

Subpart H—Title VII Interpretations and Opinions by the Commission

§ 1601.91 Request for title VII interpretation or opinion.

Any interested person desiring a written title VII interpretation or opinion from the Commission may make such a request. However, issuance of title VII interpretations or opinions is discretionary.

[56 FR 9625, Mar. 7, 1991]

§ 1601.92 Contents of request; where to file.

A request for an “opinion letter” shall be in writing, signed by the person making the request, addressed to the Chairman, Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507 and shall contain:

- (a) The names and addresses of the person making the request and of other interested persons.
- (b) A statement of all known relevant facts.
- (c) A statement of reasons why the title VII interpretation or opinion should be issued.

[42 FR 55388, Oct. 14, 1977. Redesignated and amended at 56 FR 9625, Mar. 7, 1991; 74 FR 3430, Jan. 21, 2009]

§ 1601.93 Opinions—title VII.

Only the following may be relied upon as a “written interpretation or opinion of the Commission” within the meaning of section 713 of title VII:

- (a) A letter entitled “opinion letter” and signed by the Legal Counsel on behalf of and as approved by the Commission, or, if issued in the conduct of litigation, by the General Counsel on behalf of and as approved by the Commission, or
- (b) Matter published and specifically designated as such in the FEDERAL REGISTER, including the Commission’s Guidelines on Affirmative Action, or
- (c) A Commission determination of no reasonable cause, issued, under the circumstances described in §1608.10 (a) or (b) of the Commission’s Guidelines on Affirmative Action, 29 CFR part 1608, when such determination contains a statement that it is a “written inter-

pretation or opinion of the Commission.”

[49 FR 31411, Aug. 7, 1984. Redesignated at 56 FR 9626, Mar. 7, 1991]

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AUTHORITY: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.*; 42 U.S.C. 12117; 42 U.S.C. 2000ff–6.

Subpart A—General

§ 1602.1 Purpose and scope.

Section 709 of title VII (42 U.S.C. 2000e), section 107 of the Americans with Disabilities Act (ADA) (42 U.S.C. 12117), and section 207(a) of the Genetic Information Nondiscrimination Act (GINA) (42 U.S.C. 2000ff–6) require the Commission to establish regulations pursuant to which employers, labor organizations, joint labor-management committees, and employment agencies subject to those Acts shall make and preserve certain records and shall furnish specified information to aid in the administration and enforcement of the Acts.

[74 FR 63983, Dec. 7, 2009]

§§ 1602.2–1602.6 [Reserved]

Subpart B—Employer Information Report

§ 1602.7 Requirement for filing of report.

On or before September 30 of each year, every employer that is subject to title VII of the Civil Rights Act of 1964, as amended, and that has 100 or more

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employees shall file with the Commission or its delegate executed copies of Standard Form 100, as revised (otherwise known as “Employer Information Report EEO-1”) in conformity with the directions set forth in the form and accompanying instructions. Notwithstanding the provisions of §1602.14, every such employer shall retain at all times at each reporting unit, or at company or divisional headquarters, a copy of the most recent report filed for each such unit and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710 of title VII. Appropriate copies of Standard Form 100 in blank will be supplied to every employer known to the Commission to be subject to the reporting requirements, but it is the responsibility of all such employers to obtain necessary supplies of the form from the Commission or its delegate prior to the filing date.

[37 FR 9219, May 6, 1972, as amended at 56 FR 35755, July 26, 1991]

§ 1602.8 Penalty for making of willfully false statements on report.

The making of willfully false statements on Report EEO-1 is a violation of the United States Code, title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

[31 FR 2833, Feb. 17, 1966]

§ 1602.9 Commission’s remedy for employer’s failure to file report.

Any employer failing or refusing to file Report EEO-1 when required to do so may be compelled to file by order of a U.S. District Court, upon application of the Commission.

[31 FR 2833, Feb. 17, 1966]

§ 1602.10 Employer’s exemption from reporting requirements.

If an employer claims that the preparation or filing of the report would create undue hardship, the employer may apply to the Commission for an exemption from the requirements set forth in this part, according to instruction 5. If an employer is engaged in activities for which the reporting unit criteria described in section 5 of the instructions are not readily adaptable, special re-

porting procedures may be required. If an employer seeks to change the date for filing its Standard Form 100 or seeks to change the period for which data are reported, an alternative reporting date or period may be permitted. In such instances, the employer should so advise the Commission by submitting to the Commission or its delegate a specific written proposal for an alternative reporting system prior to the date on which the report is due.

