Appendix A. Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education

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information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 10, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Written Application for the Independent Living Services for Older Individuals Who are Blind Formula Grant.

Frequency: Every 3 years.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 9.

Abstract: This document is used by States to request funds to administer the Independent Living Services for Older Individuals Who are Blind (IL–OIB) program. The IL–OIB program is provided for under Title VII, Chapter 2 of the Rehabilitation Act of 1973, as amended to assist individuals who are age 55 or older whose significant visual impairment makes competitive employment extremely difficult to attain, but for whom independent living goals are feasible.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3425. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–20427 Filed 10–18–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On October 12, 2007, the Department of Education published a comment period notice in the **Federal Register** (Page 58063, Column 2) for the information collection, ''U.S. Department of Education Grant Performance Report Form and Instructions (ED 524B)''. The abstract has been corrected to state a 3-year clearance instead of a 2-year clearance.

The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: October 16, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E7–20673 Filed 10–18–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education

AGENCY: U.S. Department of Education.

ACTION: Final guidance.

SUMMARY: The Secretary is issuing final guidance to modify the standards for racial and ethnic data used by the Department of Education (Department). This guidance provides educational institutions and other recipients of grants and contracts from the Department with clear and straightforward instructions for their collection and reporting of racial and ethnic data.

DATES: This guidance is effective December 3, 2007.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill, U.S. Department of Education, 400 Maryland Avenue, SW., room 6C103, Washington, DC 20202–0600, telephone: (202) 708–8196 or Edith K. McArthur, U.S. Department of Education, National Center for Education Statistics, 1990 K Street, NW., room 9115, Washington, DC 20006, telephone: (202) 502–7393.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to one of the contact persons listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On August 7, 2006, the Secretary published a Notice of Proposed Guidance on Maintaining, Collecting, and Reporting Data on Race and Ethnicity to the U.S. Department of Education in the **Federal Register** (71 FR 44866).

In the proposed guidance, the Secretary discussed on pages 44866 through 44868 the major elements of how the Department proposed to modify standards and aggregation categories for collecting racial and ethnic data. As explained in the proposed guidance, these changes are necessary in order to implement the Office of Management and Budget's (OMB) 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (1997 Standards).[1] The 1997 Standards instituted a number of changes for how Federal agencies should collect racial and ethnic data.

This guidance directly addresses three sets of issues:

(1) How educational institutions and other recipients will collect and maintain racial and ethnic data from students and staff;

(2) How educational institutions and other recipients will aggregate racial and ethnic data when reporting those data to the Department; and

(3) How data on multiple races will be reported and aggregated under the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB).

In addition, this final guidance provides information regarding the implementation schedule for these changes.

[1] *See* OMB, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58782–58790 (October 30, 1997); *http://www.whitehouse.gov/omb/fedreg/1997standards.html.*

Substantive Changes From the Proposed to the Final Guidance

The following is a summary of the substantive changes in this final guidance from the proposed guidance.

We have clarified that when collecting racial and ethnic data at the elementary and secondary school level, the identification of a student's race and ethnicity is to be primarily made by the parents or guardians of the student rather than the student.

In the proposed guidance, we stated that educational institutions and other recipients could use a combined one question format when Hispanic ethnicity is included in the list of options with the racial categories if observer-collected data was used. In the final guidance, we are removing this exception to the general requirement that educational institutions and other recipients use the two-part question (*i.e.*, a question on Hispanic/non-Hispanic ethnicity and a question on race)[2] for collecting racial and ethnic data.

We are extending the final implementation date for reporting school year data under the final guidance from the 2009–2010 school year to the 2010–2011 school year.

Analysis of Comments and Changes

In response to the invitation in the proposed guidance, more than 150 parties submitted comments on the proposed guidance. An analysis of the comments and of the changes in the final guidance since publication of the proposed guidance follows. The analysis generally does not address (a) minor changes, including technical changes, made to the language published in the proposed guidance, and (b) comments that express concerns of a general nature about the Department or other matters that are not directly relevant to this guidance.

I. Background

A. Why publish the guidance?

Comment: Many commenters supported the proposed guidance while others expressed opposition to it. Generally the commenters opposed to the proposed guidance asserted that the changes would undermine the Department's collection of reliable statistical data, have a detrimental impact on statistical trend data, and make it more difficult for the Department to carry out enforcement and oversight efforts. Other commenters objected to collecting any individual racial and ethnic data because they viewed the collection of racial and ethnic data as being contrary to the principle of racial equality.

Discussion: The Department's final guidance satisfies OMB's requirement to establish consistent government-wide guidance at the Federal level for collecting and reporting racial and ethnic data. In particular, it is designed to obtain more accurate information about the increasing number of students who identify with more than one race—a key reason OMB initiated the review and modification of the government-wide standards. The racial and ethnic categories set forth in this final guidance are designed to measure more accurately the race and ethnicity for the general population of students, including the population of students identifying themselves as being members of more than one racial or ethnic group. A part of the Department's mission is ''ensuring equal access'' to education for all students. This includes collecting racial and ethnic data about the educational progress of students from various racial and ethnic groups in our nation's schools.

Changes: None.

B. What is the difference between collecting data and reporting data?

Comment: Some commenters expressed confusion about the requirement to collect data from individuals using the two-part question and the requirement to report data using seven aggregate reporting categories including the ''two or more races'' category.

Discussion: The collection of data requires the gathering of information from individuals by educational institutions and other recipients, whereas the reporting of data requires the provision of aggregate information to the Department by educational institutions and other recipients based on the information that has been collected from individuals.

Educational institutions and other recipients will be required to collect racial and ethnic data using a two-part question. The first question is whether the respondent is Hispanic/Latino. The second question is whether the respondent is from one or more races using the following five racial groups: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and White. Respondents will not be offered the choice of selecting a ''two or more races'' category.

The process for reporting the data collected to the Department is different than the process for the collection of data from individuals. When reporting data to the Department, educational institutions and other recipients will report aggregated racial and ethnic data in the following seven categories:

(1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only,

(2) American Indian or Alaska Native,

(3) Asian,

(4) Black or African American,

(5) Native Hawaiian or Other Pacific Islander,

(6) White, and

(7) Two or more races.

The following examples may be helpful in understanding how the reporting will work.

Example 1: A respondent self-identifies as Hispanic/Latino and as Asian. This respondent is reported only in the Hispanic/Latino category.

Example 2: A respondent self-identifies as Hispanic/Latino and as Asian and Black or African American. This respondent is reported only in the Hispanic/Latino category.

Example 3: A respondent self-identifies as non-Hispanic/Latino and as Native Hawaiian or Other Pacific Islander. This respondent is reported in the Native Hawaiian or Other Pacific Islander category.

Example 4: A respondent self-identifies as non-Hispanic/Latino and as American Indian or Alaska Native and White. This respondent is reported in the two or more races category.

Through this system, there will be no double reporting of persons identifying with multiple races. Similarly, while educational institutions and other recipients will collect both racial and ethnic data using the two-part question for collecting data, they will report only ethnic data for individuals who self-identify as being Hispanic/Latino, even though the individuals will have had the opportunity to designate racial information—in addition to Hispanic/Latino ethnicity—under the two-part question. In this way, there will be no double reporting of individuals who have self-identified as having Hispanic/Latino ethnicity and who also have provided racial information in response to the second question about race. Additionally, these reporting categories will minimize paperwork burden because they are the same reporting categories used by other Federal agencies to which educational institutions and other recipients report aggregate data, such as the Equal Employment Opportunity Commission (EEOC).

Changes: None.

[2] The two part question is sometimes refereed to as the ''two-question format.''

II. Collecting Data

A. Should We Add New Racial and Ethnic Categories or Clarify the Proposed Categories?

Comment: Many of the commenters recommended one or more changes to the proposed racial and ethnic categories. Some commenters suggested adding categories such as Middle Eastern, Southeast Asian, African (as a different category from African American), Indian/Pakistani (as a different category from Asian), Filipino, and Cape Verdean (as a different category from African American). Other commenters suggested adding a multiracial category. Some commenters suggested that the categories generally are not clear. For example, a commenter asked whether people from Spain or other Spanish cultures should identify as Hispanic/Latino or White.

