



December 28, 2005

Carolyn Lovett
Policy Analyst
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

**RE: Submission of Revised Employer Information Report (EEO-1 Report) for
Office of Management and Budget Approval
(OMB Number: 3046-0007)**

Ms. Lovett:

This letter responds to the request for written comments by the Equal Employment Opportunity Commission (EEOC) regarding the submission for approval of the revised Employer Information Report (EEO-1 report). We unequivocally support the EEOC in its mission to eliminate illegal discrimination and welcome this opportunity to provide input regarding the practices and processes used in undertaking that mission.

Background - Maly Consulting LLC

Maly Consulting (originally founded as Maly & Associates in 1986) is a management consulting firm located in San Rafael, California. We specialize in the analysis and reporting of human resource data for equal employment and affirmative action compliance and for OFCCP audits. The majority 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 analyzed data for and developed thousands of Affirmative Action Programs (AAPs) over the 19 years that we have been in business. We have assisted many clients with compiling their data for OFCCP audits, EEO-1 reports, VETS-100 reports, and EO Surveys. We are keenly aware of the high costs and organizational burdens imposed on our clients by confusing data requests.

Focus of Our Comments

The final notice of submission of the EEO-1 report for OMB review requested written comments on the revisions to the report form and instruction booklet. Our firm provided

comments in a previous public comment letter¹ regarding the immense burden imposed by the EEO-1 report and the lack of significant value considering the inaccurate nature of the data collection. In this letter we will specifically address the failure of the proposed revision to allow for unidentified employees or, in the alternative, to provide instruction on the process for collecting data on those employees who choose not to self-identify.

The EEO-1 Report Should Include a Category for Employees Who Choose Not to Self-Identify Race/Ethnicity and Gender

Although the former EEO-1 report instruction booklet language regarding the required use of visual identification of employees has been removed, the revised EEO-1 report continues to require the inclusion of *all* full-time and part-time employees.²

The proposed instruction booklet provides that if an employee declines to self-identify then "employment records or observer identification may be used" to identify an employee's race/ethnicity. The booklet also specifically requires employers to provide employees with a statement that self-identification is voluntary.

The EEOC should make clear that employers are not *required* to — and arguably should not — identify the race/ethnicity and gender of those employees who voluntarily choose not to self-identify. To accommodate these unidentified employees, the EEO-1 report should include a category of Unknown.

The use of various and inconsistent methods of identification undermines the already highly suspect integrity of data collected through the EEO-1 report. Furthermore, it is unclear that the data collected through the EEO-1 report provides an effective tool to either target or facilitate enforcement or to analyze trends. The EEOC should perform a study of the viability of the report in fulfilling its purposes before it imposes onerous requirements on the public.

If Employers Are Required to Identify the Race/Ethnicity and Gender of Employees Who Choose Not to Self-Identify, the EEOC Should Provide Meaningful Guidance on How Employees Should Be Identified

The EEOC suggests that the alternatives for identifying employees who choose not to self-identify are the use of employment records or observer identification but provides no direction as to what these terms mean or how they are to be used.

¹Please see Maly Consulting's comment letter of August 4, 2003 for our response to the EEOC's originally proposed EEO-1 report changes ([www.malyconsulting.com/PressRoom/Public Comment Letter - EEO-1 Report.pdf](http://www.malyconsulting.com/PressRoom/Public%20Comment%20Letter%20-%20EEO-1%20Report.pdf)).

²Page 3 of the revised instruction booklet states that employment data for the EEO-1 report "must include ALL full-time and part-time employees who were employed during the selected payroll period" (with some limited exceptions for certain employees such as insurance sales agents).

To what employment records is the EEOC referring? Do they mean for employers to use an employee's place of birth or surname as a means of identifying their race/ethnicity? Who should be the observer identifying race/ethnicity and gender and on what basis should they make the determination? Should not employees be notified that, if they do not voluntarily self-identify, their employer is required by the EEOC to determine race/ethnicity and gender through employment records or observer identification?

The EEO-1 report employs race and ethnic designations that the EEOC itself recognizes as *not* denoting "scientific definitions of anthropological origins." How can a federal government agency require private employers to categorize its employees if it cannot provide clear direction on how to identify those employees? Requiring thousands of observers with no training or even instruction across approximately 45,000 companies to categorize fellow employees by race/ethnicity and gender is simply untenable as a data collection system.

Summary and Conclusion

Employers should have the option of reporting as Unknown those employees who choose not to self-identify. If employers are required to report race/ethnicity and gender on employees who choose not to self-identify then the EEOC should provide clear guidance on how identification is to be performed. Ultimately, the EEOC should be required to examine the effectiveness of, not to mention the effect of, the EEO-1 report in achieving its purposes. The work of the EEOC is too important to allow unconsidered and untested methods of collecting data to continue.

Sincerely,



Edward Corrao, Esq.
Senior Consultant

ETC/AMM/GS

cc: Stephen Llewellyn
Acting Executive Officer, Executive Secretariat
Equal Employment Opportunity Commission