[56 FR 35755, July 26, 1991]

§ 1602.11 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the Employer Information Report EEO-1, about the employment practices of individual employers or groups of employers whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of title VII, the ADA, or GINA. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of title VII, section 107 of the ADA, or section 207(a) of GINA and as otherwise prescribed by law.

[31 FR 2833, Feb. 17, 1966, as amended at 56 FR 35755, July 26, 1991; 74 FR 63983, Dec. 7, 2009]

Subpart C—Recordkeeping by Employers

§ 1602.12 Records to be made or kept.

The Commission has not adopted any requirement, generally applicable to employers, that records be made or kept. It reserves the right to impose recordkeeping requirements upon individual employers or groups of employers subject to its jurisdiction whenever, in its judgment, such records (a) are necessary for the effective operation of the EEO-1 reporting system or of any special or supplemental reporting system as described above; or (b) are further required to accomplish the purposes of title VII, the ADA, or GINA. Such record-keeping requirements will be adopted in accordance

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with the procedures referred to in section 709(c) of title VII, section 107 of the ADA, or section 207(a) of GINA, and otherwise prescribed by law.

(Approved by the Office of Management and Budget under control number 3046-0040)

[31 FR 2833, Feb. 17, 1966, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35755, July 26, 1991; 74 FR 63983, Dec. 7, 2009]

§ 1602.13 Records as to racial or ethnic identity of employees.

Employers may acquire the information necessary for completion of items 5 and 6 of Report EEO-1 either by visual surveys of the work force, or at their option, by the maintenance of post-employment records as to the identity of employees where the same is permitted by State law. In the latter case, however, the Commission recommends the maintenance of a permanent record as to the racial or ethnic identity of an individual for purpose of completing the report form only where the employer keeps such records separately from the employee's basic personnel form or other records available to those responsible for personnel decisions, e.g., as part of an automatic data processing system in the payroll department.

[31 FR 2833, Feb. 17, 1966]

§ 1602.14 Preservation of records made or kept.

Any personnel or employment record made or kept by an employer (including but not necessarily limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, lay-off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the employer for a period of one year from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of one year from the date of termination. Where a charge of discrimination has been filed, or an action brought by the Commission or the Attorney General,

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against an employer under title VII, the ADA, or GINA, the respondent employer shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action. The term "personnel records relevant to the charge," for example, would include personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the aggrieved person applied and was rejected. The date of *final disposition of the charge or the action* means the date of expiration of the statutory period within which the aggrieved person may bring an action in a U.S. District Court or, where an action is brought against an employer either by the aggrieved person, the Commission, or by the Attorney General, the date on which such litigation is terminated.

(Approved by the Office of Management and Budget under control number 3046-0040)

[37 FR 9219, May 6, 1972, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35755, July 26, 1991; 77 FR 5398, Feb. 3, 2012]

Subpart D—Apprenticeship Information Report

§ 1602.15 Requirement for filing and preserving copy of report.

On or before September 30, 1967, and annually thereafter, certain joint labor-management committees subject to title VII of the Civil Rights Act of 1964 which control apprenticeship programs shall file with the Commission, or its delegate, executed copies of Apprenticeship Information Report EEO-2 in conformity with the directions set forth in the form and accompanying instructions. The committees covered by this regulation are those which (a) have five or more apprentices enrolled in the program at any time during August and September of the reporting year, and (b) represent at least one employer sponsor and at least one labor organization sponsor which are themselves subject to title VII. Every such committee shall retain at all times

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among the records maintained in the ordinary course of its affairs a copy of the most recent report filed, and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710 of title VII. It is the responsibility of all such committees to obtain from the Commission or its delegate necessary supplies of the form.

[37 FR 9220, May 6, 1972]

§ 1602.16 Penalty for making of willfully false statements on report.

The making of willfully false statements on Report EEO-2 is a violation of the U.S. Code, title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

[32 FR 10650, July 20, 1967]

§ 1602.17 Commission's remedy for failure to file report.

