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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of information collection – uniform guidelines on employee selection procedures – extension without change.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission gives notice that it has submitted the information described below to the Office of Management and Budget (OMB) for a three-year extension without change.

DATES: Written comments on this notice must be submitted on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]**.

ADDRESSES: Written comments should be sent within 30 days of publication of this final notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review – Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, at (202) 921-2665 or kathleen.oram@eeoc.gov, or Savannah Marion Felton, Senior Attorney, at (202) 921-2671 or savannah.felton@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) or 1-800-669-6820 (TTY).

OVERVIEW OF THIS INFORMATION COLLECTION

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.

Frequency of Report: None.

ABSTRACT: The Uniform Guidelines on Employee Selection Procedures (UGESP) 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.

On April 26, 2021, the Commission published a 60-Day Notice informing the public of its intent to request an extension without change of the information collection requirements from the Office of Management and Budget, and providing its PRA burden analysis for UGESP. 86 FR 22049 (April 26, 2021). 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 procedures or 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.

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

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

under Title VII and Executive Order 11246 are subject to UGESP. However, for the purposes of burden calculation, data for all employers are counted.² 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 information -- sex, race/ethnicity, and an identification number (a total of approximately 13 keystrokes); the employer may need to transfer information received to a database either manually or electronically (although we believe it likely that many employers utilize HR software that handles employment applications as well as the rest of the employers HR needs); 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.

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. .

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>)

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 \$263.¹¹ Additionally, 35.0% of employees work for firms with at least 5,000 employees,¹² 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

For the Commission.

Dated: June 30, 2021.

Charlotte A. Burrows,
Chair.

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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>).

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).