

August 4, 2003

Frances M. Hart
Executive Officer, Executive Secretariat
Equal Employment Opportunity Commission
10th Floor
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Dear Frances Hart:

EEOC's Proposed Revision of the Employer Information Report

This letter responds to the request for written comments on the Equal Employment Opportunity Commission's proposed revision of the Employer Information Report (EEO-1).

Background - Maly & Associates LLC

Maly & Associates is a management consulting firm located in San Rafael, California. We specialize in the analysis and reporting of human resource data, affirmative action compliance, and government audits. All of our clients are federal government contractors and range in scope from large, multi-national corporations to smaller organizations of 100+ employees nationwide. We assist clients in understanding and complying with the federal regulations for affirmative action, including Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974, and Section 503 of the Rehabilitation Act of 1973. Our firm has written hundreds of Affirmative Action Programs (AAPs) over the almost 17 years that we've been in business, and assisted many clients with compiling their data for EEO-1 reports, VETS-100 reports, EO Survey and in preparation for Office of Federal Contract Compliance Programs (OFCCP) audits. We are keenly aware of the high costs and organizational burdens imposed on our clients by unclear regulations and the inconsistent and overlapping government requests for employee data.

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Focus of Our Comments

The EEOC's notice identified four specific areas in which it is interested in receiving comments. Our letter will number and address each of these four areas below. In summary, the EEOC has grossly underestimated the increased burden on report filers. On behalf of our clients, we recommend that the EEOC formulate clear guidelines on how filers will be required to collect data and submit the EEO-1 report, and that sufficient time be given for employers to

update their systems and procedures. Furthermore, changes to the current categories should not be made until the utility of the new categories is assessed.

1. Is the EEO-1 report useful and necessary to the performance of EEOC functions?

No. The EEOC has stated two purposes in collecting EEO-1 data: 1) to investigate charges of employment discrimination against employers in private industry; and 2) to provide information about the employment status of minorities and women.

As to the first purpose, EEO-1 data is of little use in investigating charges of employment discrimination. EEO-1 job categories (current or proposed) are too broad to reveal similarly situated employees and are not used by employers in the normal course of human resource management. Furthermore, the information collected is unverified and based on subjective methods. Specifically, employers do not and should not be responsible for checking the accuracy of the responses of employees who self-identify, and visual identification depends on the eye of an individual.

As to the second purpose, the distribution of information that is inexact and has little practical utility does more harm than good. In fact, because of a lack of coordination between agencies, the definitions for such basic elements as "employee" and "establishment" are inconsistent which makes the data even less useful. For instance, the OFCCP states (in Volume 165 Number 219 of the Federal Register) that the term "employee" includes all part-time, full-time, and temporary employees while the current and proposed definition for "employee" in the EEO-1 report Instruction Booklet excludes certain temporary employees.

Additionally, although we recognize that the information collected in the EEO-1 report is used by the OFCCP as part of its Equal Employment Data System (EEDS), we understand that the new Equal Opportunity Survey (EO Survey) is meant to replace the EEO-1 report as the tool for selecting contractors for audits.

2. Does the information collection requirement pose an unreasonable burden?

Yes. The EEOC has not accurately assessed or precisely defined the "one time implementation burden." An estimate of less than 15 hours on average for each private employer is unrealistic. Furthermore, the proposed race and job categories contradict those required in the EO Survey.

Contradictory Reporting Requirements: The EO Survey currently under review by the Office of Management and Budget for a two year extension uses the nine current EEO-1 categories and the five current race/ethnicity categories or, optionally, a race/ethnicity classification system that differs from both the current and proposed race/ethnicity categories. The burden

imposed by a concurrent collection and reporting of data in both the current (EO Survey) and proposed (EEO-1 report) formats is unreasonable and an inefficient use of employer resources.

Redundant Reporting Requirements: Contractors required to submit the EO Survey are being asked to submit the same workforce data (Part B - Full Time Employees at End of Year) as requested in the EEO-1 report. The OFCCP differentiates the two reports in its Supporting Statement to the EO Survey extension request by pointing out that the EEO-1 report requests both part-time and full-time incumbency. However, since one of the stated purposes (and we feel the most significant purpose) of the EEOC in collecting the EEO-1 reports is to provide information to the OFCCP it appears clear that requiring both formats is unnecessary.

Implementation Burden: There are several costs for employers that the EEOC has failed to adequately assess. We list below the costs associated with the proposed changes to the job categories and race/ethnicity categories.