Any person failing or refusing to file Report EEO-2 when required to do so may be compelled to file by order of a U.S. District Court, upon application of the Commission, under authority of section 709(c) of title VII.

[37 FR 9220, May 6, 1972]

§ 1602.18 Exemption from reporting requirements.

If it is claimed that the preparation or filing of Report EEO-2 would create undue hardship, the committee may apply to the Commission for an exemption from the requirements set forth in this part.

[32 FR 10650, July 20, 1967]

§ 1602.19 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as Report EEO-2, about apprenticeship procedures of joint labor-management committees, employers, and labor organizations whenever, in its judgment, special or supplemental reports are necessary to accomplish the purpose of title VII, the ADA, or GINA. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of title VII, section 107 of the ADA, or section

207(a) of GINA and as otherwise prescribed by law.

[32 FR 10650, July 20, 1967, as amended at 56 FR 35755, July 26, 1991; 74 FR 63983, Dec. 7, 2009]

Subpart E—Apprenticeship Recordkeeping

§ 1602.20 Records to be made or kept.

(a) Every person required to file Report EEO-2 shall make or keep such records as are necessary for its completion under the conditions and circumstances set forth in the instructions accompanying the report, which are specifically incorporated herein by reference and have the same force and effect as other sections of this part.

(b) Every employer, labor organization, and joint labor-management committee subject to title VII which controls an apprenticeship program (regardless of any joint or individual obligation to file a report) shall beginning August 1, 1967, maintain a list in chronological order containing the names and addresses of all persons who have applied to participate in the apprenticeship program, including the dates on which such applications were received. (See section 709(c), title VII, Civil Rights Act of 1964.) Such list shall, contain a notation of the sex of the applicant and of the applicant's identification as "White," "Black," "Hispanic," "Asian or Pacific Islander" or "American Indian or Alaskan Native." The methods of making such identification are set forth in the instruction accompanying Report EEO-2. The words "applied," "applicant" and "application" as used in this section refer to situations involving actual applications only. An applicant is considered to be a person who files a formal application, or in some informal way indicates a specific intention to be considered for admission to the apprenticeship program. A person who casually appears to make an informal inquiry about the program, or about apprenticeship in general, is not considered to be an applicant. The term "apprenticeship program" as used herein refers to programs described in the instructions accompanying Report EEO-2.

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(c) In lieu of maintaining the chronological list referred to in §1602.20 (b), persons required to compile the list may maintain on file written applications for participation in the apprenticeship program, provided that the application form contains a notation of the date the form was received, the address of the applicant, and a notation of the sex, and the race, color, or national origin of the applicant as described above.

[32 FR 10650, July 20, 1967, as amended at 33 FR 282, Jan. 9, 1968; 42 FR 33557, Aug. 10, 1977]

§ 1602.21 Preservation of records made or kept.

(a) Notwithstanding the provisions of section 1602.14, every person subject to §1602.20 (b) or (c) shall preserve the list of applicants or application forms, as the case may be, for a period of 2 years from the date the application was received, except that in those instances where an annual report is required by the Commission calling for statistics as to the sex, and the race, color, or national origin of apprentices, the person required to file the report shall preserve the list and forms for a period of 2 years or the period of a successful applicant's apprenticeship, whichever is longer. Persons required to file Report EEO-2, or other reports calling for information about the operation of an apprenticeship program similar to that required on Report EEO-2, shall preserve any other record made solely for the purpose of completing such reports for a period of 1 year from the due date thereof.

(b) Other records: Except to the extent inconsistent with the law or regulation of any State or local fair employment practices agency, or of any other Federal or State agency involved in the enforcement of an antidiscrimination program in apprenticeship, other records relating to apprenticeship made or kept by a person required to file Report EEO-2, including but not necessarily limited to requests for reasonable accommodation, test papers completed by applicants for apprenticeship and records of interviews with applicants, shall be kept for a period of 2 years from the date of the making of the record. Where a charge of discrimination has been filed, or an action

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brought by the Attorney General under title VII, the ADA, or GINA the respondent shall preserve all records relevant to the charge or action until final disposition of the charge or the action. The term "records relevant to the charge," for example, would include applications, forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the charging party applied and was rejected. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a charging party may bring an action in a U.S. District Court or, where an action is brought either by a charging party or by the Attorney General, the date on which such litigation is terminated.

