

**Supporting Statement A**  
**Recordkeeping and Reporting Requirements for**  
**Employer Information Report (Component 1 EEO-1)**  
**OMB Control No. 3046-XXXX (formerly 3046-0007)**

**A. Justification**

1. Need for the information collection

The Equal Employment Opportunity Commission (EEOC or Commission) is seeking approval to continue collection of the historic EEO-1 report, or the “Component 1” data collection. Under Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. § 2000e-8(c)(Section 709(c)), the EEOC has the legal authority to collect EEO-1 data (“[e]very employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order. . . .”) The EEOC’s regulations at 29 C.F.R. § 1602.7<sup>1</sup> and Office of Federal Contract Compliance Programs, Department of Labor (OFCCP) regulations at 41 CFR § 60-1.7(a),<sup>2</sup> which are based on Executive Order 11246, codify the EEO-1 recordkeeping and reporting requirements for private employers with 100 or more employees and for federal contractors who have 50 or more employees and meet certain criteria. Federal contractors and subcontractors subject to the EEO-1 reporting requirement are referred to as “federal contractors” in this supporting statement.

The EEOC’s Office of Enterprise Data and Analytics (OEDA) collects Component 1 data on behalf of the EEOC and OFCCP, and the EEOC is responsible for obtaining Paperwork Reduction Act (PRA) clearance for the EEO-1.

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<sup>1</sup> See <https://www.govinfo.gov/app/details/CFR-2009-title29-vol4/CFR-2009-title29-vol4-sec1602-7/summary> for more information.

<sup>2</sup> Federal contractors that (1) are not exempt from the provisions of these regulations in accordance with 41 CFR §60-1.5, (2) have 50 or more employees, (3) are prime contractors or first tier subcontractors, and (4) have a contract, subcontract or purchase order amounting to \$50,000 or more, or serve as depositories of Government funds in any amount, or are financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes. See <https://www.govinfo.gov/app/details/CFR-1999-title41-vol1/CFR-1999-title41-vol1-sec60-1-7> for more information.

On September 12, 2019, the Commission published a Notice in the *Federal Register* (60-Day Notice) announcing its intention pursuant to the PRA to seek OMB approval for a three-year extension of PRA authorization to collect EEO-1 Component 1 data from covered employers; the Notice also stated the Commission's intention to request that OMB remove Component 1 from OMB control number 3046-0007 and approve this PRA extension under a new control number.<sup>3</sup> In the same Notice, the Commission announced that it also did not intend to seek OMB renewal of PRA authorization for Component 2 (the summary pay data component) of the EEO-1, which the EEOC sought and received clearance to collect for the first time in 2016. Urging the public to focus on how data utility balances PRA burden, which is the central charge of the PRA, the Commission requested public comments during a sixty-day period ending November 12, 2019. In addition, on November 20, 2019, the Commission held a public hearing and considered the testimony of six witnesses representing a range of stakeholders including employers, employees, and economists.<sup>4</sup>

The EEOC published a Notice in the *Federal Register* on March 23, 2020 (30-Day Notice) announcing its decision pursuant to the PRA to seek OMB approval for a three-year extension of PRA authorization to collect EEO-1 Component 1 data from covered employers.<sup>5</sup> The 30-Day Notice also announced the Commission's decision to request that OMB remove Component 1 from OMB control number 3046-0007 and approve this PRA extension under a new control number.<sup>6</sup> The Commission reached its decision to renew Component 1 but not Component 2 based on its assessment of the significant practical utility of Component 1 data and the uncertain utility of Component 2 data, balanced against updated calculations of the burden (as defined by the PRA) that Components 1 and 2 would impose on covered employers.

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<sup>3</sup> See 84 Fed. Reg. 48138 (Sept. 12, 2019). Historically, OMB has approved collection of the EEO-1 Component 1 under OMB Control Number 3046-0007. This information clearance requests for a new OMB Control Number for collection of Component 1 to distinguish it from the recently completed collection of Component 2 and to minimize confusion.

<sup>4</sup> The press release on the hearing is available at *EEOC Examines the Efficacy of EEOC's Pay Data Collection Model* (Nov. 20, 2019), <https://www.eeoc.gov/eeoc/newsroom/release/11-20-19.cfm>. The hearing transcript, and statements and biographies of the witnesses are available at *EEOC, Hearing of November 20, 2019 – Public Hearing on the Proposed Revisions of the Employer Information Report (EEO-1)*, <https://www.eeoc.gov/eeoc/meetings/11-20-19/index.cfm>.