- a) Employers will be required to categorize and reprogram job titles into new job categories. To determine which category is appropriate, each job title will need to be analyzed. Although the names for some of the job categories remain the same, the definitions for even these categories have changed. For instance, the Technicians category currently includes occupations with skills that can be obtained through "2 years of post high school education" while the proposed Technicians category includes occupations requiring skills that are "usually obtained by bachelor degree education."

In an era in which jobs and job titles are becoming more and more distinct and specialized, the number of different occupations within a company has grown to such a level that the time necessary to categorize each job in an organization may take more than the average time estimated by the EEOC for the entire implementation. Add to this the cost of data entry and reprogramming of electronic data systems, and the burden for this task alone will average more than 20 hours for each employer.

- b) An even larger burden will be required to categorize employees into the proposed race/ethnicity categories. The EEOC recommends in its proposal that race and ethnicity information be collected through self-identification. The re-surveying of employees will require new forms, training of human resource and management employees and recruiters, and hours of work distributing, collecting and entering the new data. As with the job categories, data systems will have to be reprogrammed.

The use of the EEOC's alternate approaches of employee record examination and observer identification for determining race and

ethnicity would require even more time and lost productivity. In our estimation, the average cost of complying with the proposed race/ethnicity category changes will be over 60 hours and require several months to implement.

Based on our estimates and the EEOC's estimate of 45,000 respondents, the implementation burden alone will be *at least* 3,600,000 hours. At the EEOC's estimate of \$15 per hour, the total cost of implementation to covered employers will be *at least* \$54,000,000. Add to this the estimated annual cost to respondents of \$9,700,000 and the cost in the initial year of implementation will be over \$63,700,000.

This figure does not even begin to estimate the collateral costs of updating other reporting forms such as the VETS-100 report and EO Survey that use the EEO-1 job categories and the changes that will be required in OFCCP enforced affirmative action programs.

3) Does the EEO-1 report improve the quality, utility, and clarity of the information to be collected?

No. The proposed race/ethnicity categories create a new level of complexity to an already inexact system. Additionally, the EEOC left two critical questions unanswered that will greatly affect the burden to employers.

Quality and Utility of Information: The distinguishing of Hispanic/Latino as an ethnicity, although technically accurate, is not commonly understood and creates confusion even for those meant to be included. Evidence of this confusion can be seen in the information collected in the 2000 census and, specifically, the number of Hispanic/Latino respondents who selected "some other race." Furthermore, the proposed use of ethnicity to "trump" race is an arbitrary and misleading approach to classifying people. Are we to assume that it is more likely that people in the United States discriminate based on ethnicity than on race? How can observer identification accurately determine ethnicity?

The use of the Hispanic/Latino ethnic category and the multiple race/ethnicity category make the use of EEO-1 report data useless in assessing discrimination based on race. For instance, Black or African Americans who are also Hispanic or Latino may be discriminated against because of their race but that discrimination may be hidden in the data for the Hispanic/Latino category. Furthermore, people who fall into the multiple race category are entirely taken out of the individual race numbers even though they may be discriminated against based on identification with a single race.

Clarity of Information: Without answers to two important questions, implementation of the proposed changes will be more burdensome if not impossible.

First, in what manner will employers be required to track data? Will employers be required to track the different combinations of races or just whether or not an employee falls into the multiple race category?

Second, how long will employers have to implement the proposed changes? As we stated above, effective implementation will require several months for larger organizations.

4) Does the EEO-1 report lend itself to efficient and cost-effective information technology data collection methods?

Maybe. We would like to commend the EEOC for discontinuing the use of the "Interactive Diskette" filing system and attempting to create a more efficient and user-friendly method for electronic filing. However, we would like to request that future changes to reporting methods be made public prior to implementation so that the public may better assess their utility and so that any bugs may be worked out prior to release.

Because of the abrupt manner in which the new filing system was implemented, we withhold judgement until a thorough examination can be made.

Summary and Conclusion

The proposed changes to the EEO-1 report would require enormous implementation costs and would provide little to no useful data. We recommend that the EEOC reassess the value and burden of the EEO-1 report and find ways to lessen the burden. Specifically, we recommend that the EEOC wait to implement changes to the EEO-1 report until the utility of the report is assessed, further clarification of the proposed changes is made, and a realistic transition period is established.

Sincerely yours,

Edward Correro
Consultant

ETC/AMM/SA/GS