[32 FR 10660, July 20, 1967, as amended at 56 FR 35755, July 26, 1991; 77 FR 5398, Feb. 3, 2012]

Subpart F—Local Union Equal Employment Opportunity Report

§ 1602.22 Requirements for filing and preserving copy of report.

On or before December 31, 1986, and biennially thereafter, every labor organization subject to title VII of the Civil Rights Act of 1964, as amended, shall file with the Commission or its delegate an executed copy of Local Union Report EEO-3 in conformity with the directions set forth in the form and accompanying instructions, provided that the labor organization has 100 or more members at any time during the 12 months preceding the due date of the report, and is a "local union" (as that term is commonly understood) or an independent or unaffiliated union. Labor organizations required to report are those which perform, in a specific jurisdiction, the functions ordinarily performed by a local union, whether or not they are so designated. Every local union or a labor organization acting in its behalf, shall retain at all times among the records maintained in the ordinary course of its affairs a copy of the most recent report filed, and shall make the same available if requested by an officer, agent, or employee of the

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Commission under the authority of section 709 of title VII. It is the responsibility of all persons required to file to obtain from the Commission or its delegate necessary supplies of the form.

(Approved by the Office of Management and Budget under control number 3046-0006)

[51 FR 11018, Apr. 1, 1986]

§ 1602.23 Penalty for making of willfully false statements on reports.

The making of willfully false statements on Report EEO-3 is a violation of the United States Code, title 18, section 1001, and is punishable by fine or imprisonment as set forth herein.

[32 FR 10651, July 20, 1967]

§ 1602.24 Commission's remedy for failure to file report.

Any person failing or refusing to file Report EEO-3 when required to do so may be compelled to file by order of a U.S. District Court, upon application of the Commission, under authority of section 709(c) of title VII.

[37 FR 9220, May 6, 1972]

§ 1602.25 Exemption from reporting requirements.

If it is claimed that the preparation or filing of Report EEO-3 would create undue hardship, the labor organization may apply to the Commission for an exemption from the requirements set forth in this part.

[32 FR 10651, July 20, 1967]

§ 1602.26 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as Report EEO-3, about the membership or referral practices or other procedures of labor organizations, whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of title VII, the ADA, or GINA. Any system for requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of title VII, section 107 of the

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ADA, or section 207(a) of GINA, and as otherwise prescribed by law.

[32 FR 10651, July 20, 1967, as amended at 56 FR 35755, July 26, 1991; 74 FR 63983, Dec. 7, 2009]

Subpart G—Recordkeeping by Labor Organizations

§ 1602.27 Records to be made or kept.

Those portions of Report EEO-3 calling for information about union policies and practices and for the compilation of statistics on the race, color, national origin, and sex of members, persons referred, and apprentices, are deemed to be "records" within the meaning of section 709(c), title VII, Civil Rights Act of 1964. Every local, independent, or unaffiliated union with 100 or more members (or any agent acting in its behalf, if the agent has responsibility for referral of persons for employment) shall make these records or such other records as are necessary for the completion of Report EEO-3 under the circumstances and conditions set forth in the instructions accompanying it, which are specifically incorporated herein by reference and have the same force and effect as other sections of this part.

(Approved by the Office of Management and Budget under control number 3046-0006)

[32 FR 10651, July 20, 1967, as amended at 46 FR 63268, Dec. 31, 1981]

§ 1602.28 Preservation of records made or kept.

(a) All records made by a labor organization or its agent solely for the purpose of completing Report EEO-3 shall be preserved for a period of 1 year from the due date of the report for which they were compiled. Any labor organization identified as a "referral union" in the instructions accompanying Report EEO-3, or agent thereto, shall preserve other membership or referral records (including applications for same) made or kept by it for a period of 1 year from the date of the making of the record. Where a charge of discrimination has been filed, or an action brought by the Commission or the Attorney General, against a labor organization under title VII, the ADA, or

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GINA, the respondent labor organization shall preserve all records relevant to the charge or action until final disposition of the charge or the action. The date of “final disposition of the charge or the action” means the date of expiration of the statutory period within which the aggrieved person may bring an action in a U.S. District Court or, where an action is brought against a labor organization either by the Commission, the aggrieved person, or by the Attorney General, the date on which such litigation is terminated.