<sup>5</sup> See 85 Fed. Reg. 16340 (Mar. 23, 2020).

<sup>6</sup> *Id.*

## 2. Use of collected information

The EEOC uses data from the EEO-1 for enforcement purposes and for statistical purposes.

### *Enforcement Uses*

EEO-1 data are used by the EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. EEOC investigative analysts use EEO-1 data to assist enforcement teams in determining if a case may be systemic or to prioritize a systemic case, to validate analyses based on limited or flawed respondent data, and to assess cause in the absence of respondent data. The data are used to evaluate and prioritize charges under the Commission's charge processing system and to determine the appropriate investigative approaches.

As discussed in the "Data Sharing" section below, the EEOC shares these data with other enforcement agencies for enforcement purposes.

### *Statistical Uses*

The EEOC also uses EEO-1 data for statistical purposes and for developing evidence as defined by the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act).<sup>7</sup> For purposes of the Evidence Act, *statistical purpose* means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support these purposes.<sup>8</sup> *Evidence* means information produced as a result of statistical activities conducted for a statistical purpose.<sup>9</sup> An example of how the data are used for a statistical purpose is the annual production and publication of the *Job Patterns For Minorities And Women In Private Industry (EEO-1)*.<sup>10</sup>

### *Data Sharing*

The EEO-1 data are collected under Title VII and Executive Order 11246. The EEO-1, administered by the EEOC's Office of Enterprise Data and Analytics, is a single data collection designed to meet the enforcement data needs of both the EEOC and OFCCP while simultaneously avoiding duplication. With respect to sharing data with OFCCP, and consistent with EEOC's updated practices,

<sup>7</sup> Pub. L. No. 115-435 (2019).

<sup>8</sup> See 44 U.S.C. § 3561(12).

<sup>9</sup> See 44 U.S.C. § 3561(6).

<sup>10</sup> See <https://www.eeoc.gov/eeoc/statistics/employment/jobpat-eeo1/index.cfm>.

the EEOC will share with OFCCP only Component 1 data for federal contractors. Further, in light of the OFCCP's announcement of its decision not to request, accept, or use Component 2 data from the EEOC, the EEOC does not intend to provide any Component 2 data to OFCCP. *See, OFCCP Intention not to Request, Accept, or Use Employer Information Report (EEO-1) Component 2 Data*, 84 FR 64932 (Nov. 25, 2019).

The EEOC shares certain EEO-1 data with state and local fair employment practices agencies (FEPAs). The text of Title VII states that the EEOC may only give a FEPA information (including EEO-1 data) about employers in its jurisdiction on the condition that the FEPA *not* make it public prior to the institution of a proceeding under state or local law involving such information.<sup>11</sup> FEPA staff are required to receive annual training in data protection and security. The EEOC's current practice is to share data with a contracted FEPA under these conditions only when the employer is in the FEPA's jurisdiction and is a respondent to a particular charge of discrimination cited by the FEPA in its data request. (*See also* Section 10, Confidentiality).

The EEOC also shares EEO-1 data with other federal agencies that have a legitimate law enforcement purpose; however, the EEOC only gives access to information collected under Title VII upon an agency's demonstration of that law enforcement purpose, and only if the agencies agree, by letter or memorandum of understanding, to comply with the confidentiality provisions of Title VII. (*See also* Section 10, Confidentiality).

To align with provisions of Title VII of the Civil Rights Act of 1964, Federal Information Security Modernization Act of 2014 (FISMA),<sup>12</sup> the Evidence Act, and OMB Memorandum M-19-15 *Improving Implementation of the Information Quality Act* issued on April 24, 2019,<sup>13</sup> the EEOC is modernizing its policies and procedures concerning access to EEO-1 data for approved external data users. The EEOC is reviewing and updating all current data sharing memoranda with other federal enforcement agencies.

The EEOC will only provide approved users access to the minimum data necessary to adhere to the specific terms of the relevant memoranda. Consistent with the requirements of the Evidence Act, the EEOC is exploring secure mechanisms to facilitate access to EEO-1 restricted data for approved researchers for statistical purposes and for developing evidence. As defined by

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<sup>11</sup> 42 U.S.C. 2000e-8(d).

<sup>12</sup> Pub. L. No. 113-283 (2014).