Discussion: We do not think it would be appropriate to make the changes suggested by the commenters. This final guidance conforms the Department's data collection and aggregate reporting categories to those used by other Federal agencies that require educational institutions and other recipients to collect and report data. At the same time, it imposes the least possible data collection and reporting burden on the education community. The issues raised by these commenters concerning additional categories or clarifications of existing categories were previously addressed by OMB when it announced its ''Revisions to the 1977 Standards for the Classification of Federal Data on Race and Ethnicity'' in its notice in the **Federal Register**, published on October 30, 1997 (62 FR 58782–58790). The history of the research, meetings, and reasoning that produced OMB's Federal guidance on this issue is available electronically at *http://www.whitehouse.gov/omb/fedreg/1997standards*.

In response to the commenter's question, OMB's guidance provides that individuals from Spain may select ''Hispanic/Latino'' because of their Spanish cultural heritage. When selecting a race they may select ''White'' for their European origin or any other race with which they identify.

Changes: None.

B. Should the Two-Part Question Be Required or Made Optional?

Comment: Some commenters supported and some opposed using the two-part question. One commenter argued that it is difficult and confusing to implement use of the two-part question. Some commenters suggested that the Department change the guidance to only recommend use of the two-part question rather than require its use. Others requested instructions for using the collection form that would encourage individuals to answer both questions in the two-part question.

Discussion: The Department will require educational institutions and other recipients to use the two-part question when collecting racial and ethnic data from individuals. This approach will ensure consistency in the categories of data reported to the Department and also assist the Department in carrying out its mission to collect, analyze, and report educational information and statistics that are relevant and useful to practitioners, researchers, policy makers, and the public.[3]

We also note that the Department routinely uses the two-part question when collecting racial and ethnic data from individuals directly and the two-part question is routinely used by a number of Federal agencies, including the EEOC, when collecting data from individuals.

The Department will provide instructions that educational institutions and other recipients can include on their data collection forms in the future. These instructions will be designed to eliminate any confusion when using the form and to encourage individuals to answer both questions.

Additionally, the final guidance permits each educational institution and other recipient to create sub-categories of these seven categories if it desires additional information for its own purposes.

In our review of the proposed guidance, we determined that providing an exception to the use of the two-part question for collecting racial and ethnic data for observer-collected data using a combined one-question format could be confusing for educational institutions and other recipients. Accordingly, we are eliminating that exception and requiring the consistent use of the two-part question for self-identification and (as a last resort) observer-collected data. We hope that this change will help to minimize confusion for educational institutions and other recipients when collecting racial and ethnic data.

Changes: We have revised the guidance in Part IV.A.2 to delete the provision that would have allowed possible use of a combined one-question format when observer identification is used as a last resort.

[3] 20 U.S.C. 9541.

C. Identification of Racial and Ethnic Categories and Missing Data

Comment: Some commenters objected to the Department's decision to continue its current requirement for ''observer identification'' of the race and ethnicity of elementary and secondary school students when self-identification or identification by the parents does not occur. Some commenters suggested that elementary and secondary school students should be treated like postsecondary students and that observer identification should not be used under any circumstances. Others suggested that observer identification for elementary and secondary school students only be used as a last resort and requested additional guidance about steps to be taken before observer identification is used. Commenters also emphasized that student self-identification is inaccurate at the elementary and secondary school level.

Finally, several commenters suggested that parents, students, and other individuals should be informed about how aggregate data will be reported before completing the two-part question.

Discussion: The Department will continue to require the use of observer identification at the elementary and secondary school level, as a last resort, if racial and ethnic data are not self-identified by the students —typically the students' parents or guardians.

As a general matter, while educational institutions and other recipients are required to comply with this guidance, individuals are not required to self-identify their race or ethnicity. If respondents do not provide information about their race or ethnicity, educational institutions and other recipients should ensure that respondents have refused to self-identify rather than simply overlooked the questions. If adequate opportunity has been provided for respondents to self-identify and respondents still do not answer the questions, observer identification should be used.

While the Department recognizes that obtaining data by observer identification is not as accurate as obtaining data through a self-identification process, places some burden on school district staff, and may be contrary to the wishes of those refusing to self-identify, it is better than the alternative of having no information. Additionally, this approach should assist in discouraging refusals to self-identify because respondents are informed that if they fail to provide the racial and ethnic information someone from the school district will provide it on their behalf. In some instances, this may result in

self-identification. This approach should also provide useful data for carrying out Department monitoring and enforcement responsibilities, and enable the Department to continue ''trend'' analysis of data. The Department emphasizes that observer identification should only be used as a last resort when a respondent does not self-identify race and ethnicity. It does not permit any representative of an educational institution or other recipient to tell an individual how that individual should classify himself or herself.

In a subsequent document, the Department will provide examples and suggested steps that may be taken before observer identification is used at the elementary and secondary school levels as a last resort and provide examples of statements that educational institutions and other recipients may use with individuals when collecting racial and ethnic data.

The Department agrees that the self-identification by students at the elementary and secondary school level may not reflect what their parents or guardians might have selected, and has changed this final guidance to state that at the elementary and secondary school level, the identification of a student's racial and ethnic categories is to be made primarily by parents or guardians.

Educational institutions and other recipients are free to inform the public about how the aggregate data will be reported to the Department before the respondents complete the two-part question and we encourage educational institutions and other recipients to disseminate this information. We do not believe it is necessary to require dissemination of this information because of the additional burden that it would add for educational institutions and other recipients.

Unlike elementary and secondary institutions, generally, postsecondary institutions and Rehabilitation Services Administration (RSA) grantees use self-identification only and do not use observer identification. As discussed elsewhere in this notice, postsecondary institutions and RSA grantees will also be permitted to continue to include a ''race and ethnicity unknown'' category when reporting data to the Department. This category is being continued in the Integrated Postsecondary Education Data System (IPEDS) because the National Center for Education Statistics' experience has shown that (1) a substantial number of college students have refused to identify a race and (2) there is often not a convenient mechanism for college administrators to use observer identification. RSA grantees have had similar experiences with RSA program beneficiaries.

Changes: We have revised the guidance to clarify that at the elementary and secondary school level, parents or guardians typically identify the racial and ethnic categories of students.

D. Can States Use Their Own System for Collecting State Level Data Solely for State—not Federal—Reporting Requirements?

Comment: Some commenters questioned whether States can request that individuals provide racial and ethnic data that are not included in the two-part question, if the additional data are used solely for State level reporting requirements.

Discussion: Nothing prohibits States (or other entities collecting data from individuals) from requesting more racial and ethnic information solely for State level purposes than is collected using the minimum Federal categories in the two-part question. While educational institutions and other recipients may collect additional information for their own purposes, they must collect the data for the Department using the two-part question and must use the seven categories required by this final guidance when reporting aggregate racial and ethnic data to the Department. Thus, for example, a State could choose to collect information using racial subcategories such as Japanese, Chinese, or Korean for State purposes, but would have to report such students to the Department using only the Asian racial category. Similarly, if a State wanted to collect information on subcategories of the Hispanic/Latino ethnic category, such as Puerto Rican and Mexican, it could do so, but would need to report each of the students in the subcategories as Hispanic/Latino to the Department. When collecting data solely for the educational institution's or other recipient's purposes, the accuracy of the Federal data collection cannot be compromised.

Changes: None.

E. Recordkeeping—Length of Time for Maintaining Original Responses

Comment: Some commenters expressed concern about our proposal that States and school districts be required to maintain data collected on the two-part question for the period of time specified in the instructions to the information collection rather than a longer time period. The commenters were concerned that the data will not be available if needed for the resolution of issues that arise in the future. Other commenters suggested that the original responses should be made available electronically for longer than a three-year period and suggested that the Department ask Congress for money to do so.

Discussion: When the Department requests racial and ethnic data from educational institutions and other recipients, the Department indicates in the instructions for the collection how long the original individual responses must be kept. Under 34 CFR 74.53 and 80.42, generally, a Department grantee or sub-grantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or Department regulations applicable to the grant, or that are otherwise reasonably considered as pertinent to the grant agreement or Department regulations. These records include the individual responses to the two-part question. 5 CFR 1320.4(c). One exception to the general three-year period is when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action.

In addition to the record keeping requirement discussed above, we also note that if further racial or ethnic information about a respondent is needed for the Department to perform its functions fully and effectively, the Department will request this information directly from educational institutions and other recipients, such as when the Department's Office for Civil Rights (OCR) requests information to investigate a complaint or undertake a compliance review under 20 U.S.C. 3413(c)(1) and 34 CFR 100.6(b).

