

May 24, 2011

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

Chad A. Lallemand
Office of Information and Regulatory Affairs
Office of Management and Budget
New Executive Office Building, Room 10235
725 17th Street, N.W.
Washington, DC 20503

Re: Comments of the Equal Employment Advisory Council on the U.S. Equal Employment Opportunity Commission's Request for a Three-Year Paperwork Reduction Act Extension of the *Employer Information Report (EEO-1)* (OMB Control Number 3046-0007)

Dear Mr. Lallemand:

The Equal Employment Advisory Council ("EEAC") welcomes the opportunity to file these written comments on the Equal Employment Opportunity Commission's ("EEOC") *Employer Information Report (EEO-1)* (OMB Control Number 3046-0007). Our letter responds to the EEOC's invitation to participate in the Paperwork Reduction Act ("PRA") clearance process for this information collection, notice of which was published in the *Federal Register* on April 25, 2011. 76 Fed. Reg. 22897.

The EEOC is seeking a routine, three-year PRA extension of the EEO-1 Report and its underlying race and ethnicity and job category classification systems, both of which were revised in 2007 after remaining essentially unchanged for more than 30 years. For the reasons set forth below, EEAC supports the Commission's request to preserve these classification systems for three additional years, and we strongly urge OMB to approve it.

Statement of Interest

EEAC is the nation's largest nonprofit association of employers dedicated exclusively to the advancement of practical and effective programs to eliminate workplace discrimination. Founded more than 30 years ago, EEAC's membership includes approximately 300 of the nation's largest and most progressive private-sector companies, all of which are firmly committed to the principles and practice of workplace nondiscrimination and affirmative action.

All of EEAC's members, as major U.S. corporations, are subject to the EEO-1 reporting requirement, and most of them file hundreds, and in some cases, thousands of EEO-1 Reports each year. In addition, most EEAC member companies also must comply with an array of other federal equal employment opportunity and affirmative action ("EEO/AA") recordkeeping and reporting requirements that incorporate the same race/ethnicity and/or job category classification systems used in the EEO-1 Report, including requirements administered and enforced by the EEOC, the U.S. Department of Labor's ("DOL") Office of Federal Contract Compliance Programs ("OFCCP"), DOL's Veterans' Employment and Training Service ("VETS"), and the Federal Communications Commission ("FCC"). EEAC's members thus have a significant interest and stake in the final outcome of the PRA consultation and clearance process for this information collection.

The EEO-1 Report

The EEO-1 Report is 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. At its essence, the EEO-1 Report is an annual "snapshot" of the racial, ethnic, and gender demographics of the employer's workforce at each of its "establishments" (defined primarily, for purposes of this report, as a physical location) employing 50 or more people.

The EEO-1 Report includes data for both part-time and full-time employees. For most employers, the EEO-1 Report reflects the makeup of their workforce as of the end of any payroll period between July 1 and September 30 each year.

The current format of the EEO-1 Report requires employers annually to report each establishment's workforce data using two fundamental classification systems, discussed in more detail below: one for reporting employee race/ethnicity data, and one for reporting occupational data. Under the current race/ethnicity classification system, all employees must be reported in one of seven mutually exclusive race/ethnicity categories, data for which may be acquired either by visual survey or from post-employment records. Under the current EEO-1 job category classification system, all employees must be reported in one of ten broad occupational categories.

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 not only the racial/ethnic and gender composition of the workforce, but also how that composition is distributed among the ten job categories used in the EEO-1 Report.

Other Federal Recordkeeping and Reporting Requirements Use the Same Classification Systems as Are Used in the EEO-1 Report

The EEO-1 Report is not the only federally mandated compliance obligation requiring employers to collect, maintain, report, and analyze data using these two classification systems. Indeed, there are at least seven other federal EEO/AA requirements of which we are aware that incorporate one or both of these two classification systems. These requirements include the following:

- the EEOC's Recordkeeping Requirements Under Title VII and the Americans with Disabilities Act (ADA) (OMB Control Number 3046-0040);
- the EEOC's Uniform Guidelines on Employee Selection Procedures (OMB Control Number 3046-0017);
- the OFCCP's Recordkeeping and Reporting Requirements – Supply and Service Contractors (OMB Control Number 1250-003);
- the DOL-VETS' Federal Contractor Veterans' Employment Report VETS-100 (OMB Control Number 1293-0005);
- the DOL-VETS' Federal Contractor Veterans' Employment Report VETS-100A (OMB Control Number 1293-0005);
- the FCC's Common Carrier Annual Employment Report (Form 395) (OMB Control Number 3060-0076); and
- the FCC's Broadcast Station Annual Employment Report (Form 395-B) (OMB Control Number 3060-0390).