<sup>13</sup> <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf>.

the Evidence Act, “evidence” only means “information produced as a result of statistical activities conducted for a statistical purpose.”<sup>14</sup>

### 3. Use of information technology

The EEO-1 report is collected through an online filing system. The vast majority of filers enter data online; historically, five percent of filers upload a data file directly, but the uploaded data represent nearly half of all data on business establishments reported by filers. Paper submissions of an EEO-1 are extremely rare and must be approved in advance by the EEOC. EEO-1 filers can access the EEO-1 User’s Guide on the EEOC website. The User’s Guide contains detailed information on the online filing system, including how to access user login and password information. It also contains instructions on navigating between screens, uploading data files, and completing the online form. The User’s Guide includes technical specifications for the type of files to be used by employers for data upload when the EEO-1 report is finalized. Numerous edit checks and validations are programmed into the online filing system to reduce the burden on filers and improve data quality. These checks also compare data entries to those provided in prior EEO-1 reports to alert the filer of a potential error.

### 4. Description of efforts to identify duplication

The amount of publicly available employment data by demographic characteristics is limited. Both the U.S. Census Bureau (Census) and the U.S. Bureau of Labor Statistics (BLS) collect employment data on the U.S. workforce, but the BLS and Census surveys do not capture the same data as the EEO-1.

The BLS’ National Longitudinal Surveys (NLS) are a set of surveys designed to gather information at multiple points in time on the labor market activities and other significant life events of several groups of men and women. For more than four decades, NLS data have served as an important tool for economists, sociologists, and other researchers.

The BLS Occupational Employment Statistics (OES) program produces employment and wage estimates annually for over 800 occupations. These estimates, which are based on a sample of establishments, are available for the nation as a whole, for individual states, and for metropolitan and nonmetropolitan areas;

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<sup>14</sup> 44 USC 3561(6).

national occupational estimates for specific industries are also available.

The U.S. Census Bureau's American Community Survey is a household survey that collects demographic data, e.g. age, sex, and race. Some limited employment data is also collected, but the relevant questions are more limited in scope than the EEO-1 employment questions.

The U.S. Census Bureau's Economic Census, which is conducted every five years, is primarily conducted on an establishment basis. A company operating at more than one location is required to file a separate report for each location or establishment. Companies engaged in distinctly different lines of activity at one location are requested to submit separate reports if the business records permit such a separation, and if the activities are substantial in size. For selected industries, only payroll, employment, and classification are collected for individual establishments, while other data are collected on a consolidated basis.

Component ID: While the BLS and Census information is useful for benchmarking EEO-1 employment estimates, it cannot replace EEO-1 data due not only to the nature of the data being collected by BLS and Census, but also due to the permissions associated with use and dissemination of the BLS and Census data. Specifically, all information collected by the federal government for statistical purposes, including the data in these BLS and Census surveys, is collected under a pledge of confidentiality according to the provisions of the 2002 Confidential Information Protection and Statistical Efficiency Act (CIPSEA).<sup>15</sup> This means that while the data can be used to provide statistical estimates, the data cannot be shared for purposes of employment discrimination enforcement.

##### 5. Impact on small business

The EEO-1 data collection has been in existence since 1966. The continuation of this data collection does not add any additional burden beyond that which small employers have experienced since the inception of this data collection in 1966.

##### 6. Consequences if information were collected less frequently

The EEOC investigates charges of employment discrimination with the benefit of up-to-date data reflecting the most current information possible. Although the EEOC has considered collecting EEO-1 data every two years, this approach was rejected because the agency concluded that the utility of the data would be

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<sup>15</sup> Pub. L. No. 107-347 (2002).

diminished before new data became available. In the private sector, workforce changes are frequent, not only within a particular establishment's workforce, but also on a larger scale in light of mergers and acquisitions. Historically, each year approximately one-quarter of EEO-1 filers request a new point of contact. Collecting the data biannually would compound the change of contact issue and would unnecessarily delay filers' submissions of Component 1 data while the EEOC identified the new appropriate points of contact. When employers restructure through mergers and acquisitions, employee demographics may undergo significant changes. A delay of two years in collecting data reflecting these changes could undermine the EEOC's ability to investigate and enforce statutes and regulations, since the agency would be forced to rely on outdated and inaccurate data with respect to filers.

7. Special circumstances

This information collection does not require any special circumstances.