The three-year requirement generally used by the Department allows the government to verify information whenever a question about accuracy is brought up. Nothing in this guidance precludes educational institutions and other recipients from maintaining records for longer periods of time than required by the Department. However, we do not believe it is appropriate to require retention of records for longer periods of time because the burden, i.e., costs of record keeping, would exceed the expected benefits from having the records.

Changes: None.

III. Reporting Aggregate Data Using Seven Categories

A. Hispanic/Latino Reporting

Comment: Some commenters opposed counting any individual as Hispanic/Latino who selected the Hispanic/Latino category and one or more of the race categories, suggesting that this approach will result in over-counting individuals who are Hispanic/Latino. Other commenters stated that they do not have enough information to understand whether the proposed process allows for more accurate reporting of individuals who are Hispanic/Latino. Some commenters suggested that individuals who are Hispanic/Latino should also be reported by race and others suggested that individuals who are mixed race Hispanic/Latino should be counted twice.

Discussion: We do not agree that use of the two-part question in collecting racial and ethnic data will result in over-counting of individuals who have responded affirmatively to the question about Hispanic/Latino ethnicity and also have provided racial information when responding to the two-part question. When educational institutions report data to the Department using the seven reporting categories, they will only report ethnic data from individuals who report being Hispanic/Latino. Institutions will not report any information on the race of those individuals to the Department, if the Hispanic/Latino individuals have identified a race as well.

The approach we are adopting also is very likely to result in more accurate reporting of data on individuals who are Hispanic/Latino. The most frequent cases of an individual not reporting race occur for individuals who identify themselves as Hispanic/Latino. Research conducted by Federal agencies has shown that a two-part question typically results in more complete reporting of Hispanic/Latino ethnicity, provides flexibility, and helps to ensure data quality. Under this approach, individuals who are Hispanic/Latino are asked to identify a race too.

This approach is also part of a longstanding Federal effort to obtain accurate ethnic data. In 1976, in response to an apparent under-count of Americans of Spanish origin or descent in the 1970 Census, Congress passed Public Law 94–311 calling for the collection, analysis, and publication of Federal statistics on persons of Spanish origin or decent. In 1977, OMB issued the ''Race and Ethnic Standards for Federal Statistics and Administrative Reporting,'' adding Hispanic ethnicity to Federal reports. (Subsequently reissued as Statistical Policy Directive No. 15, ''Race and Ethnic Standards for Federal Statistics and Administrative Reporting.'' 43 FR 19269 (May 6, 1978). In a further effort to enhance accuracy, OMB's 1997 Revised Standards recommended that Federal forms ask two questions: The first about ethnicity, and the second about race. This decision stemmed, in part, from research sponsored by the Bureau of Labor Statistics showing that significantly more people appropriately identified as Hispanic/Latino or Latino when they were asked separately about Hispanic or Latino origin. (*See* Recommendations from the Interagency Committee for the Review of the Race and Ethnic Standards to the Office of Management and Budget Concerning Changes to the Standards for Ethnicity, 62 FR 36874 (July 9, 1997) (Recommendations from the Interagency Committee) Appendix 2, Chapter 4.7). The Department's decision to adopt a two-part question is part of this ongoing effort to design Federal reports that yield more accurate counts of individuals who are Hispanic/Latino. *See* Standards for Classification of Federal Data on Race and Ethnicity, 60 FR 44674, 44678–44679 (August 28, 1995); *See also* Recommendations from the Interagency Committee, Appendix 2, Chapter 4 (detailing various effects and data quality concerns stemming from the use of combined and/or separate questions on race and Hispanic/Latino origin.)

With respect to the commenters' suggestions that individuals who are Hispanic/Latino should also be reported by race and that individuals who are of more than one race and Hispanic/Latino should be counted twice, the Department has determined that the best approach for racial and ethnic information to be reported by educational institutions and other recipients is to include individuals who are Hispanic/Latino of any race only in the ethnic category. The Department wants to minimize the reporting burdens for educational institutions and other recipients. We recognize that in most instances the Department will not need to know the race identified by individuals who are Hispanic/Latino. However, in some instances in the exercise of the Department's monitoring and enforcement responsibilities, it may become necessary for the Department to know the race identified by individuals who are Hispanic/Latino. Therefore, it is necessary for educational institutions and other recipients to collect these data from individuals and maintain the records for the timeframe announced by the Department in each information collection.[4]

Changes: None.

B. Two or More Races Category Reporting

1. *Addition of the two or more races category will change population counts in single race categories.*

Comment: A number of commenters suggested that using the two or more races category will result in longitudinal data falsely showing declining minority populations in current single race categories. Some commenters suggested that this approach will reflect a significant reduction in Black and White student populations at State and Federal levels, changes in the reported populations of Asians and American Indians in certain States, and significantly reduced counts of Native Hawaiians and Other Pacific Islanders. Some commenters suggested that this category be changed to report more information about the multiple races identified by individuals.

Discussion: In most instances, the Department anticipates that the size of the two or more races category will not be large enough to cause significant shifts in student demographics. Clearly, there will be changes causing reductions in the numbers of students reported in some categories when aggregate reporting shifts from using five categories to using seven. However, the change in categories will result in more accurate data. We also note that the former ''Asian/Pacific Islander'' category will now be divided into two different categories—Asian and Native Hawaiian or Other Pacific Islander. The Department plans to monitor the data trends reported. If necessary, we will request access to the specific racial and ethnic data provided in response to the two-part question by individual respondents.

We also note that OMB's bridging guidance[5] describes methods to accurately report trend data over a time

[4] The Department also notes that the increase in the number of minority students enrolled in our nation's schools largely reflects the growth in the proportion of students who are identified as Hispanic/Latino—from six percent in 1972 to 20 percent in 2005. During the same period, White enrollment declined to 58 percent of the school population in 2005, from 78 percent in 1972. African American enrollment changed little: Blacks were 14.8 percent of all students in 1972 and 15.6 percent of all students in 2005. (*The Condition of Education http://nces.ed.gov/programs/coe/2007/section/indicator05.asp*)

[5] OMB, Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, December 15, 2000, available on the Internet at: *http://www.whitehouse.gov/omb/inforeg/re_appctables.pdf*

span that encompasses this change. We encourage educational institutions and other recipients to refer to the bridging guidance when preparing multi-year reports utilizing education data before and after implementing the changes required in the final guidance. (*See* discussion in III.D. in this notice regarding bridging.)

Changes: None.

2. *Two or more races category's implication for civil rights enforcement and research purposes.*

Comment: Some commenters suggested that reporting two or more races will have a detrimental impact on compliance with, and enforcement of, civil rights laws; ignores OMB guidance for aggregation and allocation of multiple race responses for purposes of civil rights reporting; and limits public access to important information by civil rights advocates, parents, and others. Some commenters suggested that this approach will preclude full disclosure of information relating to government programs. Other commenters also suggested that subgroup data will be difficult to request from the State, and that it will be difficult to bridge longitudinal data.

Discussion: The Department's final guidance, which is consistent with OMB guidance, is designed to ensure that OCR and other offices in the Department have access to all necessary racial and ethnic information about all individuals participating in federally-funded programs for monitoring, enforcement, and research purposes. If any Department office needs additional racial and ethnic information about individuals, the final guidance requires educational institutions and other recipients to maintain the original responses from staff and students for a specific length of time announced at the time of the data collection. In addition to being required to maintain this detailed information for the Department, States, educational institutions and other recipients are encouraged to continue to make such data and information available to the public, civil rights advocates, parents, and other members of the public, within the constraints permitted under applicable privacy and other laws. When reporting racial and ethnic data, these entities are also encouraged to make public their methods used to bridge or allocate the data longitudinally. Accordingly, we do not believe any modification or change with respect to the two or more races category is necessary.

Changes: None.

3. *Alternatives proposed for reporting data.*

Comment: Some commenters suggested reporting the number of individuals selecting each racial category plus an unduplicated total. Others suggested that every category selected by a respondent in the two-part question should be reported. Some commenters suggested that students who selected more than one race should be put in the minority category identified, rather than in the two or more races category. Other commenters questioned why the Department's reporting differs from the reporting of the Census Bureau and suggested that the final guidance highlight for States the differences between Department and Census collections so that States can collect their data in a way that allows them to generate reports that allow comparisons with Census data.

