

August 29, 2014

Via the Federal eRulemaking Portal at <http://www.regulations.gov>

Bernadette Wilson
Acting Executive Officer, Executive Secretariat
Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507

Re: **Comments of the Equal Employment Advisory Council on the Equal Employment Opportunity Commission's Proposed Extension of the Employer Information Report (EEO-1), 79 Fed. Reg. 36802 (June 30, 2014)**

Dear Ms. Wilson:

The Equal Employment Advisory Council ("EEAC") is pleased to file these 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") "preclearance" consultation program for this information collection, notice of which was published in the *Federal Register* on June 30, 2014. 79 Fed. Reg. 36802.

According to the Commission's June 30, 2014 *Federal Register* notice, EEOC intends to submit to the Office of Management and Budget ("OMB") a request for a three-year extension of the EEO-1 Report without change. As discussed in more detail below, EEAC supports the Commission's proposed extension of the current EEO-1 form's content without change. At the same time, we respectfully urge the EEOC to make one relatively minor modification to the current specifications governing how employers may file their EEO-1 reports. We believe this modification will both improve the accuracy of the important data collected by the EEO-1 form, as well as help minimize the costs and burdens imposed on employers required to complete and submit the form.

Specifically, EEAC recommends that the Commission adjust the policies and/or technical procedures that currently prevent parent companies from using the "electronic data file" option to submit EEO-1 reports for different subsidiary companies operating at the same physical location within the same industry classification. For example, current filing procedures preclude a parent company from filing a Report for a subsidiary company that resides at the same address as the parent company and within the same industry, despite the fact that EEOC requires the parent company to satisfy the reporting obligations of the subsidiary in the first place.

STATEMENT OF INTEREST

EEAC is the nation's largest nonprofit association of major employers dedicated exclusively to the advancement of practical and effective programs to eliminate employment discrimination. Formed in 1976, EEAC's membership currently includes approximately 270 of the nation's largest private-sector corporations, all of which are firmly committed to the principles and practice of workplace nondiscrimination, and all of which are subject to the annual EEO-1 filing requirement.

Indeed, as major U.S. corporations, EEAC member companies file hundreds, and in some cases, thousands of EEO-1 Reports each year. 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"), and DOL's Veterans' Employment and Training Service ("VETS"). EEAC members thus have a significant interest and stake in an EEO-1 Report that is both accurate and efficient.

BACKGROUND

The EEO-1 Report is among 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. The EEO-1 Report reflects an annual "snapshot" of the racial, ethnic, and gender demographics of the employer's workforce at each of its "establishments" (defined as a single physical location engaged in predominantly one type of economic activity) employing 50 or more people.

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. Reports can be filed via one of the following filing options currently permitted by EEOC:

- **Computer-Generated Printout/Paper Forms.** With advance approval, some companies still elect to file their EEO-1 Reports using computer-generated printouts or paper forms. Because of their size and number of locations, few if any EEAC members utilize this filing option.
- **Online Filing.** Under this method, employers enter their EEO-1 data manually, establishment by establishment, into the EEOC's web-based filing form. Given the manual data entry aspect to this option, online filing is generally used by those companies that have only a handful of individual establishments for which EEO-1 data must be reported.

- **Data File Transfers.** Employers also have the option of submitting their EEO-1s electronically via a single electronic file containing all of the EEO-1 data for the company's establishments. The EEOC permits employers using this option to submit their electronic files either as ASCII/TXT files or as CSV/XML files. For large employers, this option is critical, as it permits companies to avoid manually entering data for hundreds or thousands of company establishments. There is still a significant startup cost to this option, however, as companies must develop advance queries or software programs to conform their data to the EEOC's data file specifications.

By and large, the EEO-1's structure, content, and filing options have worked remarkably well over the years, and as a general matter EEOC supports their continued use. Because EEOC's members are large corporations, it is critical for them to have access to a consistent, reliable means of achieving their compliance obligations, and with one notable exception, we believe the current EEO-1 reporting structure meets those criteria.

EEOC RECOMMENDS CORRECTING THE DATA FILE TRANSFER OPTION

EEO-1 filing procedures currently require parent companies to file an EEO-1 report for all of their subsidiary entities, even if the subsidiary has an independent legal obligation to file the report (either by virtue of its status as a covered federal contractor or as a private employer subject to Title VII of the 1964 Civil Rights Act). The EEO-1 instructions note that "multi-establishment companies, including parent corporations and their subsidiary holdings, must report all employees working at each company establishment or subsidiary establishment." Indeed, these subsidiaries cannot even register to file the EEO-1 Report, as they would receive the following prompt:

"If your company has a parent company, the parent company must include you in their reports. It DOES NOT matter that your company has a different Federal Tax ID."

With a few notable exceptions (such as those parent companies who do not have access to their subsidiaries' personnel data), this somewhat unusual filing requirement has not proven to impose a significant burden on employers in the past. However, beginning with the 2013 filing cycle and continuing into the current 2014 filing cycle, EEOC's filing procedures now *prevent* companies that use the electronic data file option from submitting accurate data on their subsidiaries. This is because, under its current procedures, EEOC will not accept a data file if the parent and subsidiary (or two different subsidiaries) attempt to file more than one report for the same address and industry code,¹ a reality that is quite common in today's private sector.

Indeed, it is entirely possible, if not common, for parent companies to have one or more subsidiaries occupying the same address and operating within the same industry. More importantly, each of the subsidiaries, under Title VII and EEOC's implementing regulations,

¹ Industries are identified using the North American Industry Classification System ("NAICS").

often will have an independent legal requirement to file the EEO-1. Indeed, EEOC's implementing regulations make no mention of parents or subsidiaries, only "employers."

The potential negative consequences of this situation become clear when companies try to resolve the filing issues with the EEOC. While some of our members have reported that the EEOC has been willing to accept their submissions under these circumstances, more often than not, our members tell us that when interacting with the EEOC regarding this issue, the Commission has recommended that companies either change one of their establishment's industry codes, or change one of their establishment's addresses by adding a suite number or floor number that may or may not exist. In either case, this results in an inaccurate report in direct contradiction with EEOC's rule stating that false statements made on the EEO-1 Report are "punishable by fine or imprisonment."²

Thus, a once remarkably efficient and streamlined electronic filing process has become quite the opposite for many large employers. EEAC respectfully submits that if EEOC is going to continue to require parent companies to file EEO-1 reports for all of their subsidiaries, then the Commission should lift the seemingly arbitrary ban that precludes the accurate reporting of their data.

CONCLUSION

In conclusion, EEAC supports the EEOC's intent to continue using the current version of the EEO-1 for another three years, with a change that would adjust the policies and/or technical procedures that currently prevent parent companies from using the "electronic data file" option to submit EEO-1 reports for different subsidiary companies operating at the same physical location within the same industry classification as was the case up until the 2013 filing cycle.

We appreciate the opportunity to make our views known to EEOC, and would welcome any questions you may have.

Sincerely,



Danny E. Petrella
Equal Employment Advisory Council

² 29 C.F.R. § 1602.8.