8. Consultation outside the agency

The 60-Day Notice was published on September 12, 2019.<sup>16</sup> The EEOC received and posted 11,504 timely public comments<sup>17</sup> from individuals, employers, employer associations, Members of Congress, civil rights groups, women's organizations, industry and trade groups, human resources organizations, and social scientists in response to the 60-Day Notice. Almost all of the comments were in response to the EEOC's proposal to discontinue collecting Component 2 data. Of the comments that addressed Component 1, nearly all expressed support for the EEOC's proposal in the 60-Day Notice to seek continued approval of Component 1.<sup>18</sup> Even while supporting the proposed extension of Component 1, however, many commenters questioned the accuracy of the Component 1 estimated burden calculation as set forth in the 60-Day Notice. Some of these commenters stated that the EEOC's higher burden estimate for Component 1 still underestimates the actual employer burden. Notwithstanding this concern about the accuracy of the burden estimates, these commenters concluded that the utility of the Component 1 collection continues to justify the

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<sup>16</sup> Available at <https://www.federalregister.gov/documents/2019/09/12/2019-19767/agency-information-collection-activities-existing-collection>.

<sup>17</sup> 11,504 timely comments were posted on [regulations.gov](https://www.regulations.gov). One timely comment was not posted because its content was irrelevant to the 60-Day Notice and therefore the EEOC determined it was submitted in error.

<sup>18</sup> One anonymous commenter expressed concern about government oversight generally, and that individuals should turn to internal HR processes or litigation to address unfair treatment.

burden. Other commenters stated that the estimated burden for Component 1 set forth in the 60-Day Notice overstated the burden on employers. These commenters nonetheless supported the EEOC's proposal to continue collecting Component 1 data.

A small number of commenters suggested changes to the Component 1 data collection. Two commenters, both of which are firms that assist clients with EEO-1 reporting, suggested the EEOC should consider implementing changes that would facilitate the reporting of gender for non-binary employees. As part of its larger EEO-1 modernization effort (see description below) the EEOC will consider and evaluate all data elements collected via the EEO-1 collection. The modernization will weigh whether the data, as currently collected, is statistically valid and relevant. This assessment will include data collected and reported on the personal characteristics of employees.

The few commenters who addressed the EEOC's request for a separate OMB Control number for Component 1 supported this proposal.

One commenter, representing a consulting firm that assisted clients with Component 2 filings, suggested that the EEOC should discontinue the Component 1 collection in its entirety and argued that all the demographic data currently collected on Component 1 could be collected more efficiently if the EEOC implemented only Component 2.

The EEOC has been in consultation with OMB regarding the full implementation of Directive 15<sup>19</sup> and the 1997 Revised Standards for Data on Race and Ethnicity.<sup>20</sup> In the fall of 2018, the EEOC began an evaluation project to modernize the EEO-1 and other EEO Surveys (EEO-1 modernization effort). As part of this effort, alternatives to the current EEO-1 will be explored. The project is scheduled to conclude by 2022 and will include stakeholder engagement. Any consideration of changes to the EEO-1 will also be communicated via the Federal Register so the public may comment. This Information Collection Review (ICR) request leaves intact the race and ethnicity categories that have been used on the EEO-1 since 2006 until the evaluation is completed and

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<sup>19</sup> This directive provides standard classifications for record keeping, collection, and presentation of data on race and ethnicity in Federal program administrative reporting and statistical activities. See here for full explanation: <https://wonder.cdc.gov/wonder/help/populations/bridged-race/directive15.html>

<sup>20</sup> See here for more information: <https://www.federalregister.gov/documents/2016/09/30/2016-23672/standards-for-maintaining-collecting-and-presenting-federal-data-on-race-and-ethnicity>



stakeholder input on forthcoming alternatives to the EEO-1 report have been received.

9. Gifts or payments

No gifts or payments will be provided to respondents in connection with this information collection.

10. Confidentiality of information

*Confidentiality*

All reports and any information from individual reports are subject to the confidentiality provisions of Section 709(e) of Title VII<sup>21</sup> and may not be made public by the EEOC prior to the institution of any proceeding under Title VII involving the EEO-1 data. Any EEOC employee who violates this prohibition may be found guilty of a criminal misdemeanor and could be fined or imprisoned. The confidentiality requirements allow the EEOC to publish only aggregated data, and only in a manner that does not identify any particular filer or reveal any individual employee's personal information.

