



Federal Register

**Monday,
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Part V

Department of Education

**Proposed Guidance on Maintaining,
Collecting and Reporting Data on Race
and Ethnicity to the U.S. Department of
Education; Notice**

DEPARTMENT OF EDUCATION**Proposed Guidance on Maintaining, Collecting and Reporting Data on Race and Ethnicity to the U.S. Department of Education**

AGENCY: Department of Education.

ACTION: Request for comments.

SUMMARY: The Secretary is proposing guidance to modify the standards for data on race and ethnicity used by the Department of Education. Once adopted, this guidance will provide educational institutions and other recipients of grants and contracts from the Department with straightforward instructions for their collection and reporting of data on race and ethnicity.

We request from all interested parties written comments on the proposed guidance.

DATES: We must receive your comments on or before September 21, 2006.

ADDRESSES: Address all comments regarding this proposed guidance to Patrick J. Sherrill, US Department of Education, 400 Maryland Avenue, SW., Room 6C103, Washington, DC 20202-0600. If you prefer to send your comments through the Internet, you may address them to us at the U.S. Government Web site: <http://www.regulations.gov>.

Or you may send your Internet comments to us at the following address: comments@ed.gov.

You must include the phrase "Guidance for Data on Race and Ethnicity" in the text of your paper document or the subject line of your electronic message to ensure that your comments will be considered.

FOR FURTHER INFORMATION CONTACT: For general information: Patrick J. Sherrill, US Department of Education, 400 Maryland Avenue, SW., Room 6C103, Washington, DC 20202-0600, telephone: (202) 708-8196 or Edith K. McArthur, US 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:

Invitation To Comment

We invite you to submit comments regarding this proposed guidance. During and after the comment period, you may inspect all public comments about this proposed guidance in Room 6C103, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Public Record

On request, we will supply an appropriate aid to an individual with a disability who needs assistance to review the comments or other documents in the public record for the proposed guidance. If you want to schedule an appointment for this type of aid, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Proposed Guidance*I. Purpose*

This proposed guidance is provided to the public to solicit comments on how the US Department of Education (the Department) is proposing to modify standards and aggregation categories for collecting information on race and ethnicity. The proposed 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 data on race and ethnicity.

This proposed guidance is designed to be straightforward and easy to implement. Whenever possible, we have proposed a Department-wide standard. However, in certain situations, we have tailored the standard to the different needs of the institutions collecting data.² The Department recognizes that

¹ 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>.

² For example, for the purposes of No Child Left Behind, States are allowed to define major racial and ethnic groups using categories that may be different than the seven categories announced in this guidance. These differences may reflect the State using more categories than the seven, less categories than the seven, or a decision to use subsets of the seven categories announced in this guidance. Additionally, in the Integrated Postsecondary Education Data Systems (IPEDS) and Rehabilitation Services Administration (RSA) data collections, grantees are permitted to use a race unknown category, while in elementary and

implementing the changes required by OMB to improve the quality of data on race and ethnicity may result in an additional burden to educational institutions. In developing this proposed 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 data on race and ethnicity that the Department needs to fulfill its responsibilities. We have done so by using the same reporting categories used by the Equal Employment Opportunity Commission (EEOC), so that local educational agencies can use the same reporting requirements for students and staff.

This proposed guidance applies to the collection of individual-level data and to aggregate data on race and ethnicity reported to the Department. Aggregate data mean the total data on race and ethnicity that are reported to the Department by educational institutions and other recipients. The data are collected by them and reported in the aggregate to the Department. This proposed guidance directly addresses three sets of issues:

(A) How educational institutions and other recipients will collect and maintain data on race and ethnicity from students and staff;

(B) How educational institutions and other recipients will aggregate data on race and ethnicity when reporting those data to the Department; and

(C) 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 proposed 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 data on race and ethnicity. 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

secondary programs use of a race unknown category is not permitted.

IV.) The Department plans to begin the process of implementing all necessary changes by the school year beginning in the Fall of 2006, with the implementation required to be completed by the Fall of 2009.³

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 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.⁴

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-question format when collecting data on race and ethnicity; *i.e.*, individuals should first indicate whether or not they are of Hispanic/Latino ethnicity; then, individuals may select one or more races from the five racial categories.