Discussion: Reporting racial and ethnic data using the seven aggregate categories provides the Department with more accurate information reflecting the growing diversity of our nation while minimizing the implementation burden placed on educational institutions and other recipients. Under this approach individuals are given the opportunity to select more than one race and ethnicity. If they desire to do so, educational institutions and other recipients remain free to determine when and how they might use and report these data not reported in the aggregate to the Department in other contexts. Reporting of the data in the manner suggested by the commenters, however, would create additional burden on education institutions and other recipients and would not be necessary for Department purposes.

We recognize that there may be differences in how different Federal agencies collect racial and ethnic data. The Department will continue to study the similarities and differences between the data received by the Department and data received by other Federal agencies and will consider providing any appropriate guidance to the public on this matter, in the future.

Changes: None.

C. Reporting Additional Racial or Ethnic Data

Comment: Several commenters suggested that the proposed guidance limits publicly available racial and ethnic data and should be expanded to report additional categories of racial and ethnic data. Another commenter suggested that the Department should not follow the same approach as the Equal Employment Opportunity Commission (EEOC) because the objectives of the Department in collecting data are different from those of the EEOC.

Discussion: Under the Paperwork Reduction Act, the Department is required to weigh the costs of collecting any additional data against the benefits expected from having that data. The Department has determined that the expected costs to those educational institutions and other recipients of collecting and reporting additional data outweigh the informational and other benefits. Under the final guidance, the public continues to be permitted to request access to publicly available racial and ethnic data from educational institutions and other recipients.

The Department, like all other Federal agencies, including the EEOC, is similarly situated when collecting data needed to carry out each agency's mission. In accordance with the high standards established by OMB, respect for individual dignity has guided the process and methods for collecting racial and ethnic data at the same time that an effort has been made to minimize the burden placed on those entities providing the data. To do this, the Department must weigh the costs imposed on those who must provide the data with the benefits to those who could use more extensive information. For example, in addition to serving students, educational institutions and other recipients are also employers required to report racial and ethnic data to the EEOC. The Department repeatedly has heard from educational institutions and other recipients that they would prefer that the various Federal agencies involved in data collection all use the same aggregate categories so that the burden of implementing changes is minimized and they are not forced to provide different or inconsistent racial and ethnic data to Federal agencies. Our adoption of this final guidance reflects our efforts and other agencies' efforts to alleviate these concerns and help to achieve consistency across different agencies' data collections.

Changes: None.

D. Bridging and Other Allocation Methods

Comment: Some commenters suggested that more guidance is needed about bridging and allocation measures and suggested that the Department encourage States to share bridging information when final guidance is published. Some commenters viewed bridging as impossible. Other commenters agreed that specific bridging should not be required for NCLB.

Discussion: The Department does not agree that bridging is impossible or that

bridging should not be required under NCLB. Further guidance on bridging the data collected before and after these changes take effect can be found in OMB's December 15, 2000 Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, available at the following Internet address: *http://www.whitehouse.gov/omb/inforeg/re_app-ctables.pdf.* The OMB Guidance discusses eight techniques that can be used for bridging data in the two or more races category back to the five single-race groups.

Additionally, guidance on how to allocate multiple race responses to a single race response category are found in OMB's March 9, 2000, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement available at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b00–02.html.* For example, multiple race responses that combine one minority race and White could be allocated to the minority race.

Changes: None.

IV. No Child Left Behind (NCLB) Reporting

Comment: Some commenters suggested that counting all individuals identifying themselves as being Hispanic/Latino and another race only as Hispanic/Latino without identifying any race and using the two or more races category to report all individuals identifying as non-Hispanic/Latino and two racial groups will result in longitudinal data falsely showing declining minority populations in current ''major racial groups'' used by States when making NCLB adequate yearly progress (AYP) determinations.

Discussion: Under NCLB, States will continue to have discretion in determining which racial groups are ''major'' for the purposes of fulfilling NCLB accountability requirements for making AYP determinations and issuing State and local report cards. Using data collected at the school level, States will continue to be able to count individual students as a part of the same ''major'' racial groups for AYP purposes in the same manner that they do currently. States implementing this final guidance are not required to change the racial and ethnic categories used for AYP determinations. Nor are they required to change the manner in which individual students are identified at the school level for the purposes of making AYP determinations. For example, if a State currently uses the Asian/Pacific Islander group for AYP determinations it can continue to use this category as a ''major'' racial group rather than using the two new categories of (1) Asian, and (2) Native Hawaiian or Other Pacific Islander.[6] Additionally, if a student is currently identified as African American for AYP purposes at the school level when the student has one African American parent and one Hispanic parent, the school may continue to identify the student as African American for AYP determinations. For all other aggregate Federal data collections, however, the school and State will be required to identify this student as Hispanic under this final guidance.

States will also have the discretion to change the ''major'' racial groups used to make AYP determinations. For example, a State may change the ''major'' racial groups used to aggregate students for AYP purposes to the same seven categories required by this final guidance for all other aggregate reporting to the Department.

If a State chooses to make changes to the racial and ethnic data categories it will use under NCLB, the State will be required to submit an amendment to its Consolidated State Accountability Workbook to the Department. If the manner in which students are aggregated into major racial and ethnic groups is changed for AYP purposes, then States may want to use bridging and allocation methods to ensure that accountability determinations accurately account for possible shifts in demographics and are not due to the change in the manner in which students are included in the major racial and ethnic groups.

During the Department's routine monitoring of Title I programs, we expect to ask States among other things about performance or accountability trends and the extent to which they may relate to any changes in the demographic measurements that may have been brought about by the changes in the final guidance.

Changes: None.

[6] However, if a State does not change its ''major'' racial and ethnic groups for AYP determinations, it is possible that the racial and ethnic categories it is required to collect using the two-part question may be different from the racial and ethnic categories previously used by States and districts to collect data for AYP determinations. Therefore, it may be necessary for States or districts to ensure that once the data are collected, students continue to be identified using the same criteria used in the past. For example, if a State or school district continues to use ''Asian/Pacific Islander'' as a ''major'' racial group for AYP determinations, it will be necessary for the State or district to add the numbers of students collected using the two-part question for the ''Asian'' and ''Native Hawaiian and Other Pacific Islander'' categories together in order to continue to identify all ''Asian/Pacific Islander'' students.

V. Individuals With Disabilities Education Act (IDEA)

Comment: Some commenters suggested that like NCLB accountability determinations, determinations about disproportional representation by minorities in special education required under the IDEA will be seriously undermined by the proposed reporting categories.

Discussion: Among other required data, IDEA requires that States report data to the Secretary on the number and percentage of children by race, ethnicity, and disability category, who are receiving special education and related services under the IDEA. IDEA also requires that States report these data disaggregated for children being served in particular types of educational settings, and receiving certain types of discipline. 20 U.S.C. 1418(a)(1)(A). IDEA further requires that States examine data to determine if significant racial and ethnic disproportionality is occurring in the State and in local educational agencies (LEA) of the State with respect to the identification of children as children with disabilities, including the identification of children in specific disability categories; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. 20 U.S.C. 1418(d); 34 CFR 300.646. As a part of their State Annual Performance Report under section 616 of the IDEA, 20 U.S.C. 1416, States also are required to determine whether disproportionate racial and ethnic representation in special education and related services is occurring in LEAs of the State, and whether that disproportionate racial and ethnic representation is the result of inappropriate identification.

There is no requirement in IDEA that States either report longitudinal data to the Department or conduct longitudinal analyses of the data. However, we encourage States to bridge and/or use one of the data allocation measures in their transition to the new racial and ethnic reporting categories, as appropriate. For example, States that are using a longitudinal analysis as a part of identifying LEAs with significant disproportionality or disproportionate representation that is the result of inappropriate identification will, if they continue to employ a longitudinal analysis in making one of these determinations, need to use one of these bridging and/or allocation methods as they transition to using new categories.

Changes: None.

VI. Postsecondary Data Collections

A. Postsecondary Institutions and RSA Grantee Handling of Missing Data

Comment: Some commenters asked how postsecondary institutions and RSA grantees should report missing data in the aggregate.

Discussion: The option to report a race/ethnicity unknown category will continue to be permitted for postsecondary institutions and RSA grantees. This category (''unknown'') will not appear on the individual data collection forms provided to the individual students, staff, or RSA clients, but rather on the aggregate data reporting forms used for reporting the aggregate data to the Department. An RSA grantee or postsecondary education institution that does not use the race/ethnicity unknown category is required to report the racial and ethnic data about 100% of the participants in their program using seven categories.

Changes: None.