The EEOC directly imposes this Title VII confidentiality requirement on all of its contractors, including contract workers and contractor companies, as a condition of their contracts. With respect to other federal agencies with a legitimate law enforcement purpose, the EEOC gives access to information collected under Title VII *only* if the agencies agree, by letter or memorandum of understanding, to comply with the confidentiality provisions of Title VII.

With respect to data-sharing with state and local fair employment practices agencies (FEPAs), the text of Title VII itself states that the EEOC may only give FEPAs information (including EEO-1 data) about employers in their jurisdiction on the condition that they *not* make it public prior to the institution of a proceeding under state or local law involving such information.<sup>22</sup> The EEOC's current practice is to share EEO-1 data with a contracted FEPA only upon request and to share only EEO-1 data for an employer within the FEPA's jurisdiction and only when that employer is a respondent to a particular charge of discrimination cited by the FEPA in its data request. Title VII authorizes the EEOC to decline to honor a FEPA's subsequent requests for information if the FEPA violates Title VII's confidentiality requirements.

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<sup>21</sup> See 42 U.S.C. § 2000e-8(e).

<sup>22</sup> 42 U.S.C. 2000e-8(d).

## *Security*

The EEOC's information systems (including data extracted from those systems and maintained by contractors) as overseen by the Office of Information Technology are categorized at the Federal Information Processing Standards ([FIPS 199](#)) level of "Moderate." As defined in the Federal Information Security Modernization Act of 2014,<sup>23</sup> information systems used or operated by an agency or by a contractor of an agency are required by statute to provide information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of the information.

The confidentiality provisions of Title VII prohibit disclosure of any charge, charge-related information, or EEO survey information, except under the conditions outlined in the "Confidentiality of information" section above. Both project staff and the EEO-1 data collection agent staff, i.e. the contractor who is collecting EEO-1 data on the behalf of the EEOC, who have access to the EEOC records will not disclose any confidential information and will only use such information in the performance of their project responsibilities and duties. The data collection agent is bound to prevent the unauthorized release of information obtained by employees in the performance of work required by the EEO-1 data collection project. All project staff receive training, as necessary, on all regulations and laws that restrict the release of information. The EEOC administrative and control files are the property of the EEOC and the information contained therein is protected under the Privacy Act of 1974.<sup>24</sup>

### 11. Questions of a sensitive nature

Currently, the EEO-1 report tallies data about the sex, race, and ethnicity of the workforce by EEO-1 job category. All information utilized for statistical purposes will be reported in a summarized manner and no information will be reported that would allow the identification of an individual employee or employer.

### 12. Information collection burden

The previous annual estimated burden for Component 1 under the 2016 clearance<sup>25</sup> was 1,952,146 hours. After reviewing the

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<sup>23</sup> 44 U.S.C. § 3541 et seq.

<sup>24</sup> 5 U.S.C. § 552a.

<sup>25</sup> The 2016 burden was estimated to be 6.6 hours per respondent, multiplied by 60,886 respondents. The EEOC has now determined that the proper unit of analysis to calculate burden should be the number of reports submitted by report type, rather than the number of respondents.

methodology used to calculate the 2016 burden for Component 1, the EEOC identified an approach it believes is substantially more precise.

The methodology used in the 30-Day Notice to calculate the burden for Component 1 is to separate Type 1 (single establishment) and Type 2 (multi-establishment) filers and calculate the burden by considering the following factors: type of filer, the combination of report types submitted by the filer, and the total number of reports filers will certify to complete their EEO-1 submission.

Reporting time estimates for EEO-1 Component 1 filers are based on the most recently completed Component 1 collection cycle for 2018 data, which opened in March 2019 and closed in July 2019. During the 2018 data collection cycle, 80,396 of the 87,021 eligible EEO-1 Component 1 filers submitted a total of 1,628,897 reports. Based on data trends over the last five data-collection years, the EEOC expects that the total number of eligible filers submitting data will increase to 90,000 filers. The EEOC further estimates that of the 90,000 filers, Type 1 filers will continue to represent about 40% of filers, and that these filers will submit less than 2% of all reports, while Type 2 filers will continue to represent about 60% of filers and will submit more than 98% of all reports. The EEOC estimates that completion time by report type will be similar to earlier data years, and that filers will continue to submit the same combination of report types, e.g. Type 1 filers will submit a type 1 report only, and Type 2 filers will submit type 2 and type 3 reports, and then either type 4, type 6 or type 8 reports, depending on their business structure.