(b) Nothing herein shall relieve any labor organization covered by title VII of the obligations set forth in subpart E, §§ 1602.20 and 1602.21, relating to the establishment and maintenance of a list of applicants wishing to participate in an apprenticeship program controlled by it.

(Approved by the Office of Management and Budget under control number 3046-0040)

[37 FR 9220, May 6, 1972, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35755, July 26, 1991; 77 FR 5398, Feb. 3, 2012]

Subpart H—Records and Inquiries as to Race, Color, National Origin, or Sex

§ 1602.29 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts D through G, supersede any provisions of State or local law which may conflict with them. Any State or local laws prohibiting inquiries and record-keeping with respect to race, color, national origin, or sex do not apply to inquiries required to be made under these regulations and under the instructions accompanying Reports EEO-2 and EEO-3.

[32 FR 10652, July 20, 1967]

Subpart I—State and Local Governments Recordkeeping

§ 1602.30 Records to be made or kept.

On or before September 30, 1974, and annually thereafter, every political jurisdiction with 15 or more employees is required to make or keep records and

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the information therefrom which are or would be necessary for the completion of report EEO-4 under the circumstances set forth in the instructions thereto, whether or not the political jurisdiction is required to file such report under § 1602.32 of the regulations in this part. The instructions are specifically incorporated herein by reference and have the same force and effect as other sections of this part.¹ Such reports and the information therefrom shall be retained at all times for a period of 3 years at the central office of the political jurisdiction and shall be made available if requested by an officer, agent, or employee of the Commission under section 710 of title VII, as amended. Although agency data are aggregated by functions for purposes of reporting, separate data for each agency must be maintained either by the agency itself or by the office of the political jurisdiction responsible for preparing the EEO-4 form. It is the responsibility of every political jurisdiction to obtain from the Commission or its delegate necessary instructions in order to comply with the requirements of this section.

(Approved by the Office of Management and Budget under control number 3046-0008)

[38 FR 12604, May 14, 1973, as amended at 39 FR 30832, Aug. 26, 1974; 46 FR 63268, Dec. 31, 1981]

§ 1602.31 Preservation of records made or kept.

Any personnel or employment record made or kept by a political jurisdiction (including but not necessarily limited to requests for reasonable accommodation application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff, or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the political jurisdiction for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the

¹NOTE: Instructions were published as an appendix to the proposed regulations on Mar. 2, 1973 (38 FR 5662).

individual terminated shall be kept for a period of 2 years from the date of termination. Where a charge of discrimination has been filed, or an action brought by the Attorney General against a political jurisdiction under title VII, the ADA, or GINA, the respondent political jurisdiction shall preserve all personnel records relevant to the charge or action until final disposition of the charge or the action. The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of final disposition of the charge or the action means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in a U.S. district court or, where an action is brought against a political jurisdiction either by a person claiming to be aggrieved or by the Attorney General, the date on which such litigation is terminated.

(Approved by the Office of Management and Budget under control number 3046-0040)

[38 FR 12605, May 14, 1973, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35756, July 26, 1991; 77 FR 5398, Feb. 3, 2012]

Subpart J—State and Local Government Information Report

SOURCE: 38 FR 12605, May 14, 1973, unless otherwise noted.

§ 1602.32 Requirement for filing and preserving copy of report.

On or before September 30, 1993, and biennially thereafter, certain political jurisdictions subject to title VII of the Civil Rights Act of 1964, as amended, shall file with the Commission or its delegate executed copies of "State and Local Government Information Report EEO-4" in conformity with the directions set forth in the form and accom-

panying instructions. The political jurisdictions covered by this section are (a) those which have 100 or more employees, and (b) those other political jurisdictions which have 15 or more employees from whom the Commission requests the filing of reports.

Every such political jurisdiction shall retain at all times a copy of the most recently filed EEO-4 at the central office of the political jurisdiction for a period of 3 years and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710 of title VII, as amended.

[58 FR 29536, May 21, 1993]

§ 1602.33 Penalty for making of willfully false statements on report.

The making of willfully false statements on report EEO-4, is a violation of the United States Code, title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.34 Commission's remedy for political jurisdiction's failure to file report.

Any political jurisdiction failing or refusing to file report EEO-4 when required to do so may be compelled to file by order of a U.S. district court, upon application of the Attorney General.

