

*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 employment election 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 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 involve data collection and recordkeeping by regulated entities, as described at 29 C.F.R. § § 1607.4, 1607.15. UGESP does not include any reporting requirements. However, EEOC, DOL, and DOJ can demand and inspect records under their respective investigative authorities (for example, in connection with an investigation of an employment discrimination charge filed with it by a Title VII charging party, 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. When EEOC investigates charges of employment discrimination filed with it, EEOC may request this information as part of the investigation. When conducting compliance reviews, OFCCP may seek 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 April 26, 2021, giving notice of its intent to submit to the Office of Management and Budget (OMB) a request to approve an extension without change of an information collection. The notice published in the Federal Register specifically requested comments in response to four PRA topics relating to respondent cost and burden. The Commission received one comment in response to the 60-Day Notice. This comment notes that UGESP, since its 1978 adoption, has used the verb “should” to characterize employers’ duties to collect and maintain information and to analyze the validity of employment selection tests. The comment appears to be arguing against construing “should” to mean “must” by commenting that, if EEOC in fact did construe “should” to mean “must,” then EEOC’s PRA burden calculation in the 60-Day Notice would be too low to cover all the activities enumerated in UGESP.

EEOC does not express a view here on the meaning of the term “should” in UGESP except to refer readers to the subsection of UGESP’s Definitions section that explains how to interpret the word “‘should’ as used in these guidelines.” See 29 CFR 1607.16 S. (Definitions. *Should*).

From the PRA perspective, EEOC correctly construes the PRA burden analysis requirements. For purposes of calculating the PRA burden of a federal “collection of information” like UGESP, the phrase “collection of information” focuses on “the act of collecting . . . information.” 5 CFR 1620.3(c). The PRA analysis of burden, in turn, refers to a calculation of the time and cost used by the regulated entity to engage in the act of collecting and maintaining the specified information. *Id.* at 1620.3(b)(1). EEOC’s 60-Day PRA burden analysis correctly and appropriately accounts for the burden on regulated entities of collecting and maintaining applicant flow data under UGESP.

9. Explanation of any Payment or Gift to Respondents

UGESP involves no payments or gifts to respondents.

10. Assurance of Confidentiality Provided to Respondent

To the extent the EEOC obtains in the course of a particular charge investigation any information originally collected and maintained under UGESP, that information 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. 81 Fed. Reg. 81116, at 81120 (November 17, 2016).

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 for compliance reviews and investigations of filed charges; 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: 957,005.

Responses¹: 957,005.

Recordkeeping Hours: 16,578,127 per year.

Number of Forms: None.

Form Number: None.

¹ The number of respondents is equal to the number of responses (i.e. one response per person).

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 ensure that they are complying with Title VII and Executive Order 11246. 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. However, for the purposes of burden calculation, data for all employers are counted². The number of employers with 15 or more employees is estimated at 957,005 which combines estimates from private employment,³ the public sector,⁴ and referral unions.⁵ Employers with 15 or more employees represent approximately 15.3% of all employers in the U.S. and employ about 87.7% of all employees in the U.S.⁶

This burden assessment is based on an estimate of the number of job applications submitted to all 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 1,989,375,182, based on an average of approximately 29 applications⁷ for every hire and a Bureau of Labor Statistics data estimate of 68,594,000 annual hires.⁸ This figure also includes 149,182 applicants for union membership reported on the EEO-3 form for 2018.

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

² In calculating burden, data from multiple sources are used. Some of these sources do not allow us to identify only those employers who are covered by Title VII (employers with 15 or more employees).

³ Source of original data: 2017 Economic Census.

(<https://www.census.gov/content/census/en/data/datasets/2017/econ/susb/2017-susb.html>). Local Downloadable CSV data. Select U.S. & states, 6 digit NAICS. The original number of employers was adjusted to only include those with 15 or more employees.

⁴ Source of original data: 2017 Census of Governments: Employment. Individual Government Data File (<https://www.census.gov/data/tables/2017/econ/apes/annual-apes.html>), Local Downloadable Data zip file "individual files". The original number of government entities was adjusted to only include those with 15 or more employees.

⁵ EEO-3 Reports filed by referral unions in 2018 with EEOC.