Using the 90,000 number, the EEOC estimates that Component 1 EEO-1 filers will submit a total of 1,915,345 reports annually, for data years 2019 through 2021. The EEOC estimates that the 36,223 Type 1 filers will submit 36,223 type 1 reports, and it will take them 27,167 hours to submit these reports. The EEOC estimates that the 53,777 Type 2 filers will submit 1,879,122 reports. Based on 2018 data, the EEOC calculated that the ratio of type 2 reports to type 3 reports was 1:1, or Type 2 filers submit an equal number of type 2 consolidated reports and type 3 headquarters reports. Since type 4, 6, and 8 reports reflect establishment data, the ratios of type 4 to type 2; type 6 to type 2; and type 8 to type 2 reports are considerably larger. Specifically, the ratio of type 4 reports to type 2 reports is 4.9:1, or for every type 2 report submitted, nearly 5 type 4 reports were submitted. The ratio for type 6 reports to type 2 reports is 14.9:1, or for every

type 2 report submitted, nearly 15 type 6 reports were submitted. The ratio for type 8 reports to type 2 reports is 13.1:1, or for every type 2 reports, about 13 type 8 reports were submitted. These ratios were then applied to the estimated number of Type 2 filers – 53,777 – to estimate the total number of reports by type we expect to receive for data years 2019 through 2021.

The EEOC estimates that it will take filers a total of 9,140,226 hours to submit these reports. The total aggregate reporting time for Component 1 EEO-1 filers is 9,167,393 hours. The aggregate reporting time for Component 1 EEO-1 filers by report type varies between a low of 27,167 hours for Type 1 filers submitting type 1 reports and 6,414,815 hours for Type 2 filers submitting type 6 reports. The table below outlines the number of reports, the average reporting time by report type, and the total number of hours estimated to submit these reports.<sup>26</sup>

<b>Table 1. Projected annual burden for Component 1 data years 2019-2021, by report type and reporting time</b>			
	<b>Number of reports</b>	<b>Average reporting time (minutes)</b>	<b>Aggregate reporting time, hours</b>
<b>Type 1</b>	36,223	45	27,167
<b>Type 2<sup>a</sup></b>	53,777	45	40,333
<b>Type 3<sup>b</sup></b>	53,777	45	40,333
<b>Type 4<sup>c</sup></b>	264,403	120	528,806
<b>Type 6<sup>d</sup></b>	801,852	480	6,414,815
<b>Type 8<sup>e</sup></b>	705,313	180	2,115,940
<b>Total</b>	<b>1,915,345</b>		<b>9,167,393</b>
<sup>a</sup> The Consolidated Report must include all employees of the company categorized by race, gender and job category.			
<sup>b</sup> Headquarters Report (Required) - The Headquarters Report must include employees working at the main office site of the company and those employees that work from home that report to the corporate office. Employment data must be categorized by race, gender and job category. A separate EEO-1 report for the headquarters establishment is required even if there are fewer than 50 employees working at the headquarters establishment.			
<sup>c</sup> Establishment Report - A separate EEO-1 Type 4 report must be submitted for each physical establishment with 50 or more employees. Employment data must be categorized by race, gender and job category.			
<sup>d</sup> Establishment list - includes establishment name, address and total number of employees for each location with less than 50 employees. Employers choosing Type 6 reports must also manually enter data categorized by race, gender and job category into the accompanying Type 2 report and include all company employees.			
<sup>e</sup> A separate EEO-1 report must be submitted for each establishment employing fewer than 50 employees. Like the Type 4 report, Type 8 report employment data must also be categorized by race, gender and job category. Employers choosing Type 8 reports			

<sup>26</sup> See Section 15 below for a description of each type of report.

must enter employment data categorized by race, gender and job category for each Type 8 report. The employment data entered for each such establishment will automatically populate the Type 2 Report.

13. Information collection cost burden

The EEOC estimates that it will cost \$297 million for Component 1 filers to submit approximately 1.9 million reports. The EEOC further estimates that it will take filers a total of 9,167,393 hours to complete this submission. Using the most recent median pay data from the Board of Labor Statistics, the EEOC estimates that a computer support specialist would account for 60% of the estimated hourly wage; a database administrator would account for 20%; an HR specialist would account for 10%; legal counsel would account for 5%; and a CEO would account for 5%. Based on this information, the EEOC estimated the cost of filers by calculating an hourly rate of \$32.44. See U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, <https://www.bls.gov/ooh/business-and-financial/human-resources-specialists.htm>.

