



This document is scheduled to be published in the Federal Register on 05/26/2021 and available online at [federalregister.gov/d/2021-11072](https://www.federalregister.gov/d/2021-11072), and on [govinfo.gov](https://www.govinfo.gov)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Extension Without Change of an Existing Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension without change of the existing recordkeeping requirements under its regulations. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods - please use only one method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions on the website for submitting comments.

Mail: Comments may be submitted by mail to Rachel See, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE, Washington, DC 20507.

Fax: Comments totaling six or fewer pages may be sent by fax machine to (202) 663-4114. (This is not a toll-free number.) Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice), (800) 669-6820 (TTY), or (844) 234-5122 (ASL Video Phone).

Instructions: All comments received will be posted without change to <http://www.regulations.gov>, including any personal information you provide. However, the EEOC reserves the right to refrain from posting inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

Although copies of comments received are usually also available for review at the Commission's library, given the EEOC's current 100% telework status due to the Coronavirus Disease 2019 (COVID-19) public health emergency, the Commission's library is closed until further notice. Once the Commission's library is re-opened, copies of comments received in response to this notice will be made available for viewing by appointment only at 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30am and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, at (202) 921-2665 or kathleen.oram@eeoc.gov, or Erin Norris, Senior Attorney, at (980) 296-1286 or erin.norris@eeoc.gov. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice), (800) 669-6820 (TTY), or (844) 234-5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 (Title VII), Title I of the Americans with Disabilities Act (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which collectively prohibit discrimination on the basis of race, color, religion, national origin, disability, or genetic information. Section 709(c) of Title VII, section 107(a) of the ADA, and section 207(a) of GINA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. The EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602. These regulations do not require the creation of any particular records but generally require employers and labor organizations to preserve any personnel and employment records they make or keep for a period of one year or two years, and possibly longer if a charge of discrimination is filed.

Pursuant to the Paperwork Reduction Act of 1995, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

- (1) Evaluate whether the collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the Commission's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The EEOC seeks an extension without change of OMB's clearance under the PRA of the recordkeeping requirements in 29 CFR part 1602.

Overview of Current Information Collection

Collection Title: Recordkeeping Under Title VII, the ADA, and GINA.

OMB Number: 3046-0040.

Description of Affected Public: Employers and labor organizations subject to Title VII.

Number of Respondents: 989,379.

Number of Reports Submitted: 0.

Estimated Burden Hours: 162,223.

Cost to Respondents: \$0.

Federal Cost: None.

Number of Forms: None.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), section 107(a) of the ADA, 42 U.S.C. 12117(a), and section 207(a) of GINA, 42 U.S.C. 2000ff-6(a), direct the Commission to establish regulations pursuant to which entities subject to those Acts shall make and preserve certain records to assist the EEOC in ensuring compliance with the Acts' prohibitions on employment discrimination. Accordingly, the EEOC issued regulations setting out recordkeeping requirements for private employers (29 CFR 1602.14); employers, labor organizations, and joint labor-management committees that control apprenticeship programs (29 CFR 1602.21(b)); labor organizations (29 CFR 1602.28(a)); state and local governments (29 CFR 1602.31); elementary and secondary school systems or districts (29 CFR 1602.40); and institutions of higher education (29 CFR 1602.49(a)). Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII, which are also incorporated by reference into the ADA at section 107(a) and GINA at section 207(a).

Burden Statement: The estimated number of respondents subject to this recordkeeping requirement is 989,379 entities, which combines estimates from private employment¹, the public sector², colleges and universities³, apprenticeship programs⁴, and referral unions⁵. An entity subject to the recordkeeping requirement in 29 CFR part 1602 must retain all personnel or employment records, records relating to apprenticeship, or union membership or referral records made or kept by that entity for one year (private employers and referral unions) or two years (public sector, colleges and universities, apprenticeship programs), and must retain any records relevant to charges of discrimination filed under Title VII, the ADA, or GINA until final disposition of those matters, which may be longer than one or two years. This recordkeeping requirement does not require reports or the creation of new documents, but merely requires retention of documents that an entity has already made or kept in the normal course of its business operations. Thus, existing employers and labor organizations bear no burden under this analysis, because their systems for retaining these types of records are already in place. Newly formed entities may incur a small burden when setting up their data collection and retention systems to ensure compliance with EEOC's recordkeeping requirements. We assume some effort and time must be expended by new employers or labor

¹ 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.

² 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 Unit Files". The original number of government entities was adjusted to only include those with 15 or more employees.

³ Source: U.S. Department of Education, National Center for Education Statistics, IPEDS, Fall 2017. Postsecondary Institutions and Cost of Attendance in 2017-18; Degrees and Other Awards Conferred: 2016-17; and 12-Month Enrollment: 2016-17: First Look (Provisional Data), See Table 1, "Number and percentage distribution of Title IV institutions, by control of institution, level of institution, and region: United States and other U.S. jurisdictions, academic year 2017-2018" (<https://nces.ed.gov/pubSearch/pubsinfo.asp?pubid=2018060REV>).

⁴ Source: U.S. Department of Labor. Registered Apprenticeship National Results Fiscal Year 2020. Number of active apprenticeship programs in 2020 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>).

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

organizations to familiarize themselves with Title VII, ADA, and GINA recordkeeping requirements and explain those requirements to the appropriate staff. We estimate that 30 minutes would be needed for this one-time familiarization process. Using projected business formation estimates from the U.S. Census Bureau for 2020 and the number of new apprenticeship programs established in 2020 provided by the Department of Labor, we estimate that there are 324,446 entities that would incur this start-up burden.⁶ Assuming a 30-minute burden per entity, the total annual hour burden is 162,223 hours (.5 hour × 324,446 new entities = 162,223 hours).

For the Commission

Dated: May 20, 2021.

Charlotte A. Burrows,
Chair.

[FR Doc. 2021-11072 Filed: 5/25/2021 8:45 am; Publication Date: 5/26/2021]

⁶ Sources: Business Formation Statistics from the U.S. Census Bureau (<https://www.census.gov/econ/bfs/index.html>). Total projected business formation statistics (series BF_PBF4Q) for 2020, across all industries, for the US, not seasonally adjusted.; Department of Labor, New Apprenticeship programs for 2020 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2020>).