

January 7, 2015

Via Electronic Mail: [Chad A. Lallemand@omb.eop.gov](mailto:Chad.A.Lallemand@omb.eop.gov)

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

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. 72678 (December 8, 2014)

Dear Mr. Lallemand:

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 is in response to the EEOC's recent *Federal Register* notice indicating that the Commission has submitted to OMB a request under the Paperwork Reduction Act ("PRA") for a three-year extension of the EEO-1 Report without change. 79 Fed. Reg. 72678 (December 8, 2014).

As discussed in more detail below, EEAC supports the Commission's proposed extension of the current EEO-1 form's content without change. EEAC also filed comments at the "preclearance" stage of this PRA process, at which time we recommended that the EEOC make one relatively minor modification to the current EEO-1 filing procedures. This change would allow parent companies to submit separate EEO-1 reports for different subsidiary companies operating at the same physical location within the same industry classification. Current EEO-1 filing procedures preclude this from being done.

EEAC has since met with EEOC representatives, and they have committed to make this helpful change in time for the 2015 EEO-1 filing cycle. EEAC very much appreciates the EEOC's willingness to engage us on this issue, and with this change we believe the EEO-1 program will remain a model for other agencies to follow for the efficient collection of private- and public-sector employment data.

## 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 efficiently administered.

## BACKGROUND AND OVERVIEW

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. 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.<sup>1</sup>

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 using one of the following filing options currently permitted by the 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

---

<sup>1</sup> For large employers, the headcount for all of the company's establishments with fewer than 50 employees is commonly rolled into a single "Type 6" Report, which is not broken out by EEO-1 job category, race, ethnicity, and gender.

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.

- **Electronic Data File.** 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 reporting 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 entering data manually for hundreds or thousands of company establishments. There is still a significant startup cost to this option, however, because 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 EEAC supports their continued use. Because EEAC'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.

#### PRECLEARANCE CONSULTATION

EEAC participated in the Commission's "preclearance" PRA consultation (EEAC's comment letter was the only one filed), urging the EEOC to make one relatively minor modification to the current specifications governing how employers may file their EEO-1 Reports. Specifically, beginning with the 2013 filing cycle and continuing into the 2014 filing cycle, EEOC's filing procedures precluded parent companies that use the "electronic data file" option from submitting separate EEO-1 Reports for different *subsidiary companies* operating at the same physical location within the same industry classification, despite the fact that the parent company is legally required to satisfy the reporting obligations of its subsidiaries.

This in turn has required affected companies to find a workaround, such as changing an establishment's industry code, or changing an establishment's address by adding a suite number or floor number that may or may not exist. In either case, this results in an inaccurate report, which contradicts EEOC's rule stating that false statements made on the EEO-1 Report are "punishable by fine or imprisonment."<sup>2</sup> EEAC's comments recommended that the Commission adjust its filing procedures to allow a parent company to file accurate EEO-1 Reports whenever that company and its affiliated companies operate multiple establishments at the same location in the same industry.

Following the comment period, EEAC met with EEOC representatives to discuss possible solutions for this problem, including the specific possibility of adding Federal Employer Identification Number to the electronic data file to distinguish between different employers operating at the same address. The EEOC representatives expressed their willingness to address

---

<sup>2</sup> 29 C.F.R. § 1602.8.

Chad A. Lallemand

January 7, 2015

Page 4

our concerns, and we are pleased to see that the EEOC's supporting statement indicates that the Commission is planning to implement a solution to this problem in time for the 2015 EEO-1 reporting cycle.

CONCLUSION

EEAC appreciates this opportunity to comment. In light of the foregoing, we support the EEOC's intent to continue using the current version of the EEO-1 Report for another three years, with a change that would adjust the policies and/or technical procedures that currently preclude 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. We would welcome a further opportunity to discuss our views with OMB at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Danny E. Petrella". The signature is stylized with a large, looped "D" and a prominent "P".

Danny E. Petrella

Vice President, Compliance Policy

cc: Bernadette Wilson, Equal Employment Opportunity Commission