III. Summary of Guidance

The Department proposes to modify its standards for the collection and reporting of data on race and ethnicity in the following manner:

A. Educational institutions and other recipients will be required to collect data on race and ethnicity using a two-question format 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 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. The Department proposes to have educational institutions and other recipients report aggregated data on race and ethnicity in 7 categories:

- (1) Hispanics of any race; and, for Non-Hispanics 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 proposes to 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 refuses to self-identify his or her race and/or ethnicity. The Department would not include a "race and/or ethnicity unknown" category in its aggregate elementary and secondary collections of data on race and ethnicity. The Integrated Postsecondary Education Data System (IPEDS) would 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 would also 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 would 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 data on race and ethnicity, 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 data on race and ethnicity. 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, once issued in final, no later than by the Fall of 2009 with data regarding the 2009–2010 school year,

³ 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.

⁴ *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>.

and are encouraged to do so before, if feasible. (See the discussion in Part VI. of this notice.)

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

The Department has been carefully examining its options for implementing the 1997 Standards for some time. Department staff have met or spoken with a variety of individuals and organizations representing educational institutions to ascertain their needs and interests. The Department has consistently heard that major revisions to the collection of data on race and ethnicity will 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 must be effective for the Department's diverse uses for data on race and ethnicity, 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 has 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 data on race and ethnicity to Federal agencies. In response to these repeated requests, the Department decided to wait to propose its implementation plan until after the EEOC announced its final implementation plan, which was published in November 2005, because the EEOC collects data on race and ethnicity for staff in elementary and secondary schools and districts.⁵

A. How Educational Institutions and Other Recipients Will Be Required to Collect Data on Race and Ethnicity from Students and Staff. This portion of the proposed guidance, Part A, presents a

⁵ 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/eo1/> See also EEOC, Agency Information Collection Activities: Revision of the Employer Information Report (EEO-1) Comment Request, 68 FR 34965, 34967 (June 11, 2003).

proposal for how educational institutions and other recipients will collect data on race and ethnicity; Part B, which follows, proposes how data on race and ethnicity 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 would then be able to select one or more of these subcategories.

2. Educational Institutions and Other Recipients Will Be Required to Use a Two-Question Format When Collecting Data on Race and Ethnicity Whenever Feasible. Educational institutions and other recipients will be required to collect data on race and ethnicity using a two-question format, except as provided in the following paragraph. Using the two-question format, 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-question format provides flexibility and ensures data quality. In particular, a two-question format typically results in more complete reporting of Hispanic 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.

A combined one-question format in which Hispanic ethnicity is included in the list of options with the racial categories may be used if necessary for observer-collected data on race and

ethnicity. (See the discussion in Part IV.A.3 of this notice on using self-identification of the race and ethnicity of respondents.)

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 and staff to self-identify their race and ethnicity unless self-identification is not practicable or feasible. If a student or staff member 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. 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 may be used.

Educational institutions and other recipients also may allow parents to identify the race and ethnicity of their child when the educational institution or other recipient believes that this is appropriate, such as when a child is too young 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 their race and ethnicity upon entrance or application to an educational institution. 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 that data is collected from the opportunity to re-identify their race and ethnicity under the 1997 Standards.⁶ 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

⁶ This recommendation is consistent with the recommendations of the Education Information Advisory Committee of the 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 Educational 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.

“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, 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 proposal 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 proposal 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 proposal 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 proposed Department guidance. Thus, those educational institutions and other recipients that do not conduct a re-identification will transition to the new standard over time as new staff and students enter.

5. *Maintaining the Original Responses from Staff and Students to Requests for Data on Race and Ethnicity.* When the Department requests data on race and ethnicity from educational institutions and other recipients, the Department indicates in the instructions to the collection how long each office asks, or requires, educational institutions 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 and these would include records on race and or ethnicity 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 the 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).

B. *The Aggregate Categories Educational Institutions and Other Recipients Will be Required to Use to Report Data on Race and Ethnicity 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 data on race and ethnicity, this section will examine how educational institutions and other recipients will report these data on race and ethnicity to the Department.

1. *The Aggregate Categories Educational Institutions and Other Recipients Will be Required to Use to Report Data on Race and Ethnicity to the Department.* The Department proposes to have educational institutions and other recipients report aggregated data on race and ethnicity in the following 7 categories:

- (1) Hispanics of any race; and, for Non-Hispanics 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 proposes to have reports use these 7 aggregate categories for several reasons. Reporting these 7 aggregate categories allows data on race and ethnicity to achieve an appropriate balance 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 a substantial rate—more than twice the rate of adults.⁷

Finally, the proposed 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 proposed aggregate reporting categories do not separately identify the race of Hispanics. The Department’s proposal reflects its assessment that the inclusion of Hispanics of any race in one category is appropriate in light of both the implementation 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 Hispanics as non-Hispanics, 6 additional aggregate categories would be reported to the Department.

