

January 9, 2023

Submitted via Federal eRulemaking Portal: <https://www.regulations.gov>

Ms. Shelley Kahn
Acting Executive Officer, Executive Secretariat
Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507

Re: OMB Docket ID: EEOC-2022-0005; Comments of the Center for Workplace Compliance in Response to the EEOC's Notice of Information Collection—Proposed Revision of the Employer Information (EEO-1) Report Component 1 (OMB Control Number 3046-0049)

Dear Ms. Kahn:

The Center for Workplace Compliance (CWC) welcomes the opportunity to submit written comments in response to the Equal Employment Opportunity Commission's (EEOC or Commission) Notice, published in the *Federal Register* on November 10, 2022, indicating that the agency intends to revise Component 1 of the Employer Information (EEO-1) Report and seeks authorization to use the revised form for three years. The primary revision the EEOC proposes is to replace the current "Type 4" and "Type 8" Reports with a new "Establishment-Level Report."

CWC is pleased to support the EEOC's proposed revision and extension. However, we question the agency's assumptions regarding the burdens associated with the current and proposed reporting requirements.

Statement of Interest

Founded in 1976, the Center for Workplace Compliance (CWC) is the nation's leading nonprofit association of employers dedicated exclusively to helping its members develop practical and effective programs for ensuring compliance with fair employment and other workplace requirements. CWC's membership includes approximately 200 major U.S. employers, collectively providing employment to millions of workers.

CWC's directors and officers include many of industry's leading experts in the fields of fair employment, workplace compliance, and risk management. Their combined experience

gives CWC a unique depth of understanding of the practical, as well as legal, considerations relevant to the proper interpretation and application of workplace rules and regulations.

All CWC member companies are employers subject to the federal employment nondiscrimination statutes enforced by the EEOC. The vast majority are also federal contractors subject to the nondiscrimination and affirmative action obligations imposed by Executive Order 11246, the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act, and their implementing regulations.

CWC has a long track record of working closely with the EEOC to ensure that the EEO-1 Report maintains its relevance and utility to both the Commission and the employers who must file it. Indeed, over the years, CWC has many times been the only organization to submit public comments in response to the EEOC's invitations for stakeholder input on the burdens and utility of the EEO-1 Report under the Paperwork Reduction Act.¹ And, for more than three decades, we have regularly communicated less formally with Commission staff in an attempt to resolve practical concerns regarding the EEO-1 reporting process in ways that facilitated timely and compliant reporting.

Background

The EEO-1 Report is among the most fundamental and wide-ranging of all the federal EEO/AA reporting requirements, impacting both those employers that are federal contractors and those that are not. Since its genesis in 1966, the EEO-1 Report has reflected an annual "snapshot" of the racial, ethnic, and gender demographics of a filing employer's workforce at each of an employer's "establishments."

Each year, employers subject to the EEO-1 reporting requirement must extract from their systems, and report for each establishment having 50 or more employees, data showing the racial/ethnic and gender composition of the workforce distributed across ten EEO-1 job categories. Reports can be filed through a web-based form or through the data file upload method.²

In 2016, the EEOC implemented a significant (and controversial) reporting requirement to collect data related to employee pay and hours worked. This requirement was referred to as Component 2 while the traditional report was referred to as Component 1. Component 1's structure, content, and filing options have worked well over the years and, as a general matter,

¹ See, for example, the supporting documents maintained by the Office of Management and Budget related to EEOC's 2014, 2011, and 2009 information collection requests for approval of the EEO-1 Report, *available at* https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201409-3046-001, https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201104-3046-003, and https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200901-3046-001, respectively.

² The Commission does have a process for employers to petition to use another method of reporting if electronic filing is an undue hardship.

CWC supports the continuation of the current structure. The EEOC's proposal, and these comments, are limited to Component 1.

CWC Supports the EEOC's Proposed Revisions to Component 1

In its proposal, the EEOC is seeking to revise the EEO-1 Report by changing the names of the different types of reports that must be filed and requiring data for establishments (other than headquarters) to be filed using the new "Establishment-Level Report" rather than Type 4 or Type 8 Reports. The proposal would not seek to continue authorization for the use of Type 6 Establishment List Reports. The EEOC is also seeking to extend authorization to use the EEO-1 Report for three years. CWC supports the EEOC's proposal. However, the EEOC should have sought stakeholder input and OMB approval before discontinuing the Type 6 Report.

