

June 1, 2023

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

Office of Information and Regulatory Affairs
Attn: OMB Desk Officer for the EEOC
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Re: ICR Reference No. 202304-3046-02; Comments of the Center for Workplace Compliance in Response to the EEOC’s Notice of Information Collection—Proposed Revision of the Employer Information Report (EEO-1) Component 1 (OMB Control Number 3046-0049)

Dear OMB Desk Officer:

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 May 2, 2023,¹ seeking to renew and revise Component 1 of the Employer Information (EEO-1) Report. 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. While we appreciate additional information that the EEOC has provided in the current *Federal Register* notice and Supporting Statement, we continue to question the agency’s assumptions regarding the burdens associated with the current and proposed reporting requirements.

¹ 88 Fed. Reg. 27,504, 27,505 (May 2, 2023).

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.² 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

² 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.

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.³

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, 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

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 does not seek to continue authorization for the use of Type 6 Establishment List Reports.⁴ The EEOC is also seeking to extend authorization to use the EEO-1 Report for three years. CWC supports the EEOC’s proposal.

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

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.

³ The Commission does have a process for employers to petition to use another method of reporting if electronic filing is an undue hardship.

⁴ The EEOC implemented this change without soliciting employer input or, as far as we know, seeking OMB approval.

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).⁵

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.

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 a plurality of 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 Establishment-Level Reports will take an average of 2.5 hours.⁶ In its May 2, 2023, *Federal Register* notice and associated Supporting Statement the EEOC includes additional information about how it arrived at these burden estimates.

While we appreciate the additional information, we continue to believe that the EEOC's estimates are too low. 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

⁵ 88 Fed. Reg. at 27,505.

⁶ 88 Fed. Reg. at 27,508.

members have informed us that their annual reporting obligation take significantly more time and resources.⁷ The burden estimates do not appear to reflect the true impact of Component 1 filing on large employers.

The EEOC's asserts that its burden estimates overestimate the burden on employers with the largest number of establishments because such employers are "much more likely to be using a Human Resource Information System (HRIS) which can automatically generate their headquarters reports and establishment reports into a single data file upload."⁸ This statement implies that large employers can achieve compliance by simply pressing a few buttons, which is a far cry from reality.

A good HRIS system can be an important tool for compliance with EEO-1 Reporting requirements. But even the most sophisticated systems will still require hours of human support to:

- Ensure data is complete and accurate;
- Ascertain the reasons for missing data, for example, did an employee fail to self-identify sex or does the employee not-identify as either male or female;
- Use alternative sources to identify race and ethnicity of employees who fail to self-identify;
- Address issues related to the use of multiple HRIS systems, such as often happens after a merger or acquisition;
- Manage instances where the EEO-1 reporting portal is not accepting data produced in accordance with EEOC's published data file specifications; and
- Reconciling the EEOC's EEO-1 unit IDs with address and location data maintained by the employer.

We also respectfully 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 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 separate Establishment-Level Reports. Thus, instead of preparing *one* Type 6 Establishment List, most

⁷ 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>.

⁸ 88 Fed Reg. at 27,506.

employers will have to prepare *dozens*, or even *hundreds* of Establishment-Level Reports in its place.

If there is a disconnect between our analysis and the EEOC's it is perhaps partially explained by the EEOC's statement that that a plurality of multi-establishment employers submitted only a single establishment report.⁹ On its face, this appears to be a faulty premise. We look forward to working with the EEOC to further assess the number and types of reports filed to better assist the agency develop more accurate burden assessments.

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 understand the true costs of compliance.

Conclusion

The Center for Workplace Compliance is pleased to support the EEOC's request to renew and revise 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

⁹ See, for example, 88 Fed. Reg. at 27,508 n.33.