⁶ Source of original data: 2017 Economic Census.

(<https://www.census.gov/content/census/en/data/datasets/2017/econ/susb/2017-susb.html>). Local Downloadable CSV data. Select U.S. & states, 6 digit NAICS; 2017 Census of Governments (<https://www.census.gov/data/tables/2017/econ/apes/annual-apes>).

⁷ The average number of applications received per job opening in 2018, according to the private career advice website Zety. (<https://zety.com/blog/hr-statistics>).

⁸ Bureau of Labor Statistics Job Openings and Labor Turnover Survey, 2018 annual level data (Not seasonally adjusted), (<http://www.bls.gov/jlt/data.htm>) is the source of the original data. The BLS figure includes new hires in both the public and the private sectors across all employer sizes. .

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 time cost associated with entering 13 keystrokes.

Assuming that the required recordkeeping takes 30 seconds per record, and assuming a total of 1,989,375,182 paper and electronic applications per year (as calculated above), the resulting UGESP burden hours would be 16,578,127. Based on a wage rate of \$17.44⁹ per hour for the individuals entering the data, the collection and storage of applicant demographic data would come to approximately \$289,122,526 per year. 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 957,005 employers, which is about 15.3% of all employers in the U.S, and who employ about 87.7% of all employees in the U.S (86.5% of private employees and 95.9% of government employees)¹⁰. Therefore, the estimated cost per covered employer is about \$263¹¹. Additionally, 35.0% of employees work for firms with at least 5,000 employees¹², and it is likely the burden of entry for these firms is transferred to the applicants via use of electronic application systems. UGESP also allows for simplified recordkeeping for employers with more than 15 but less than 100 employees.¹³

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, and it is

⁹ Based on the 10th percentile hourly wage for Human Resources Specialist in 2018 (<https://www.bls.gov/oes/2018/may/oes131071.htm>). The 10th percentile is slightly lower than the average salary for an entry-level Human Resources Specialist (<https://www.ziprecruiter.com/Salaries/Entry-Level-Human-Resources-Specialist-Salary>)

¹⁰ Source for private employees: 2017 Economic Census. (<https://www.census.gov/content/census/en/data/datasets/2017/econ/susb/2017-susb.html>). [Local Downloadable CSV data. Select U.S. & states, 6 digit NAICS. Source for public employees: 2017 Census of Governments](https://www.census.gov/data/tables/2017/econ/apes/annual-apes) (<https://www.census.gov/data/tables/2017/econ/apes/annual-apes>).

¹¹ This assumes that the new hires in 2018 were distributed equally across firm and agency sizes. In 2018, 64,286,000 new hires were in the private sector 86.5% of which would be 55,575,000 new hires estimated for firms with at least 15 employees. Similarly, 4,310,000 new hires were in the public sector. 95.9% of which would be 4,133,000 new hires into governments with at least 15 employees. This totals approximately 59,708,000 new hires in Title VII locations. The remainder of the burden hour calculations remain the same.

¹² Source for private employees: 2017 Economic Census. (<https://www.census.gov/content/census/en/data/datasets/2017/econ/susb/2017-susb.html>).

¹³ See 29 CFR 1607.15A(1): *Simplified recordkeeping for users with less than 100 employees*. In order to minimize recordkeeping burdens on employers who employ one hundred (100) or fewer employees, and other users not required to file EEO-1, *et seq.*, reports, such users may satisfy the requirements of this section 15 if they maintain and have available records showing, for each year:(a) The number of persons hired, promoted, and terminated for each job, by sex, and where appropriate by race and national origin; (b)The number of applicants for hire and promotion by sex and where appropriate by race and national origin; and (c) The selection procedures utilized (either standardized or not standardized).

expected that larger employers utilize one of these software products. These 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 employees work for an employer that has an automated applicant system and thus that the majority of applications are received by employers that have an automated applicant system. 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 increased from 7,825,132 (November 2017) to 16,578,127 per year. This adjustment was the result of changes in burden hour calculation methods and workplace data, such as the number of respondents, employees, and job seekers. We expect that the assumptions relied on to calculate the burden hours are over-inclusive, because the majority of applications are received by employers that 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.