§ 1602.35 Political jurisdiction's exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the political jurisdiction may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system prior to the date on which the report is due.

§ 1602.36 Schools exemption.

The recordkeeping and report-filing requirements of subparts I and J of this part shall not apply to State or local educational institutions or to school districts or school systems or any other educational functions. The previous sentence of this section shall not

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act to bar jurisdiction which otherwise would attach under §1602.30.

§ 1602.37 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the "State and Local Government Information Report EEO-4," about the employment practices of individual political jurisdictions or group of political jurisdictions whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of title VII, the ADA, or GINA. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of title VII, section 107 of the ADA, or section 207(a) of GINA and as otherwise prescribed by law.

[38 FR 12605, May 14, 1973, as amended at 56 FR 35756, July 26, 1991; 74 FR 63983, Dec. 7, 2009]

Subpart K—Records and Inquiries as to Race, Color, National Origin, or Sex

§ 1602.38 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts I and J, supersede any provisions of State or local law which may conflict with them.

[38 FR 12605, May 14, 1973]

Subpart L—Elementary and Secondary School Systems, Districts, and Individual Schools Recordkeeping

§ 1602.39 Records to be made or kept.

On or before November 30, 1974, and annually thereafter, every public elementary and secondary school system or district, including every individually or separately administered district within a system, with 15 or more employees and every individual school within such system or district, regardless of the size of the school shall make or keep all records and information therefrom which are or would be nec-

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essary for the completion of report EEO-5 whether or not it is required to file such a report under §1602.41. The instructions for completion of report EEO-5 are specifically incorporated herein by reference and have the same force and effect as other sections of this part.¹ Such records and the information therefrom shall be retained at all times for a period of 3 years at the central office of the elementary or secondary school system or district, or at the individual school which is the subject of the records and the information therefrom, where more convenient, and shall be made available if requested by an officer, agent, or employee of the Commission under section 710 of title VII, as amended. It is the responsibility of every such school system or district, to obtain from the Commission or its delegate necessary instructions in order to comply with the requirements of this section.

(Approved by the Office of Management and Budget under control number 3046-0003)

[38 FR 26719, Sept. 25, 1973, as amended at 39 FR 30832, Aug. 26, 1974; 46 FR 63268, Dec. 31, 1981]

§ 1602.40 Preservation of records made or kept.

Any personnel or employment record made or kept by a school system, district, or individual school (including but not necessarily limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff, or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by such school system, district, or school, as the case may be, for a period of 2 years from the date of the making of the record or the personnel action involved, whichever occurs later. In the case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of 2 years from the date of termination. Where a charge of discrimination has been filed, or an action brought against

¹NOTE: Instructions were published as an appendix to the proposed regulations on June 12, 1973 (38 FR 15463).

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an elementary or secondary school by the Commission or the Attorney General, the respondent elementary or secondary school system, district, or individual school shall preserve similarly at the central office of the system or district or individual school which is the subject of the charge or action, where more convenient, all personnel records relevant to the charge or action until final disposition thereof. The term "personnel record relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; and application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in a U.S. district court or, where an action is brought against a school system, district, or school either by a person claiming to be aggrieved, the Commission, or the Attorney General, the date on which such litigation is terminated.

(Approved by the Office of Management and Budget under control number 3046-0040)

[38 FR 26719, Sept. 25, 1973, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35756, July 26, 1991]

Subpart M—Elementary-Secondary Staff Information Report

SOURCE: 38 FR 26719, Sept. 25, 1973, unless otherwise noted.

§ 1602.41 Requirement for filing and preserving copy of report.

On or before November 30, 1982, and biennially thereafter, certain public elementary and secondary school systems and districts, including individually or separately administered districts within such systems, shall file with the Commission or its delegate executed copies of Elementary-Sec-

ondary Staff Information Report EEO-5 in conformity with the directions set forth in the form and accompanying instructions. The elementary and secondary school systems and districts covered are:

(a) Every one of those which have 100 or more employees, and

(b) Every one of those others which have 15 or more employees from whom the Commission requests the filing of reports.

Every such elementary or secondary school system or district shall retain at all times, for a period of 3 years, a copy of the most recently filed report EEO-5 at the central office of the school system or district, and shall make the same available if requested by an officer, agent, or employee of the Commission under the authority of section 710 of title VII, as amended. It is the responsibility of the school systems or districts above described in this section to obtain from the Commission or its delegate necessary supplies of the form.