14. Cost to federal government

The EEOC estimates that the annual contract cost will be about \$2 million annually. The costs break down accordingly –

Annual cost of the contract: \$1.5 million

Federal Staffing costs: \$533,056

The federal staffing costs are estimated by assuming that the OEDA team - a GS-15, 2 GS-14s, and 1 GS-7 assigned to Component 1 EEO-1 will work on it full-time. It also assumes a Division Chief at the GS-14 level will devote 50% of their time to the project.

15. Program changes or burden adjustments

In May 2018, the EEOC created the Office of Enterprise Data and Analytics (OEDA) with the goal of creating a 21st century data and analytics program within the agency. OEDA is now staffed largely by data scientists and statisticians who did not work at the EEOC in 2016 when the Commission developed the 2016 PRA package for EEO-1 Component 2. When the EEOC began preparing to seek continued approval of the EEO-1 collection under the PRA, staff in OEDA revisited the methodology used in 2016 for calculating EEO-1 burden estimates, taking into consideration the methodology the EEOC used prior to 2016 and, significantly, also referencing Government Accountability Office (GAO) statements and OMB instructions on the appropriate methodology for calculating burden estimates in federal

information collections. Per guidance published in a 2018 GAO report:

A single information collection request may contain multiple burden hour estimate formulas depending, for example, on whether there are different forms or different types of respondents. The total annual burden hour estimate is the sum of all of individual burden hour estimate formulas. If the information request is for the maximum 3-year period, then the annual burden estimate is the average over that 3-year period.<sup>27</sup>

In light of these considerations, OEDA staff concluded that the EEOC's 2016 burden estimate for the EEO-1 had underestimated the burden to submit the Component 1 data. After Janet Dhillon was sworn in as Chair of the EEOC on May 15, 2019, she consulted with the Director of OEDA about the EEO-1 burden calculation and other aspects of the PRA renewal process.

OEDA staff concluded that the 2016 methodology did not adhere to the standard approach of OMB and GAO, which was to account for the burden of filing each different type of the EEO-1 "report". Rather, the 2016 burden methodology initially assessed employer burden entirely at the firm level, assuming that covered employers would use automated data systems to centralize EEO-1 data collection and then utilize the EEOC's upload file function to send data to the agency.<sup>28</sup> Although later acknowledging that tasks such

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<sup>27</sup> See Government Accountability Office Report GAO-18-381, "PAPERWORK REDUCTION ACT, Agencies Could Better Leverage Review Processes and Public Outreach to Improve Burden Estimates," July 2018, <https://www.gao.gov/assets/700/693057.pdf>, p. 8, Footnote a to Figure 2. see also ROCIS HOW TO Guide for Agency Users of the (ICR) Module, April 5, 2017, [https://www.rocis.gov/rocis/jsp3/common/ROCIS\\_HOW\\_TO\\_Guide\\_for\\_AGENCY\\_Users\\_of\\_ICR\\_Module-04052017.pdf](https://www.rocis.gov/rocis/jsp3/common/ROCIS_HOW_TO_Guide_for_AGENCY_Users_of_ICR_Module-04052017.pdf), p. 105, ¶ 12. ("Provide estimates of the hour burden of the collection of information. The statement should:

\* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

\* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens.

\* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included under 'Annual Cost to Federal Government'.")

<sup>28</sup> *Agency Information Collection Activities; Notice of Submission for OMB Review, Final Comment Request:*

as data entry would necessarily be performed at the establishment level, especially if a covered employer did not use the EEOC's upload file function, the final 2016 burden methodology still stated that "the bulk of the tasks performed in completing the EEO-1 report will be completed at the firm level due to the centrality of automation" and calculated burden at the firm level.<sup>29</sup> This assumption resulted in an extremely low estimate of the burden on employers. Applying this 2016 methodology, the EEOC concluded that "the total estimated *annual* burden hour costs for employers and contractors that will complete both Components 1 and 2 in 2017 and 2018 will be \$53,546,359.08."<sup>30</sup>

Based on the following analysis and as specified below, the EEOC now concludes that the burden estimate associated with the EEO-1 is higher than it had estimated in 2016. The methodology used to develop the burden estimates in the 30-Day Notice returns to the approach used by the EEOC prior to 2016, which accounted for the burden of filing each different type of EEO-1 "report." The EEO-1 Instructions direct covered employers to use different reports for different purposes, and OMB and GAO direct agencies to account for the burden of filing each different kind of report.<sup>31</sup> An employer with only a single location files one EEO-1 report — a type 1 EEO-1 report — and an employer with numerous locations files a corresponding number of EEO-1 "establishment" reports, plus a headquarters report and a consolidated report, as follows:<sup>32</sup>