B. Can IPEDS data be reported before 2009?

Comment: Some commenters asked whether the data reported to the Department from institutions of higher education under the Integrated Postsecondary Education Data System (IPEDS) can be reported before 2009.

Discussion: Yes. Although not required to do so, educational institutions and other recipients, including institutions of higher education reporting IPEDS data that collect individual-level data using the two-part question are encouraged to immediately begin reporting aggregate data to the Department in accordance with this final guidance.

Changes: None.

VII. Guidance on Data Storage and Coding

Comment: A number of commenters asked for guidance concerning data storage and coding and additional clarification of definitions to promote data consistency across States on current State-defined voluntary questions. Others expressed concern that current education information systems are not designed to collect data with multiple self-selection options, as is required by the two-part question. Some commenters expressed concern that the Department was dictating the set of codes to be used in the databases containing this information which would require them to change their current codes and be unable to keep valuable information about their students.

Discussion: The final guidance does not dictate the methods for educational institutions and other recipients to use when developing ''choice for codes'' or ''coding structure'' for the data maintained by such entities. Educational institutions and other recipients are permitted to design their own coding structure, provided that they are able to report the racial and ethnic data using the seven aggregate categories set forth in this final guidance, and maintain the individual reports so that the data can be tabulated with more specificity, if needed. (*See* discussion elsewhere in this notice regarding use of the two-part question.)

The Department recognizes that there are numerous education information systems that will need to be adjusted to receive, store, and report the racial and ethnic data using the new categories. There are many strategies for making this system development transition simple and direct. The Department will separately provide information compiling many of these strategies.

Changes: None.

VIII. Implementation Timeline—Delay

Comment: A number of commenters expressed support of the proposed guidance and their desire to begin reporting using the proposed seven categories immediately. Some individuals and organizations responding to the proposed guidance recommended that the Department delay the issuance of any final guidance until uncertainties about the effects of the change could be resolved and further studies made. However, other commenters suggested that the three-year implementation timeline was sufficient.

Discussion: The Department will change the final implementation date of this final guidance from reporting data beginning with data from the 2009–2010 school year to reporting data beginning with data from the 2010–2011 school year. However, the Department will not delay issuing final guidance or commission additional research.

The Department believes that this extension of time of one year will give educational institutions and other recipients adequate time to make the changes required by this final guidance. Educational institutions and other recipients desiring to collect and report racial and ethnic data in accordance with this final guidance before the fall of 2010 may do so.

Changes: We have revised the final guidance to require educational institutions and other recipients to collect and report racial and ethnic data in accordance with this final guidance with implementation required to be completed by the fall of 2010 for the 2010–2011 school year.

Final Guidance

I. Purpose

This final guidance is provided to the public on how the U.S. Department of Education (the Department) is modifying standards and aggregation categories for collecting and reporting racial and ethnic information. These changes are necessary in order to implement the Office of Management and Budget's (OMB) 1997 Standards for the Classification of Federal Data on Race and Ethnicity (1997 Standards).[7] The 1997 Standards instituted a number of changes for how Federal agencies should collect and report racial and ethnic data.

This final guidance is designed to be straightforward and easy to implement. Whenever possible, we have developed a Department-wide standard. However, in certain situations, we have tailored the standard to the different needs of the institutions collecting the data.[8] The Department recognizes that implementing changes to improve the quality of racial and ethnic data may result in an additional burden to educational institutions. In developing this final guidance, we have sought to minimize the burden of implementation on local and State educational agencies (LEAs and SEAs), schools, colleges, universities (hereinafter collectively referred to as ''educational institutions''), and other recipients of grants and contracts from the Department (hereinafter referred to as ''other recipients''), while developing guidance that would result in the collection of comprehensive and accurate racial and ethnic data that the Department needs to fulfill its responsibilities. We have done so by using the same reporting categories used

[7] *See* OMB, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 FR 58781 (October 30, 1997); *http://www.whitehouse.gov/omb/fedreg/1997standards.html.*

[8] For example, for the purposes of determining adequate yearly progress under the No Child Left Behind Act of 2001, States are allowed to define major racial and ethnic groups using reporting categories that may be different than the seven categories announced in this guidance. These differences may reflect the State's use of more categories than the seven, fewer categories than the seven, or subsets of the seven categories announced in this guidance. Additionally, in the Integrated Postsecondary Education Data Systems and Rehabilitation Services Administration data collections, grantees are permitted to use a race unknown category when reporting data to the Department, although in elementary and secondary programs use of a race unknown category is not permitted. (*See* discussion elsewhere in this guidance.)

by the Equal Employment Opportunity Commission (EEOC), so that educational institutions and other recipients can use the same reporting requirements for students and staff.

This final guidance applies to the collection of individual-level data and to aggregate racial and ethnic data reported to the Department. Aggregate data are the total racial and ethnic data that are reported to the Department by educational institutions and other recipients. The data are collected by educational institutions and other recipients and reported by each recipient in the aggregate to the Department. This final guidance directly addresses three sets of issues:

(1) How educational institutions and other recipients will collect and maintain racial and ethnic data from students and staff;

(2) How educational institutions and other recipients will aggregate racial and ethnic data when reporting those data to the Department; and

(3) How data on multiple races will be reported and aggregated under the Elementary and Secondary Education Act of 1965 (ESEA), as reauthorized by the No Child Left Behind Act of 2001 (NCLB).

In addition, this final guidance provides information regarding the implementation schedule for these changes.

II. Background

In October 1997, OMB issued revised standards for the collection and reporting of racial and ethnic data. A transition period was provided in order for agencies to review the results of Census 2000, the first national data collection that implemented the revised standards. (*See* the discussion in Part IV.) The Department will begin the process of implementing all necessary changes, with the implementation required to be completed by the fall of 2010 for the 2010–2011 school year.[9]

The 1997 Standards include several important changes:

A. OMB revised the minimum set of racial categories by separating the category ''Asian or Pacific Islander'' into two separate categories—one for ''Asian'' and one for ''Native Hawaiian or Other Pacific Islander.'' Therefore, under the 1997 Standards, there are a minimum of five racial categories:

(1) American Indian or Alaska Native,

(2) Asian,

(3) Black or African American,

(4) Native Hawaiian or Other Pacific Islander, and

(5) White.

B. For the first time, individuals have the opportunity to identify themselves as being of or belonging to more than one race. In the 2000 Census, 2.4 percent of the total population (or 6.8 million people) identified themselves as belonging to two or more racial groups. For the population under 18 years old, 4.0 percent (or 2.8 million children) selected two or more races.[10]

C. In an effort to allow individuals—rather than a third party—to report their race and ethnicity, the 1997 Standards strongly encourage ''self-identification'' of race and ethnicity rather than third party ''observer identification.''

D. Under the 1997 Standards, OMB strongly encouraged the use of a two-part question when collecting racial and ethnic data; *i.e.*, individuals should first indicate whether or not they are of Hispanic/Latino ethnicity; then, individuals should select one or more races from the five racial categories.

III. Summary of Guidance

The Department is modifying its standards for the collection and reporting of racial and ethnic data in the following manner:

A. Educational institutions and other recipients will be required to collect racial and ethnic data using a two-part question on the educational institution's or other recipient's survey instrument. The first question would be whether or not the respondent is Hispanic/Latino.

Hispanic or Latino means a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term ''Spanish origin'' can be used in addition to ''Hispanic/Latino or Latino.''

The second question would ask the respondent to select one or more races from the following five racial groups:

(1) *American Indian or Alaska Native.* A person having origins in any of the original peoples of North and South America (including Central America), and who maintains a tribal affiliation or community attachment.

(2) *Asian.* A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

(3) *Black or African American.* A person having origins in any of the Black racial groups of Africa.

(4) *Native Hawaiian or Other Pacific Islander.* A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

(5) *White.* A person having origins in any of the original peoples of Europe, the Middle East, or North Africa. *See* 1997 Standards, 62 FR 58789 (October 30, 1997).

(*See* the discussion in Part IV.A.1 and 2 of this notice.)

B. Educational institutions and other recipients should allow students, parents, and staff to ''self-identify'' race and ethnicity unless self-identification is not practicable or feasible. (*See* the discussion in Part IV.A.3 of this notice.)

C. The Department encourages educational institutions and other recipients to allow all students and staff the opportunity to re-identify their race and ethnicity under the 1997 Standards. (*See* the discussion in Part IV.A.4 of this notice.)

