exceptions to the certification statement under this information collection request.