The cost and burden of these 6 additional cells 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 information on race and ethnicity if Hispanics of any race are reported in one category. The Department notes that its proposal not to separately aggregate Hispanics by race is consistent with the final implementation plan of the EEOC.

Finally, the Department’s reporting requirement for data on Hispanics in one category is different from the Department’s collection requirements discussed in Part IV.5 of this notice, which require educational institutions and other recipients to maintain information on the racial identification of Hispanics. As discussed above, the

⁷ 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.

Department will require educational institutions and other recipients to keep the original individual responses from staff and students to requests for data on race and ethnicity 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 7 categories to collect data on race and ethnicity from private employers. These 7 categories are:

- (1) Hispanics of any race; and, for non-Hispanics,
- (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 intends to use these 7 categories to collect data on race and ethnicity from LEAs on their employees. The adoption of 7 categories for the Department collections would mean that the Department and EEOC would collect the same categories of data on race and ethnicity from LEAs.

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 (or his or her parents) 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 its clients and staff using a "race unknown" category when clients or staff do not identify a race.

The Department proposes to continue its current practice for handling missing data.⁸ Elementary and secondary

institutions and other recipients would continue to use observer identification when a respondent leaves blank or refuses to self-identify his or her race and/or ethnicity. The Department would not include a "race and/or ethnicity unknown" category in its aggregate elementary and secondary collections of data on race and ethnicity. IPEDS would continue to include a "race and/or ethnicity unknown" category for reporting aggregate data from postsecondary institutions. Similarly, the RSA will continue to use a "race and/or ethnicity unknown" category for reporting aggregate data. The "race and/or ethnicity unknown" category would not appear on 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 implicates several requirements under the ESEA as reauthorized by NCLB regarding race and ethnicity. First, States, districts, and schools are held accountable for making adequate yearly progress (AYP) based, among other factors, on the proficiency in reading/language arts and mathematics of major racial and ethnic groups of students.⁹ Neither ESEA nor the ESEA regulations define what is a "major" racial and/or ethnic group. States have this responsibility and the Department checks to ensure that States carry out that responsibility.

Second, each State and school district that receives ESEA Title I 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, district, and school levels.¹⁰ The same racial and ethnic groups that are examined to determine AYP are typically the groups examined in State report cards.¹¹

Finally, the creation of a "two or more races" group 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.¹² In addition, to take advantage of the "safe harbor" method of making

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.

⁹ 20 U.S.C. 6311(b)(2)(B) and 6311(b)(2)(C)(v)(I)(bb); (34 CFR 200.13).

¹⁰ 20 U.S.C. 6311(h)(1) and (2).

¹¹ 20 U.S.C. 6311(h)(1)(C)(i).

¹² 20 U.S.C. 6311(h)(1)(C)(iv).

AYP (where a school can make AYP by decreasing the percent of students who are not proficient on statewide assessments by 10%), 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, including its graduation rate.¹³

States will continue to have discretion in determining what racial and ethnic groups will be deemed "major" for purposes of fulfilling these ESEA requirements. The States vary substantially in the number and distribution of 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 race and ethnicity 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 Title I accountability plan 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 categories and relate them back to the racial 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

⁸ The Department proposes to continue to include a "race unknown" category in IPEDS because the

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

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.¹⁴ 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.¹⁵ 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.¹⁶ 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 data on race and ethnicity 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. The Bulletin 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 proposes to require educational institutions and other recipients to keep the original individual responses for data on race and ethnicity. 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 race and ethnicity standards.

Educational institutions and other recipients will be required to implement this guidance, once issued in final, by the Fall of 2009. 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 data on race and ethnicity. 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 data on race and ethnicity 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 years should be needed to implement data systems consistent with guidance in this area. The Department will work expeditiously to review any comments we receive and issue final guidance.

The Department recognizes that its delay in issuing proposed 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 data on race and ethnicity 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: July 31, 2006.

Margaret Spellings,
Secretary of Education.

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¹⁴ 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).

¹⁵ 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).

¹⁶ OMB 2000 Guidance.