The EEOC Should Have Sought Stakeholder Input and OMB Approval Before Discontinuing the Type 6 Report

Historically, when complying with EEO-1 reporting requirements for establishments with fewer than 50 employees, multi-establishment employers have had the option of utilizing one of two reports, the Type 6 Establishment List Report or the Type 8 Establishment Report. This provided employers the option of whether to utilize the Type 8 Report, which includes a full headcount of the establishment's workforce by demographic category and job group, or a Type 6 Report that listed the total employment of the establishment.

When the EEOC last sought OMB approval for the use of Component 1 of the EEO-1 Report, it asserted that employers would have the option of filing either Type 6 or Type 8 Reports for establishments with fewer than 50 employees. For example, the EEOC's Supporting Statement submitted to OMB on March 23, 2020, states "Type 2 filers will submit type 2 and type 3 reports, and then either type 4, type 6, or type 8 reports, depending on their business structure."³

However, beginning with the 2019 reporting cycle, the EEOC began to phase out the use of Type 6 Reports and completely discontinued their use for the 2021 cycle.⁴ The EEOC implemented this change without soliciting employer input or, as far as we know, seeking OMB approval.

Many employers clearly preferred to utilize Type 6 Reports. For example, as the EEOC reported in its 2020 Supporting Statement to OMB, in 2018 for every Type 2 Consolidated

³ Supporting Statement A at 11, ICR Reference No. 202002-3046-002, available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=99658701>.

⁴ See, for example, EEO-1 Component 1 Data Collection Fact Sheet, available at https://eeocdata.org/pdfs/EEO-1_Fact_Sheet.pdf.

Report that was filed, nearly 15 Type 6 Reports were filed.⁵ By comparison, about 13 Type 8 Reports were filed.⁶ EEOC should not have removed the Type 6 option without consulting stakeholders or seeking OMB approval.

CWC Supports Consolidating the Type 4 and Type 8 Reports Into a Single Establishment Report

Regardless of the method by which the Type 6 Report was discontinued, CWC supports the EEOC's proposal to consolidate the current Type 4 and Type 8 reports into a single Establishment Report. The Type 4 and Type 8 reports have no substantive differences and consolidation will simplify the reporting process and reduce confusion.

CWC Supports the EEOC's Proposed Changes to the Names of EEO-1 Report Types

The EEOC has proposed renaming the various EEO-1 reports that employers must file. In general, the name changes simply eliminate the word "Type" and the number associated with each report. Consequently, as proposed the reports would consist of the following:

- Single-Establishment Filer Report (currently Type 1 Single-Establishment Report);
- Consolidated Report (currently Type 2 Consolidated Report);
- Headquarters Report (currently Type 3 Headquarters Report);
- Establishment-Level Report (currently Type 4 Establishment Report and Type 8 Establishment Report).⁷

CWC is pleased to support these proposed revisions. The proposed report names are simpler and more consistent with the goal of ensuring that regulatory (and sub-regulatory) requirements are explained in plain English.

CWC Does Not Support Further Changes to Component 1

It is possible that the EEOC may receive input from some stakeholders to further revise Component 1, for example by modifying the demographic or job categories. Such revisions are premature.

Any modification to the data collection and reporting requirements related to demographic and job categories will have a collateral impact on a number of other federal recordkeeping and reporting requirements, not the least of which include the Uniform Guidelines on Employee Selection Procedures; OFCCP's Recordkeeping and Reporting

⁵ Supporting Statement A at 12, ICR Reference No. 202002-3046-002, available at <https://www.reginfo.gov/public/do/DownloadDocument?objectID=99658701>.

⁶ *Id.*

⁷ 87 Fed. Reg. at 67,910 n.26.

Requirements – Supply and Service Contractors; and the DOL-VETS Federal Contractor Veterans' Employment Report VETS-4212.