[48 FR 8058, Feb. 25, 1983, as amended at 61 FR 33660, June 28, 1996]

§ 1602.42 Penalty for making of willfully false statements on report.

The making of willfully false statements on report EEO-5 is a violation of the United States Code, title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.43 Commission's remedy for school systems' or districts' failure to file report.

Any school system or district failing or refusing to file report EEO-5 when required to do so may be compelled to file by order of a U.S. district court, upon application of the Commission or the Attorney General.

[61 FR 33660, June 28, 1996]

§ 1602.44 School systems' or districts' exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the school system or district may apply to the Commission for an exemption from the requirements set forth in this part by submitting to the Commission or its delegate

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a specific proposal for an alternative reporting system prior to the date on which the report is due.

[61 FR 33660, June 28, 1996]

§ 1602.45 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the Elementary-Secondary Information Report EEO-5, about the employment practices of private or public individual school systems, districts, or schools, or groups thereof, whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of title VII, the ADA, or GINA. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of title VII, section 107 of the ADA, or section 207(a) of GINA and as otherwise prescribed by law.

[38 FR 27619, Sept. 25, 1973, as amended at 56 FR 35756, July 26, 1991; 74 FR 63983, Dec. 7, 2009]

Subpart N—Records and Inquiries as to Race, Color, National Origin, or Sex

§ 1602.46 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts L and M of this part, supersede any provisions of State or local law which may conflict with them.

[38 FR 26720, Sept. 25, 1973]

Subpart O—Recordkeeping for Institutions of Higher Education

§ 1602.47 Definition.

Under subparts O and P of this part, the term *institution of higher education* means an institutional system, college, university, community college, junior college, and any other educational institution which offers an associate degree, baccalaureate degree or higher degree or which offers a two year program of college level studies without degree. The term *college level studies* means a post secondary program which

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is wholly or principally creditable toward a baccalaureate degree or terminates in an associate degree.

[40 FR 25188, June 12, 1975]

§ 1602.48 Records to be made or kept.

Commencing August 1, 1975, every institution of higher education, whether public or private, with 15 or more employees, shall make or keep all records, and information therefrom, which are or would be necessary for the completion of Higher Education Staff Information Report EEO-6 whether or not it is required to file such a report under § 1602.50. The instructions for completion of Report EEO-6 are specifically incorporated herein by reference and have the same force and effect as other sections of this part.¹ Such records, and the information therefrom, shall be retained at all times for a period of three years at the central administrative office of the institution of higher education, at the central administrative office of a separate campus or branch, or at an individual school which is the subject of the records and information, where more convenient. Such records, and the information therefrom, shall be made available if requested by the Commission or its representative under section 710 of title VII and 29 U.S.C. 161. It is the responsibility of every institution of higher education to obtain from the Commission or its delegate the necessary instructions in order to comply with the requirements of this section.

(Approved by the Office of Management and Budget under control number 3046-0009)

[40 FR 25188, June 12, 1975, as amended at 46 FR 63268, Dec. 31, 1981]

§ 1602.49 Preservation of records made or kept.

(a) Any personnel or employment record (including but not necessarily limited to requests for reasonable accommodation, application forms submitted by applicants and other records having to do with hiring, promotion, tenure, demotion, transfer, layoff, or termination, rates of pay or other

¹NOTE: Instructions were published as an appendix to the regulations at 40 FR 25188, June 12, 1975.

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terms of compensation, and selection for training) made or kept by an institution of higher education shall be preserved by such institution of higher education for a period of two years from the date of the making of the personnel action or record involved, whichever occurs later. In the case of the involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of two years from the date of termination. Where a charge of discrimination has been filed, or a civil action brought against an institution of higher education by the Commission or the Attorney General, the respondent shall preserve similarly at the central administrative office of the institution of higher education, at the central office of a separate campus or branch, or at the individual school which is the subject of the charge or action, where more convenient, all personnel records relevant to the charge or action until final disposition thereof. The term "personnel records relevant to the charge," for example, would include personnel or employment records relating to the person claiming to be aggrieved and to all other employees holding positions similar to that held or sought by the person claiming to be aggrieved; it would also include application forms or test papers completed by an unsuccessful applicant and by all other candidates for the same position as that for which the person claiming to be aggrieved applied and was rejected. The date of "final disposition of the charge or the action" means the date of expiration of the statutory period within which a person claiming to be aggrieved may bring an action in the United States District Court, or, where an action is brought against an institution of higher education by a person claiming to be aggrieved, the Commission, or the Attorney General, the date on which such litigation is terminated.