D. Educational institutions and other recipients will be required to report aggregated racial and ethnic data in seven categories:

(1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only,

(2) American Indian or Alaska Native,

(3) Asian,

(4) Black or African American,

(5) Native Hawaiian or Other Pacific Islander,

(6) White, and

(7) Two or more races. (*See* the discussion in Part IV.B.1 of this notice.)

E. The Department will continue its current practice for handling the reporting of individuals who do not self-identify a race and/or an ethnicity. Elementary and secondary educational institutions will continue to use observer identification when a respondent—typically a parent or guardian at the elementary and secondary school level—refuses to self-identify the student's race and/or ethnicity. The Department will not include a ''race and/or ethnicity unknown'' category for its aggregate elementary and secondary reporting of racial and ethnic data. The Integrated Postsecondary Education Data System (IPEDS) will continue to use the category of ''nonresident alien'' as an alternative to collecting race/ethnicity from nonresident aliens (information that is not needed for civil rights reporting purposes). IPEDS will also continue to include a ''race and/or ethnicity unknown'' category for reporting aggregate data from postsecondary institutions. Similarly,

[9] Although not required to do so, educational institutions and other recipients already collecting individual-level data in the manner specified by this notice are encouraged to immediately begin reporting aggregate data to the Department in accordance with this notice.

[10] *See* United States Census Bureau, The Two or More Races Population: 2000, Census 2000 Brief, at p. 9 (November 2001) (hereinafter ''The Two or More Races Population''); this information is on the Internet at the following address: *http://www.census.gov/prod/2001pubs/c2kbr01–6.pdf.*

the Rehabilitation Services Administration (RSA) grantees will continue to use a ''race and/or ethnicity unknown'' category for reporting aggregate data. The ''race and/or ethnicity unknown'' category should not appear on forms provided to postsecondary students and staff or to clients and staff of RSA recipients. (*See* the discussion in Part IV.B.2 of this notice.)

F. When the Department asks educational institutions and other recipients to report racial and ethnic data, the Department indicates in the instructions to the collection how long educational institutions and other recipients are required to keep the original individual responses from staff and students to requests for racial and ethnic data. In addition, at a minimum, generally, a Department grantee or sub-grantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or the Department regulations applicable to the grant or that are otherwise reasonably considered as pertinent under the grant or Department regulations. One exception is when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action. (*See* the discussion in Part IV.A.5 of this notice.)

G. States will continue to have discretion in determining which racial and ethnic groups will be used for accountability and reporting purposes under the ESEA. (*See* the discussion in Part IV.C of this notice.)

H. Educational institutions and other recipients will be required to implement this guidance no later than the fall of 2010 with data for the 2010–2011 school year, and are encouraged to do so before that date, if feasible. (*See* the discussion in Part VI. of this notice.)

IV. The Department's Implementation of OMB's 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

The Department has carefully examined its options for implementing the 1997 Standards. Department staff met or spoke with a variety of individuals and organizations representing educational institutions to ascertain their needs and interests. The Department has heard consistently that major revisions to the collection of racial and ethnic data would impose a substantial burden on educational institutions and other recipients as they adopt new data systems or modify existing systems, prepare new forms, and train staff at all levels to implement these changes. Furthermore, the Department's implementation plan had to be effective for the Department's diverse uses for racial and ethnic data, such as research and statistical analysis, measuring accountability and student achievement, civil rights enforcement, and monitoring of the identification and placement of students in special education.

Finally, the Department repeatedly heard from educational institutions that they would prefer that the various Federal agencies involved in data collection all use the same aggregate categories so that the burden of implementing changes is minimized and educational institutions are not forced to provide different and/or inconsistent racial and ethnic data to Federal agencies. In response to these repeated requests, the Department waited until after the EEOC announced its final implementation plan, which was published in November 2005, because the EEOC collects racial and ethnic data for staff in elementary and secondary schools and districts.[11]

A. *How Educational Institutions and Other Recipients Will Be Required To Collect Racial and Ethnic Data From Students and Staff.* This portion of the final guidance, Part A, explains how educational institutions and other recipients will *collect* racial and ethnic data; Part B, which follows, explains how racial and ethnic data will be *reported* to the Department.

1. *Educational Institutions and Other Recipients Will Be Required To Allow Students and Staff To Select One or More Races From Five Racial Groups.* Educational institutions and other recipients will be required to allow students and staff to select one or more races from the following five racial groups:

(1) American Indian or Alaska Native;
(2) Asian;
(3) Black or African American;
(4) Native Hawaiian or Other Pacific Islander; and
(5) White.

This is the minimum number of categories that educational institutions and other recipients will be required to use for purposes other than NCLB reporting. Any additional categories that educational institutions and other recipients choose to use to collect information must be subcategories of these categories (such as Japanese, Chinese, Korean, and Pakistani—subcategories of Asian). Students and staff will then be able to select one or more of these subcategories.

2. *Educational Institutions and Other Recipients Will Be Required To Use a Two-part Question When Collecting Racial and Ethnic Data.* Educational institutions and other recipients will be required to collect racial and ethnic data using a two-part question. Using the two-part question, the first question asks whether or not the respondent is Hispanic/Latino. The second question allows individuals to select one or more races from the five racial groups listed in paragraph 1 of this Part, and Hispanic/Latino is not included in the list of racial categories. A two-part question provides flexibility and ensures data quality. In particular, a two-part question typically results in more complete reporting of Hispanic/Latino ethnicity; however, the most frequent cases of an individual not reporting a race occur for individuals who identify themselves as Hispanic/Latino. Therefore, educational institutions and other recipients should include instructions that encourage students and staff to answer both questions.

3. *Educational Institutions and Other Recipients Should Allow Students and Staff To Self-Identify Their Race and Ethnicity Unless Self-Identification Is Not Practicable or Feasible.* Educational institutions and other recipients should allow students—at the elementary and secondary level, typically the students' parents or guardians, on behalf of the students—and staff to self-identify their race and ethnicity unless self-identification is not practicable or feasible. If a respondent does not provide his or her race and ethnicity, educational institutions and other recipients should ensure that the respondent is refusing to self-identify rather than simply overlooking the question.

At the elementary and secondary level, if the educational institution or other recipient has provided adequate opportunity for the respondent to self-identify and he or she still leaves the items blank or refuses to complete them, observer identification should be used. It will typically be more appropriate for students' parents or guardians to self-identify the student's race and ethnicity. In all other instances, it will be more

[11] *See* EEOC, Agency Information Collection Activities: Notice of Submission for OMB Review; Final Comment Request (EEO–1), 70 FR 71294–71303 (November 28, 2005) (hereinafter ''EEOC Notice''); this notice is on the Internet at the following address: *http://www.eeoc.gov/eeo1/See also* EEOC, Agency Information Collection Activities: Revision of the Employer Information Report (EEO–1) Comment Request, 68 FR 34965, 34967 (June 11, 2003).

appropriate for the individuals to self-identify.

4. *The Department Encourages Educational Institutions and Other Recipients To Allow All Current Students and Staff to Re-Identify Their Race and Ethnicity Using the 1997 Standards.* Students are typically asked to provide racial and ethnic information upon entrance or application to an educational institution or other recipient's program. Staff members typically provide this information upon employment or application for employment. The Department encourages educational institutions and other recipients to allow all students and staff, and other individuals from whom data are collected, the opportunity to re-identify their race and ethnicity under the 1997 Standards.[12] Re-identification will provide all students, staff, and other individuals the opportunity to select more than one race and to report both their ethnicity and their race separately, and will allow all individuals who previously identified themselves as within the Asian or Pacific Islander category the opportunity to select either ''Asian'' or ''Native Hawaiian or Other Pacific Islander,'' thereby conforming all racial and ethnic information to the 1997 Standards. If all individuals are not provided the opportunity to identify their race and ethnicity in a manner that is consistent with the 1997 Standards, data within schools, school districts, and States will not accurately reflect the diversity of the population; and data on those who were permitted to identify their race and ethnicity under the 1997 Standards will not be easily comparable with data on those who were not permitted to identify their race and ethnicity under the 1997 Standards.

The Department's final guidance does not mandate re-identification because we recognize the considerable one-time cost that re-identification would entail. Also, the 1997 Standards do not require existing records to be updated. However, the Department's final guidance reflects our expectation that most educational institutions and other recipients will provide all respondents the opportunity to re-identify their race and ethnicity under the 1997 Standards.