Any changes to the EEO-1 classification systems would thus have far-reaching implications well beyond the EEO-1 Report itself, and would again require private sector employers, state and local governments, educational institutions, federal grant recipients, and the federal government to expand significant human, technical, and financial resources to reengineer countless numbers of systems, forms, reports, and processes that have been designed to accommodate them.

This is not to say that the demographic and job categories used on the EEO-1 Report should be frozen in perpetuity. Only that the EEOC should proceed cautiously before doing so.

Last year, the Chief Statistician of the United States announced the beginning of a formal review of OMB's Statistical Policy Directive No. 15: *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity*.⁸ This process may lead to revision of Statistical Directive No. 15, which could require the EEOC to consider whether revisions to the EEO-1 Report's demographic categories are appropriate.

The EEOC should wait until the OMB's review process is complete before considering whether it is appropriate to consider any additional revisions to the demographic and job categories used on the EEO-1 Report. If it does not, stakeholders may have to implement two significant revisions in data collection and reporting, with wide-ranging impacts, in an unreasonably short period of time.

The EEOC's Projected Burden Estimates Understate the Actual Burdens of Compliance

As described above, CWC supports renewal of Component 1 and the revisions proposed by the EEOC. CWC also believes that the burdens imposed by the data collection requirement are justified. However, the EEOC's estimate of burdens imposed by Component 1 is too low.

According to the Burden Statement published in the *Federal Register*, the EEOC estimates that multi-establishment employers will be able to satisfy their EEO-1 Reporting requirements in an average of 3.3 hours. This estimate includes an estimate that completing the Headquarters Report will take an average of 50 minutes and completing all Establishment-Level Reports will take an average of 2.5 hours.⁹ This methodology is similar to that used when the EEOC estimated burdens in 2020.¹⁰

⁸ The statement is on the White House website, available at <https://www.whitehouse.gov/omb/briefing-room/2022/06/15/reviewing-and-revising-standards-for-maintaining-collecting-and-presenting-federal-data-on-race-and-ethnicity/>.

⁹ *Id.* at 67,911 & n.30.

¹⁰ *Id.* at 67,910 n. 18.

CWC disagreed with the EEOC's methodology in 2020 and we continue to disagree. Simply put, we are aware of no multi-establishment employer that could complete Component 1 in only 3.3 hours. Most large employers will spend dozens of hours or more on Component 1 compliance in the weeks before submitting their reports and some CWC members have informed us that their annual reporting obligation take significantly more time and resources.¹¹ While we are aware that the Commission's estimates are averages, the burden estimates do not appear to reflect the true impact of Component 1 filing on large employers.

We also disagree with the EEOC's assessment that the elimination of the Type 6 Establishment List Report will reduce the burden on filers. While implementing the new "Establishment-Level Report" may be more logistically and administratively convenient, it is also by definition more burdensome and costly. Each CWC member we have spoken to advises that their Type 6 Establishment List contained not one location, but many, each of which will now need a new Establishment-Level Report. Thus, most employers will now take the time spent preparing one Type 6 Establishment List, and instead prepare dozens, or even hundreds of Establishment-Level Reports in its place. We respectfully recommend that the EEOC incorporate into its burden estimates the number of locations covered by Type 6 Establishment Lists.

To be clear, CWC supports renewal of Component 1. Employers know the costs associated with their own compliance obligations under this long standing requirement and generally agree that Component 1 compliance is not unduly burdensome. However, a more accurate understanding of the burdens would help the agency and stakeholders better assess the true costs of compliance.

Conclusion

The Center for Workplace Compliance is pleased to support the EEOC's intent to seek a three-year approval of a revised Component 1 of the EEO-1 Report. Thank you for your consideration of these comments. Please do not hesitate to contact me if CWC can provide further assistance as you consider these important issues.

Sincerely yours,



Michael J. Eastman
Senior Vice President, Policy and Assistant General Counsel

¹¹ See, for example, CWC's Comments on EEOC's 2016 Proposed Revisions to the EEO-1 Report at 19-20 (August 15, 2016), available at <https://www.regulations.gov/comment/EEOC-2016-0002-0895>.