Because each employer subject to these various federal EEO/AA requirements generally relies on a single system to collect, maintain, and classify its employee race/ethnicity and job category data, any changes to the classification systems used in the EEO-1 Report would have to be contemporaneously incorporated in all other impacted requirements (including those identified above). The only alternative to “synchronizing” changes to all federal EEO/AA reporting requirements that use these classification systems would be for employers to develop and maintain *separate* systems for tracking these same data, a burden for which we submit a proper PRA accounting would be required.

Current Version of the EEO-1 Strikes the Proper Balance Between Producing Useful Demographic Data and Minimizing the Reporting Burden on Covered Employers

After remaining essentially unchanged for more than three decades, substantial revisions to the EEO-1 Report's race/ethnicity and job category classification systems were introduced to the EEO-1 form in 2007, following a lengthy and deliberative consultation process begun ten years earlier by the Commission to determine how the OMB's 1997 revised *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity* (the "revised standards") would be incorporated into this information collection.

With respect to the EEO-1 Report's race/ethnicity classification system, the EEOC considered during its deliberations the revised standards' two alternative classification systems for collecting, maintaining, and reporting race and ethnicity data. The first alternative, the revised standards' so-called "combined" format, would have required employers to manage race and ethnicity data in a total of six (6) categories. The second alternative, the revised standards' "two-question" format, would have required employers to manage race and ethnicity data in a total of sixty-two (62) categories.

The Commission ultimately adopted a "middle ground" approach on this issue, an approach that it characterized as an attempt to balance three competing interests: (1) obtaining data to support the enforcement of federal EEO/AA requirements; (2) modernizing the EEO-1 Report to accommodate both changing demographics and the revised standards; and (3) limiting any unnecessary burden on the tens of thousands of employers who must collect, maintain, and report the extensive amount of data required by the EEO-1 form each year. Under this approach, employers are required to *report* their race/ethnicity data in a total of seven (7) categories, and are permitted — but not required — to *collect and maintain* race and ethnicity data in the more detailed 62-category classification system if they so choose. These changes, which became effective with the 2007 EEO-1 reporting cycle, require employers to report the race/ethnicity of their workforce as follows:

1. Hispanic or Latino
2. White not Hispanic or Latino
3. Black or African American not Hispanic or Latino
4. Native Hawaiian or Other Pacific Islander not Hispanic or Latino
5. Asian not Hispanic or Latino
6. American Indian or Alaska Native not Hispanic or Latino
7. Two or more Races not Hispanic or Latino

The Commission arrived at this middle ground approach after extensive public debate and deliberation, during which the EEOC considered — and rejected — the much more cumbersome race and ethnicity classification system that would have required employers to

collect and maintain race and ethnicity data in 62 categories, and to report those same data in yet a different classification system.

The Commission also adopted a middle ground approach to the EEO-1 Report's job category classification system. After initially considering a total of eleven (11) job categories, the Commission increased the number of job categories from nine (9) to ten (10).

EEAC believed then, and still believes today, that these middle ground approaches reflect an appropriate balance between preserving the integrity and utility of demographic data critical to federal EEO/AA compliance and diversity programs on the one hand, and minimizing the unnecessary costs and burdens of compliance with this mandatory information collection on the other. For this reason, EEAC supported the Commission's adoption of these two classification systems four years ago, and we continue to do so today.

And while we acknowledge that the changing demographics of the U.S. population might, at some point in the future, merit further changes to the EEO-1 Report's race/ethnicity classification system, the U.S. Census Bureau's recently released *Overview of Race and Hispanic Origin: 2010* confirms that the time for changing this classification system has not yet arrived. More specifically, that report, which presents the results of the 2010 decennial census questions on race and ethnicity, states that:

- “the overwhelming majority of the total population [97.1 percent] of the United States reported only one race in 2010”;
- of the 2.9 percent of 2010 Census respondents who reported as belonging to more than one race category, 91.7 percent reported as belonging to exactly two race categories; and
- 94 percent of 2010 Census respondents who reported as being Hispanic or Latino identified as belonging to only one race category.

Accordingly, unless and until such time as the demographic diversity of the nation's working age population presents the Commission with a compelling reason to revisit the race/ethnicity classification system currently used in the EEO-1 Report, EEAC sees no reason for this classification system to be revised again any time soon. This is especially true given the fact that any further changes to these classification systems would have far-reaching implications well beyond just the EEO-1 form itself, and would again require private-sector employers, state and local governments, educational institutions, federal grant recipients, and the federal government itself to expend significant human, technical, and financial resources to reengineer countless numbers of systems, forms, reports, and processes that have been designed to accommodate them.

Mr. Chad A. Lallemand
May 24, 2011
Page 6

For all of these reasons, EEAC supports the EEOC's request to extend the current version of the EEO-1 Report for three more years.

Thank you for your consideration of our comments. If we can be of further assistance in any way, please do not hesitate to call me at (202) 629-5616.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey A. Norris". The signature is written in a cursive style with a large, stylized initial "J".

Jeffrey A. Norris
President

cc: Stephen Llewellyn, Executive Officer, Executive Secretariat, EEOC