The final guidance requires educational institutions and other recipients to provide students and staff who enter an educational institution or other recipient program on or after the implementation deadline the opportunity to identify their race and ethnicity in a manner that is consistent with this final guidance. Thus, those educational institutions and other recipients that do not conduct a re-identification will transition to the new standards over time as new staff and students enter.

5. *Maintaining the Original Responses from Staff and Students to Support Requests for Racial and Ethnic Data.* When the Department requests racial and ethnic data from educational institutions and other recipients, the Department indicates in the instructions to the collection how long each office asks, or requires, educational institutions and other recipients to keep the original individual responses to the request.

At a minimum, under 34 CFR 74.53 and 80.42, generally, a Department grantee or sub-grantee must retain for three years all financial and programmatic records, supporting documents, statistical records, and other records that are required to be maintained by the grant agreement or the Department regulations applicable to the grant or that are otherwise reasonably considered as pertinent to the grant agreement or Department regulations. These would include records on racial and/or ethnic data and the individual responses. One exception is when there is litigation, a claim, an audit, or another action involving the records that has started before the three-year period ends; in these cases the records must be maintained until the completion of the action.

If additional information on the race or ethnicity of a respondent is needed for the Department to perform its functions fully and effectively, the Department will request this information from educational institutions and other recipients, such as when OCR requests information to investigate a complaint or undertake a compliance review under 20 U.S.C. 3413(c)(1) and 34 CFR 100.6(b).

B. *The Aggregate Categories Educational Institutions and Other Recipients Will Be Required To Use To Report Racial and Ethnic Data to the Department and How To Handle Missing Data.* In contrast to the discussion in Part IV.A of this notice, which addressed how educational institutions and other recipients will collect racial and ethnic data, this section will examine how educational institutions and other recipients will report these racial and ethnic data to the Department.

1. *The Aggregate Categories Educational Institutions and Other Recipients Will Be Required To Use To Report Racial and Ethnic Data to the Department.* The Department will require educational institutions and other recipients to report aggregated racial and ethnic data in the following seven categories:

(1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only,

(2) American Indian or Alaska Native,

(3) Asian,

(4) Black or African American,

(5) Native Hawaiian or Other Pacific Islander,

(6) White, and

(7) Two or more races.

The definitions in the 1997 Standards will be used for each category. (*See* the discussion in Part III.A of this notice.)

The Department requires aggregate reports to use these seven aggregate categories for several reasons. Reporting these seven aggregate categories allows an appropriate balance of racial and ethnic data reporting that reflects the growing diversity of our Nation while minimizing the implementation and reporting burden placed on educational institutions and other recipients. The growing diversity is illustrated by the fact that in the 2000 Census, children and youth reported being of more than one race at more than twice the rate of adults.[13]

Finally, this approach provides for reporting the race and ethnicity of individuals in a manner that permits effective analysis of data by agencies that are responsible for civil rights monitoring and enforcement. In those instances in which more detailed information is needed by civil rights monitoring and enforcement agencies or other offices in the Department about individuals in the ''two or more races'' category, educational institutions and other recipients will be contacted directly for more detailed information about the individuals.

The Department's aggregate reporting categories do not separately identify the race of Hispanic/Latino. The Department's final guidance reflects its assessment that the inclusion of individuals who are Hispanic/Latino of any race in one category is appropriate in light of both the implementation

[12] This recommendation is consistent with the recommendations of the Education Information Advisory Committee of the Council of Chief State School Officers and the Policy Panel on Racial/Ethnic Data Collection, a panel sponsored by the National Postsecondary Education Cooperative of the National Center for Education Statistics and the National Science Foundation in April 1999. Both have recommended that all respondents be permitted to identify their race and ethnicity under the 1997 Standards.

[13] For individuals 18 and over, 1.9 percent (3,969,342 in the 2000 Census) of individuals reported more than one race; while 4 percent (2,856,886) of individuals under 18 reported more than one race. *See* The Two or More Races Population.

burden and cost that these changes will place on educational institutions and other recipients and the Department's need to adopt an approach that provides the Department sufficient information to fulfill its various functions. If the Department required the reporting of the same racial categories for individuals who are Hispanic/Latino as for individuals who are non-Hispanic/Latino, six additional aggregate categories would be reported to the Department.

The cost and burden of these six additional categories would be substantial because each racial and ethnic category is often cross tabulated with other relevant information, such as the individual's sex, disability category, or educational placement, thereby multiplying the number of categories in which information must be reported. The Department has determined that it can effectively fulfill its responsibilities that involve racial and ethnic information if individuals who are Hispanic/Latino of any race are reported in one category. The Department notes that its approach not to separately aggregate individuals who are Hispanic/Latino by race is consistent with the final implementation plan of the EEOC.

Finally, the Department's requirement for reporting individuals who are Hispanic/Latino as a single category without also disaggregating the Hispanic/Latino category by race is different from the Department's collection requirements discussed in Part IV.5 of this notice, which requires educational institutions and other recipients to maintain information on the racial identification of Hispanics/Latinos. As discussed above, the Department will require educational institutions and other recipients to keep the original individual responses using the two-part question from staff and students for the length of time indicated in the instructions to the collection. If the Department determines that additional information will be needed to perform its functions effectively in a specific instance, the Department will request this additional information from educational institutions and other recipients.

The EEOC published a notice in November 2005 that provided for the use of seven categories to collect racial and ethnic data from private employers. These seven categories are:

(1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino,

(2) American Indian or Alaska Native,

(3) Asian,

(4) Black or African American,

(5) Native Hawaiian or Other Pacific Islander,

(6) White, and

(7) Two or more races.

It is the Department's understanding that EEOC uses these seven categories to collect racial and ethnic data from LEAs, SEAs, and other educational institutions and other recipients about their employees. The adoption of seven categories for the Department collections would mean that the Department and EEOC would collect the same categories of racial and ethnic data from educational institutions and other recipients.

2. *Reporting on Individuals Who Do Not Self-Identify a Race or Ethnicity*. Some individuals will refuse to self-identify their race and/or their ethnicity. The Department currently has a different approach for how educational institutions and other recipients may handle such respondents at the elementary and secondary level as compared with the postsecondary level and with adults served under the RSA programs. Currently, elementary and secondary institutions must use observer identification if a student (through his or her parents or guardians) does not self-identify a race, and postsecondary institutions also may use observer identification. In addition, since 1990, postsecondary institutions have been permitted to report aggregate information on students or staff members who do not identify a race for the IPEDS in a ''race unknown'' category. Similarly, RSA recipients have been permitted to report aggregate information on their clients and staff using a ''race unknown'' category when clients or staff do not identify a race.

The Department continues its current practice for handling missing data.[14] Elementary and secondary institutions and other recipients are required to use observer identification when a respondent, typically a student's parent or guardian, leaves blank or refuses to self-identify the student's race and/or ethnicity. The Department will not include a ''race and/or ethnicity unknown'' category in its aggregate elementary and secondary collections of racial and ethnic data. IPEDS will continue to include a ''race and/or ethnicity unknown'' category for reporting aggregate data from postsecondary institutions. Similarly, RSA will continue to use a ''race and/or ethnicity unknown'' category for reporting aggregate data. The ''race and/or ethnicity unknown'' category will not appear on collection forms provided to postsecondary students and staff or RSA recipients' clients and staff.

C. *Multiple Race Responses under the No Child Left Behind Act of 2001*. The creation of a multiple race aggregation category has implications for several requirements under the ESEA as reauthorized by NCLB regarding race and ethnicity. First, States, school districts, and schools are held accountable for making AYP based, among other factors, on the percent of students proficient in reading/language arts and mathematics in each of the major racial and ethnic groups of students.[15] Neither ESEA nor the ESEA regulations define what a ''major'' racial or ethnic group is. States have this responsibility and the Department checks to ensure that States carry it out.

Second, each State and school district that receives ESEA Title I, Part A funds must issue a report card that includes information on student achievement at each proficiency level on the State assessment, disaggregated by race and ethnicity, among other factors, at the State, school district, and school levels.[16] The same racial and ethnic groups that are used to determine AYP are typically the groups reported in State report cards.[17]

Finally, the creation of a ''two or more races'' category will affect two provisions that require comparisons to prior years' data. State report cards must report the most recent two-year trend in student achievement by racial and ethnic group.[18] In addition, to take advantage of the ''safe harbor'' provision (where a school or school district can be considered to have made AYP if the percent of students who are not proficient decreased by at least 10 percent from the previous year), a State must compare a group's current assessment data to the prior year's data, and must examine the group's performance on the State's additional indicator.[19]

States will continue to have discretion in determining what racial and ethnic groups will be deemed ''major'' for purposes of fulfilling these ESEA requirements. States vary substantially in the number and distribution of

[14] The Department continues to include a ''race unknown'' category in IPEDS because the experience of the National Center for Education Statistics has shown that (1) a substantial number of college students have refused to identify a race and (2) there is often not a convenient mechanism for college administrators to use observer identification. RSA grantees have had similar experiences.