(b) The requirements of paragraph (a) of this section shall not apply to application forms and other preemployment records of non-student applicants for positions known to non-student appli-

cants to be of a temporary or seasonal nature.

(Approved by the Office of Management and Budget under control number 3046-0040)

[40 FR 25188, June 12, 1975, as amended at 46 FR 63268, Dec. 31, 1981; 56 FR 35756, July 26, 1991]

Subpart P—Higher Education Staff Information Report EEO-6

SOURCE: 40 FR 25189, June 12, 1975, unless otherwise noted.

§ 1602.50 Requirement for filing and preserving copy of report.

On or before November 30, 1975, and biennially thereafter, every public and private institution of higher education having fifteen (15) or more employees shall file with the Commission or its delegate executed copies of Higher Education Staff Information Report EEO-6 in conformity with the directions set forth in the form and accompanying instructions. Every institution of higher education shall retain at all times, for a period of three years a copy of the most recently filed Report EEO-6 at its central administrative office, at the central office of a separate campus or branch, or at an individual school which is the subject of the report, where more convenient. An institution of higher education shall make the same available if requested by the Commission or is representative under the authority of section 710 of the Act and 29 U.S.C. 161. It is the responsibility of the institutions above described in this section to obtain from the Commission or its delegate necessary supplies of the form.

§ 1602.51 Penalty for making of willfully false statements on report.

The making of willfully false statements on Report EEO-6 is a violation of the United States Code, title 18, section 1001, and is punishable by fine or imprisonment as set forth therein.

§ 1602.52 Commission's remedy for failure to file.

Any institution of higher education failing or refusing to keep records, in accordance with § 1602.48 or § 1602.49 of

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subpart O of this part, or failing or refusing to file Report EEO-6 when required to do so, in accordance with § 1602.50 of this part, may be compelled to keep records or to file by order of a United States District Court upon application of the Commission, or the Attorney General in a case involving a public institution.

§ 1602.53 Exemption from reporting requirements.

If it is claimed that the preparation or filing of the report would create undue hardship, the institution of higher education may apply to the Commission for an exemption from the requirements set forth in subparts O and P of this part by submitting to the Commission or its delegate a specific proposal for an alternative reporting system no later than 45 days prior to the date on which the report must be filed.

§ 1602.54 Additional reporting requirements.

The Commission reserves the right to require reports, other than that designated as the Higher Education Staff Information Report EEO-6, about the employment practices of private or public institutions of higher education whenever, in its judgment, special or supplemental reports are necessary to accomplish the purposes of title VII, the ADA, or GINA. Any system for the requirement of such reports will be established in accordance with the procedures referred to in section 709(c) of title VII, section 107 of the ADA, or section 207(a) of GINA and as otherwise prescribed by law.

[40 FR 25189, June 12, 1975, as amended at 56 FR 35756, July 26, 1991; 74 FR 63983, Dec. 7, 2009]

Subpart Q—Records and Inquiries as to Race, Color, National Origin, or Sex

§ 1602.55 Applicability of State or local law.

The requirements imposed by the Equal Employment Opportunity Commission in these regulations, subparts O, P, and Q of this part, supersede any

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provisions of State or local law which may conflict with them.

[40 FR 25189, June 12, 1975]

Subpart R—Investigation of Reporting or Recordkeeping Violations

§ 1602.56 Investigation of reporting or recordkeeping violations.

When it has received an allegation, or has reason to believe, that a person has not complied with the reporting or recordkeeping requirements of this part or of part 1607 of this chapter, the Commission may conduct an investigation of the alleged failure to comply.

[56 FR 35756, July 26, 1991]

PART 1603—PROCEDURES FOR PREVIOUSLY EXEMPT STATE AND LOCAL GOVERNMENT EMPLOYEE COMPLAINTS OF EMPLOYMENT DISCRIMINATION UNDER SECTION 304 OF THE GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991

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