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*Revision of the Employer Information Report (EEO-1)*, 81 FR 45479, 45493 (July 14, 2016) ("the EEOC [initially] concluded that most employers would be filing the EEO-1 with a digital file upload by the time they file their EEO-1 reports for 2017 and 2018. Therefore, in the 60-Day Notice, the EEOC reasoned that 'each additional report filed [would have] just a marginal additional cost.' Accordingly, the burden calculation in the [2016] 60-Day Notice was based on the number of firms filing one or more EEO-1 reports, not on the number of reports submitted or the number of separate establishments submitting reports.")

<sup>29</sup> *Id.* ("Second, the EEOC no longer assumes that all the EEO-1 reports for 2017 and 2018 will be submitted by one data upload filed by the firm on behalf of all the establishments. While still reflecting that the bulk of the tasks performed in completing the EEO-1 report will be completed at the firm level due to the centrality of automation, the EEOC's 30-Day Notice recognizes that there are certain tasks that will be performed at the establishment level for employers who enter their EEO-1 data directly onto the Joint Reporting Committee's secure portal. Therefore, the 30-Day Notice burden calculations are based on the number of hours needed to complete the tasks at the firm level and also at the establishment level for the proportion of EEO-1 filers who do not now use centralized, secure data uploads.")

<sup>30</sup> *Id.*

<sup>31</sup> Not all employers are required to file all form types.

<sup>32</sup> See Table 1 in Section 12 above for the projected annual burden to report Component 1 data in reporting years 2019-2021, by report type and reporting time.

- A type 2 ‘Consolidated Report,’ which must include all employees of the employer categorized by race, gender and job category;
- A type 3 ‘Headquarters Report,’ which must include employees working at the main office site of the employer and those employees who work from home and report to the corporate office. In addition, a separate EEO-1 report for the headquarters establishment is required even if there are fewer than 50 employees working at the headquarters establishment.
- A type 4 ‘Establishment Report’ must be submitted for each physical establishment with 50 or more employees. Employment data must be categorized by race or ethnicity, gender, and job category.
- A type 6 or type 8 ‘Establishment Report’ must be submitted for each establishment site with fewer than 50 employees:
  - An employer choosing to submit type 8 ‘Establishment Reports’ provides a separate type 8 report for each establishment employing fewer than 50 employees. Like filers submitting the type 4 ‘Establishment Report, filers choosing to create a type 8 report enter employment data categorized by race or ethnicity, gender, and job category for each type 8 report. The employment data entered for each such establishment on a type 8 report will automatically populate the filer’s type 2 Consolidated Report on the EEOC’s system.
  - An employer choosing to submit a type 6 ‘Establishment List’ should provide the establishment names, complete addresses, and total number of employees for all physical location where fewer than 50 employees are working. Because the type 6 report does not tally the number of employees, employers choosing a type 6 data report for each establishment employing fewer than 50 employees must manually enter data categorized by race or ethnicity, gender, and job category to the type 2 ‘Consolidated Report’ to include all company employees.

The EEOC concluded the time and resources used to collect and report data for many of these reports at different locations, some of which are more detailed than others, is greater than that needed to prepare a single report or a few reports at one or two locations.



This analysis revealed that the previously published 2016 burden hours underestimated the Component 1 EEO-1 burden by 7,188,080 hours and the cost by more than \$243.5 million dollars. Sections 12 and 13 of this statement outline how OEDA recalculated an accurate burden estimate and the costs associated with it.

16. Publication of data for statistical use

In each survey year a publication, *Job Patterns for Minorities and Women in Private Industry*, is posted on the EEOC web site. The publication includes non-confidential aggregations of the EEO-1 data based on various geographic and industrial criteria and can be found at <http://www.eeoc.gov/eeoc/statistics/employment/jobpat-eeo1/index.cfm>. Similar data sets are available on [www.data.gov](http://www.data.gov).

17. Approval not to display the expiration date

The EEOC is not seeking approval to not display the OMB approval expiration date on the EEO-1 report.

18. Exceptions to the certification statement

The EEOC is not seeking any exceptions to the certification statement under this information collection request.