[15] 20 U.S.C. 6311(b)(2)(B) and 6311(b)(2)(C)(v)(II)(bb); 34 CFR 200.13.

[16] 20 U.S.C. 6311(h)(1) and (2).

[17] 20 U.S.C. 6311(h)(1)(C)(i).

[18] 20 U.S.C. 6311(h)(1)(C)(iv).

[19] 20 U.S.C. 6311(b)(2)(I)(i); 34 CFR 200.20(b).

multiple race individuals and are in the best position to decide how these requirements should be applied to their populations. States implementing this new guidance will not necessarily be changing the racial and ethnic categories used for AYP purposes. If a State makes changes to the racial and ethnic categories it will use under the ESEA, the State must submit an amendment to its Consolidated State Accountability Workbook to the Department.

D. *Bridging Data to Prior Years' Data.* States, educational institutions, and other recipients also may propose to ''bridge'' the ''two or more races'' category into single race categories or the new single race categories into the previous single race categories. Bridging involves adopting a method for being able to link the new data collected using the two-part question with data collected before the publication of this guidance by the Department. If States, educational institutions, and other recipients do bridge data, the bridging method should be documented and available for the Department to review, if necessary.

One method is to redistribute the new data collected under this guidance using the new racial and ethnic categories and relate them back to the racial and ethnic categories used before the publication of this guidance. For example, if a State's new data collection results in 200 students falling in the ''two or more races'' category at the same time that there is a combined drop in the number in the two single race categories of Black or African American students and White students, the State can adopt a method to link the 200 students in the ''two or more races'' category to the previously used Black and White categories.

Another method is assigning a proportion of the ''two or more races'' respondents into the new five single-race categories. If educational institutions or other recipients choose to bridge, they may use one of several bridging techniques. For example, they may select one of the bridging techniques in OMB's Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity.[20] Educational institutions and other recipients also may choose to use the allocation rules developed by OMB in its Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement.[21] If a bridging technique is adopted, the same bridging technique must be used when reporting data throughout the educational institution or other recipient. For example, the same bridging technique should be used by the entire State for the purposes of NCLB.

V. OMB Guidance on Aggregation and Allocation of Multiple Race Responses for Use in Civil Rights Monitoring and Enforcement

OMB issued guidance in March 2000 for how Federal agencies will aggregate and allocate multiple race data for civil rights monitoring and enforcement. The guidance was issued to ensure that, as the 1997 Standards are implemented, Federal agencies maintain their ''ability to monitor compliance with laws that offer protections for those who historically have experienced discrimination.'' Furthermore, OMB sought to ensure consistency across Federal agencies and to minimize the reporting burden for institutions such as businesses and schools that report aggregate racial and ethnic data to Federal agencies.

This OMB guidance encourages Federal agencies to collect aggregated information on a given population using the five single race categories and the four most common double race combinations. These four double race combinations are: (1) American Indian or Alaska Native *and* White, (2) Asian and White, (3) Black or African American *and* White, and (4) American Indian or Alaska Native and Black or African American. In addition to these categories, the March 2000 OMB guidance also encourages the aggregation of data on any multiple race combinations that comprise more than one percent of the population of interest to the Federal agency. OMB's guidance also encourages the reporting of all remaining multiple race data by including a ''balance'' category so that all data sum to 100 percent.

The OMB guidance also addresses how Federal agencies, including the Department, should allocate multiple race responses for the purpose of assessing and taking action to ensure civil rights compliance. The Department believes that requiring educational institutions and other recipients to report these four most common double race reporting combinations or information on multiple race individuals who represent more than one percent of the population on a state-by-state basis or other geographical basis would impose a substantial burden on educational institutions and other recipients without a corresponding benefit for recurring, aggregate data collections. However, in order to ensure that the Department has access to this information when needed for civil rights enforcement and other program purposes, the Department will require educational institutions and other recipients to keep the original individual responses using the two-part question for racial and ethnic data. This approach will provide the Department with access to this important information when needed. (*See* discussion in Part IV.A.5. of this notice.)

VI. The Implementation Schedule

Educational institutions and other recipients have consistently informed the Department that they will need three years from the time that the Department provided them final guidance to implement the new racial and ethnic standards.

Educational institutions and other recipients will be required to implement this guidance by the fall of 2010 in order to report data for the 2010–2011 school year. Although not required to do so, educational institutions and other recipients already collecting individual-level data in the manner specified by this notice are encouraged to immediately begin reporting aggregate data to the Department in accordance with this notice.

Many educational institutions and other recipients have already taken significant steps to develop and implement new data systems for collecting, aggregating, and reporting racial and ethnic data. Since the mid-1990s and certainly subsequent to the October 30, 1997, issuance of the 1997 Standards, the Department has been meeting with educational agencies and organizations regarding the need for changes to the collection of racial and ethnic data to be consistent with the 1997 Standards. The opportunity for students and parents on their behalf to report their multiple race identity is vitally important. Multiple race children and their families were one of the primary impetuses for initiating the review of and modifying the standards. Also, with increasing automation of educational data systems, the Department believes that less than three

[20] *See* OMB, Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity, December 15, 2000; *http://www.whitehouse.gov/omb/inforeg/statpolicy.html#dr* (Appendix C).

[21] For civil rights monitoring and enforcement purposes, OMB issued guidance in March 2000 on how Federal agencies can allocate multiple race responses to a single race response category. Multiple race responses that combine one minority race and White, for example, are to be allocated to the minority race. OMB, Bulletin 00–02, Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement, (March 9, 2000); *http://www.whitehouse.gov/omb/bulletins/b00–02.html* (OMB 2000 Guidance). (See discussion in Part IV of this notice.)

years should be needed to implement data systems consistent with guidance in this area.

The Department recognizes that its delay in issuing final guidance, including its decision to delay issuing guidance until after EEOC issued its guidance in final form as discussed in Part IV of this notice, may result in implementation difficulties for some educational institutions and other recipients. The Department regrets any inconvenience that its delay in issuing guidance may cause. Nevertheless, given the vital importance of collecting racial and ethnic data under the 1997 Standards and the fact that educational institutions and other recipients are being provided a considerable amount of time to comply with the 1997 Standards, the Department expects that all educational institutions and other recipients will meet this deadline.

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Dated: October 15, 2007.

Margaret Spellings,

Secretary of Education.

[FR Doc. E7–20613 Filed 10–19–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council (NCC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stats.770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 14, 2007.

ADDRESSES: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Kane, Phone: (202) 586–4753, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendation to the Secretary of Energy on matters related to coal and coal industry issues. The purpose of this meeting is to recognize the important contributions that the NCC has made to the Department and other Federal agencies over the past years.

Tentative Agenda:

- Call to order by Ms. Georgia Nelson, Chair.
- Remarks of Secretary of Energy, Samuel W. Bodman (invited).
- Remarks by Department of Commerce Representative.
- Presentation of guest speaker—Alex Fassbender, Chief Technology Officer & Executive Vice President, ThermoEnergy Coporation—Presentation on the development and commercial of the TIPS oxy-fuel process.
- Presentation of guest speaker—Mike DeLallo, Director/Business Development, WorleyParsons—Presentation on a sustainable model for construction and operation of coal-based electricity generation plant which will include financial, social and environmental planning.
- Council Business.
  Communication Committee Report.
  Finance Committee Report.
  Study Group Report.
- Other Business.
- Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Robert Kane at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on October 15, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–20665 Filed 10–18–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on proposed revisions to the Natural Gas Production Report, Form EIA–914.

DATES: Comments must be filed by December 18, 2007. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Ms. Rhonda Green at U.S. Department of Energy, Energy Information Administration, Reserves and Production Division, 1999 Bryan Street, Suite 1110, Dallas, Texas 75201–6801. To ensure receipt of the comments by the due date, submission by FAX 214–720–6155 or e-mail (*rhonda.green@eia.doe.gov*) is also recommended. Alternatively, Ms. Green may be contacted by telephone at 214–720–6161.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Rhonda Green at the contact information listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101, *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles,