

TABLE III—TEST INFORMATION RECEIVED FROM 02/01/2020 TO 02/29/2020—Continued

Case No.	Received date	Type of Test Information	Chemical Substance
LM-18-0050	02/19/2020	Fish Acute Toxicity Test (OCED Test Guideline 203), Ready Biodegradability (OECD Test Guideline 301F), Hydrolysis as a function of pH (OECD Test Guideline 111), S, E, R, F Value Table.	(G) Heterocyclic amine, 1-[2-[[4-[2-[2-amino-6-[2-[2,5-dialkoxy-4-[[2-(sulfooxy)alkyl]sulfonyl]aromaticyl]]diazaryl]-5-hydroxy-7-sulfo-1-aromaticyl]]diazaryl]-3-sulfoaromaticyl]]sulfonyl]alkyl]-3-carboxy-, inner salt, alkali metal.
P-18-0159 ..	02/04/2020	Acute Oral Toxicity in the Rat (OECD Test Guideline 420).	(G) Thiophenium, 1-(2,7-disubstituted-1-naphthalenyl)tetrahydro-, salt with polyfluoro-n-polyfluoroalkylsulfonyl-1-alkanesulfonamide(1:1).
P-18-0202 ..	01/29/2020	Water Solubility: Column Elution Method; Shake Flask Method (OCSPP Test Guideline 830.7840).	(G) Trialkyl alkanal, polymer with phenol.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: March 12, 2020.

**Pamela Myrick,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2020-06063 Filed 3-20-20; 8:45 am]

BILLING CODE 6560-50-P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Agency Information Collection Activities: Existing Collection

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of information collection—request for new control number and approval of collection: Employer Information Report (EEO-1) Component 1; revision of existing approval for EEO-1 Component 2.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA), the Equal Employment Opportunity Commission (EEOC or Commission) announces that it has submitted to the Office of Management and Budget (OMB) a request for a three-year PRA approval of Component 1 of the Employer Information Report (EEO-1). The EEOC is seeking OMB approval to remove Component 1 from OMB control number 3046-0007 and assign it a new PRA control number. The EEOC is not submitting a request to approve Component 2 of the EEO-1 collection.

**DATES:** Written comments on this notice must be submitted on or before April 22, 2020.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Commenters are also encouraged to send comments to the EEOC using any of the following methods—please use only one method:

**Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions on the website for submitting comments.

**Mail:** Comments may be submitted by mail to Bernadette B. Wilson, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

**Fax:** Comments totaling six or fewer pages can be sent by facsimile (“fax”) machine to (202) 663-4114. (This is not a toll-free number.) Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (800) 669-6820 (TTY). (These are not toll-free telephone numbers.)

**Instructions:** All comments received must include the agency name and docket number. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters’ Library, 131 M Street NE, Washington, DC 20507. Upon request, individuals who require assistance viewing comments are provided appropriate aids such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC’s library, contact the library staff at (202) 663-4630 (voice) or (800) 669-6820 (TTY). (These are not toll-free numbers.)

### FOR FURTHER INFORMATION CONTACT:

Rashida Dorsey, Ph.D., MPH, Director, Data Development and Information Products Division and Senior Advisor on Data Strategy, Office of Enterprise Data and Analytics, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507, (202) 663-4355 (voice) or (202) 663-7063 (TTY). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY).

### SUPPLEMENTARY INFORMATION:

#### I. Background

##### A. The EEO-1 Report

Since 1966, the EEOC has required EEO-1 filers to submit demographic data (Component 1) on an annual basis. All private employers that are covered by Title VII of the Civil Rights Act of 1964, as amended (Title VII)<sup>1</sup> and that have 100 or more employees are required to file Component 1 data. In addition, Office of Federal Contract Compliance Programs (OFCCP) regulations require certain federal contractors to file the EEO-1 if they have 50 or more employees and are not

<sup>1</sup> 42 U.S.C. 2000e, *et seq.*

exempt as provided for by 41 CFR 60-1.5.<sup>2</sup>

**B. The 60-Day Notice: The Commission's Statement of Intention for the EEO-1**

On September 12, 2019, the Commission published a Notice in the **Federal Register** announcing its intention to seek OMB approval for a three-year PRA authorization to collect EEO-1 Component 1 data from covered employers ("60-Day Notice"). The 60-Day Notice also stated the Commission's intention to request that OMB remove Component 1 from OMB control number 3046-0007 and provide a new control number.<sup>3</sup> In the same 60-Day Notice, the Commission announced that it did not intend to seek OMB approval of PRA authorization for Component 2 of the EEO-1 (the summary pay data component). The Commission reached the decision to renew Component 1 but not Component 2 based on its assessment of the proven utility of Component 1 data and the uncertain utility of Component 2 data, balanced against updated calculations of the burden that the Components 1 and 2 collections impose on covered employers, as defined by the PRA. In the Notice, the Commission requested public comments during a sixty-day period ending November 12, 2019 (hence the Notice is referred to as the "60-Day Notice"). In addition, on November 20, 2019, the Commission held a public hearing pursuant to Section 709(c) of Title VII, 42 U.S.C. 2000e-8(c) and considered the testimony of six witnesses representing both employer and employee stakeholders, as well as labor economists.<sup>4</sup>

<sup>2</sup> Unless otherwise noted, the term "contractor" refers to federal contractors and first-tier subcontractors that satisfy the employee and contract size coverage criteria that subject them to the EEO-1 reporting obligations. The term "private employers" or "private industry" refers to all other entities required to file the EEO-1 that are not included in the "contractor" designation. The terms "employer," "covered employer," or "filer" refer to all entities that are required to file EEO-1 data.

<sup>3</sup> 84 FR 48138. The Commission voted to approve this 60-Day Notice in September 2019. Chair Janet Dhillon was sworn in as a Commission member on May 15, 2019, ending a four-month period during which the Commission lacked a quorum and therefore could not consider or approve documents like the 60-day Notice. There also was a partial government shutdown from December 22, 2018–January 25, 2019.

<sup>4</sup> See Notice of public hearing on proposed EEO-1 Report amendments, 84 FR 59619. 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>. More information about the hearing is available at EEOC, *Hearing of November 20, 2019—Public Hearing on the Proposed Revisions of the*

*C. Factors Necessitating the Intended Positions in the 60-Day Notice*

**(1) EEO-1 Components 1 and 2 Now Have Different Timelines**

In 2016, the EEOC sought OMB approval under the PRA to collect specific summary pay data as Component 2 of the long-established EEO-1 report. On September 29, 2016, OMB authorized the EEOC to collect Component 2 data for calendar years 2017 and 2018 under OMB control number 3046-0007, with the first filing deadline being March 31, 2018 (for 2017 pay data). This OMB approval also authorized the EEOC to collect Component 1 EEO-1 data for calendar years 2016, 2017, and 2018.<sup>5</sup>

On August 29, 2017, OMB exercised its authority under the PRA to initiate a review of the Component 2 collection and stay the EEOC's collection of Component 2 data, but not Component 1 data.<sup>6</sup> Subsequently, the National Women's Law Center and the League of United Latin American Citizens (LULAC) challenged this action in court and, on March 4, 2019, the court in *National Women's Law Center, et al. v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (D.D.C.), vacated OMB's stay of Component 2. The court ordered that OMB's September 29, 2016 PRA approval of the revised EEO-1 was in effect. On April 25, 2019, the court further ordered that the PRA approval for the EEO-1, including Component 2 data, under OMB control number 3046-0007, would expire no later than April 5, 2021. The court also ordered that the collection of Component 2 data would not be deemed complete until the percentage of filers submitting Component 2 reports equalled or exceeded the mean percentage of EEO-1 reporters that actually submitted EEO-1 reports in each of the past four reporting years. The court ordered the EEOC to collect Component 2 data for 2017 and 2018 with a submission deadline for covered employers of September 30, 2019. On October 29, 2019, the court ordered the EEOC to continue to collect Component 2 data through January 31, 2020, and on February 10, 2020, the court ordered that the EEOC's collection of

*Employer Information Report (EEO-1)*, <https://www.eeoc.gov/eeoc/meetings/11-20-19/index.cfm>.

<sup>5</sup> These Component 1 collections were timely, except for the collection of 2018 Component 1 data, which was delayed due to the partial government shutdown from December 22, 2018 through January 25, 2019. The filing deadline for that 2018 collection was extended to May 31, 2019.

<sup>6</sup> During the term of this stay, the EEOC collected Component 1 data for reporting years 2017 and 2018.

Component 2 data was complete. This case is now pending on appeal before the U.S. Court of Appeals for the D.C. Circuit. *National Women's Law Center, et al. v. Office of Management and Budget, et al.*, Case No. 19-5130 (D.C. Cir.).

The EEOC must now seek PRA authorization from OMB to continue to collect EEO-1 data for calendar years 2019, 2020, and 2021. To minimize confusion in light of the above-referenced litigation involving Component 2, the EEOC is asking OMB to approve Component 1 under a new OMB control number.

**(2) EEO-1 Burden Calculations in 2016 Were Based on Incorrect Assumptions**

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 the EEO-1. When the EEOC began preparing materials to seek this PRA approval of the EEO-1 collection, staff in OEDA revisited the methodology used in 2016 for calculating EEO-1 burden estimates. OEDA staff considered the methodology the EEOC used prior to 2016 and, significantly, also referenced Government Accountability Office (GAO) statements<sup>7</sup> and OMB instructions<sup>8</sup> on

<sup>7</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 (GAO Report), <https://www.gao.gov/assets/700/693057.pdf>.

<sup>8</sup> 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

Continued

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>9</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 Component 1 and Component 2 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 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" (see explanation below of the five types of EEO-1 reports). 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>10</sup> Although later acknowledging that tasks such 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 asserted 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>11</sup> This

activities should not be included here. Instead, this cost should be included under 'Annual Cost to Federal Government'."

<sup>9</sup> GAO Report at p. 8, Footnote a. to Figure 2.

<sup>10</sup> Agency Information Collection Activities; Notice of Submission for OMB Review, Final Comment Request: 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>11</sup> *Id.* ("Second, the EEOC no longer assumes that all the EEO-1 reports for 2017 and 2018 will be

assumption led to the conclusion 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>12</sup>

By contrast, the methodology used to develop the burden estimates in this 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>13</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>14</sup>

- 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:

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>12</sup> *Id.*

<sup>13</sup> Not all employers are required to file all form types.

<sup>14</sup> See Table 1 in section V.B. for the projected annual burden to report Component 1 data in reporting years 2019–2021, by report type and reporting time.

- 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.

Accounting for the burden of filing each different type of form or report, the Commission's September 12, 2019 60-Day Notice concluded that the burden for Components 1 and 2 of the EEO-1 was \$614,391,388 in 2017 and \$622,015,798 in 2018.<sup>15</sup>

## II. The Public Comments on the 60-Day Notice

The Commission received and posted 11,504 timely public comments in response to the 60-Day Notice.<sup>16</sup> The comments were submitted by individual members of the public, employers, employer associations, Members of Congress, civil rights groups, women's organizations, industry and trade groups, human resources organizations, and social scientists. Several thousand of the posted comments were part of mass comment-writing campaigns and opposed the proposal not to continue Component 2.

<sup>15</sup> See 84 FR. 48138, 48140–48141. The EEOC uses 2017 and 2018 data as an example because it is the agency's most recent data. For 2017, the EEOC calculates that of the \$614,391,388, \$247,959,388 is attributable to Component 1 and \$366,431,751 is attributable to Component 2. For 2018, the EEOC calculates that of the \$622,015,388, \$250,626,707 is attributable to Component 1 and \$371,389,091 is attributable to Component 2. See footnote 28, *infra* (describing how the burden estimates for Component 2 were calculated).

<sup>16</sup> 11,504 timely comments were posted on 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.

### III. Scope of the Public Comments on the 60-Day Notice

#### A. Component 1

##### (1) Summary of 60-Day Notice

The 60-Day Notice announced the Commission's intention to continue its collection of Component 1 data, even as the EEOC recalculated the burden on employers and concluded that it was higher than previously contemplated. Nonetheless, the Commission noted that collection of Component 1 data is a long-held practice that has occurred for over 50 years and it has already proven its utility to the EEOC's enforcement of employment discrimination laws in many ways. The 60-Day Notice recognized that Component 1 EEO-1 data is an important internal resource for analysis of industries and regions, and also for EEOC investigators who use the EEO-1 along with other data sources as they start to assess allegations of discrimination. Under these circumstances, even with a higher burden estimate, the EEOC concluded that the continued collection of Component 1 data would be necessary for the continued effectiveness of the agency.

##### (2) Summary of Public Comments

Almost all the public comments supported the EEOC's proposal in the 60-Day Notice to continue to collect Component 1 data.<sup>17</sup> Even while supporting the proposed continuation 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 underestimated 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 continued to justify the 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.

One commenter, representing a consulting firm that assisted clients with Component 2 filings, suggested 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 just as accurately but more efficiently if the EEOC implemented only Component 2.

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.

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

#### B. Component 2

##### (1) Summary of 60-Day Notice

The EEOC announced its intention not to seek approval of the Component 2 summary pay data collection in the 60-Day Notice because it determined that the uncertain utility of the data was outweighed by the burden on employers collecting the data. The 60-Day Notice outlined the EEOC's methodology for calculating the employer reporting burden and why the EEOC decided to use this methodology. The EEOC explained in the 60-Day Notice that it now calculated the burden by deconstructing the total number of reports submitted by report type and by filer type, and then estimating an average burden based on the number and types of reports submitted.<sup>18</sup> These estimates account for the different amounts of time required to complete different types of EEO-1 reports,<sup>19</sup> and

<sup>18</sup> See footnote 2, *supra*; see also, e.g., *Mortality in Correctional Institutions*, 84 FR 1507, 1508–09 (2019).

<sup>19</sup> Using Component 1 2017 data as the basis for an example of the new methodology, 75,043 EEO-1 filers submitted a total of 1,597,036 Component 1 reports to the EEOC. Forty percent, or 30,203 filers, submitted a report for only a single establishment. Single establishment filers are referred to as "Type 1" filers by the EEOC. Each Type 1 filer submitted a single report, yielding a total of 30,203 reports in 2017. These Type 1 filers have the lowest burden, with an average estimated burden of 45 minutes annually to complete their submission of Component 1. Multiple establishment filers are referred to as "Type 2" filers by the EEOC. In 2017, Type 2 filers accounted for 60%, or 44,840 filers of Component 1, and in 2017 submitted a total of 1,566,833 reports, or 98% of all Component 1 EEO-1 reports submitted. Type 2 filers have a higher reporting burden because they are required to submit a combination of reports: one type 2 ("consolidation") report, one type 3 ("headquarters") report, and type 4 establishment report, a type 8 establishment report, or a type 6 establishment list for each establishment. The estimated burden for Type 2 filers varies between 3.5 and 9.5 hours, depending on the report type combination. This new method for calculating the filers' burden yielded a total estimated burden of 7,643,874 hours for 75,043 filers to submit 1,597,036 reports for data year 2017. Per U.S.

are based on the EEOC's experience during the data submission process. Even using modest assumptions about the time needed to complete various EEO-1 reports, as explained in detail in the 60-Day Notice, the EEOC estimated with this new methodology that the *combined* burden hour costs for submitting both Components 1 and 2 was \$614,391,388 in 2017 and \$622,015,798 in 2018.<sup>20</sup> The EEOC concluded in the 60-Day Notice that the revised burden calculation, which was substantially higher than the Commission's 2016 burden calculation and higher than the burden for Component 1, was too high to justify the continuance of the Component 2 collection, especially in light of Component 2's uncertain utility.

Because the EEOC must balance the utility of the data to its enforcement programs against the burden the data collection imposes on the employers who must submit it, the Commission said in the 60-Day Notice that it should consider information from the ongoing Component 2 data collection before deciding whether to submit another pay data collection request to OMB. Without this assessment,<sup>21</sup> the 60-Day Notice reasoned that the practical utility to the EEOC's enforcement program of the pay data as defined in the 2016 Component 2 was far outweighed by the burden imposed on employers that must comply with the reporting obligation. For this reason, the EEOC decided not to seek renewal of the Component 2 summary pay data collection.

##### (2) Summary of Public Comments

Almost all commenters emphasized the importance of addressing pay inequity in the U.S. workforce. Many of the commenters who had also provided input on the original 2016 proposal to

Department of Labor's Bureau of Labor Statistics wage rates, the associated total annual burden hour cost is \$297,381,066 for required filers. The EEOC estimates that the total cost of the administration of the EEO-1 Component data collection to the federal government is \$2 million annually.

<sup>20</sup> The EEOC uses 2017 and 2018 data as an example because it is the agency's most recent data. Because the 2016 PRA package combined the Component 1 and 2 burdens for filers that would complete both Components 1 and 2 in 2017 and 2018, the recalculated burden reflected in the 60-Day Notice similarly provided a combined burden calculation for Components 1 and 2 for 2017 and 2018. However, above the Commission has provided a breakdown of how much the burden was attributable to each Component. See footnote 15, *supra*.

<sup>21</sup> At the time of the September 12, 2019, 60-Day Notice, the collection of Component 2 data for 2017 and 2018 was ongoing. The Component 2 data collection has now been completed, pursuant to the February 10, 2020 court order in the matter of *National Women's Law Center, et al., v. Office of Management and Budget, et al.*, Civil Action No. 17-cv-2458 (D.D.C.) . . .

<sup>17</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.

create Component 2 reiterated the arguments they raised at that time, whether for or against the Component 2 summary pay data collection.

#### a. Comments Supporting the Discontinuation of Component 2

Almost all the comments urging the discontinuation of the Component 2 collection were submitted by consultants who provide compliance, technical and/or human resources assistance to EEO-1 filers, and by trade and industry groups. Members of Congress also submitted comments urging the EEOC to discontinue the Component 2 collection. Commenters sometimes reiterated concerns they had raised in 2016 with the Component 2 collection and stated that employers' actual experiences with the 2017 and 2018 Component 2 collections not only validated, but in some respects heightened, their earlier concerns. These comments questioned the EEOC's authority to implement the Component 2 collection, expressed concerns about both the burden and the utility of the Component 2 collection, and expressed unease about the confidentiality and privacy of the data the EEOC collects. Many commenters asserted that any EEOC pay data collection should be undertaken only pursuant to rulemaking, which they argued would provide for a more robust notice-and-comment process.

With respect to the burden calculations, some commenters indicated that although the Component 2 burden in the 60-Day Notice was more accurate than the 2016 estimate, they believed the burden on employers was even higher than the estimate in the 60-Day Notice due to a number of factors. These factors included the difficulty matching the W-2, Box 1 information with the demographic data, and complications arising when employees' employment status changes during the reporting year—for example, when an employee moves between exempt and non-exempt status, or from one job category to another. They argued that addressing these issues required manual adjustments and therefore the Component 2 reporting process could not be fully automated. They noted that even when an employer used the upload file function it nonetheless had to expend significant time on manual adjustments and analyses before uploading the data. Commenters also observed that many of these issues, as well as complications caused by business changes such as mergers and acquisitions, meant this burden would not be significantly reduced in future years.

Similarly, one commenter, a consulting firm representing multiple businesses, explained why its own experience with Component 2, and that of its clients, demonstrated that the burden of collecting, organizing, and filing the data exceeded the firm's own estimates of the burden. All told, the time actually spent by the firm on first-year implementation costs as a third-party vendor was approximately 20% greater than the time it had estimated for this process in the firm's 2016 Component 2 Comments to the EEOC. The firm explained it took 280 hours to update its software to accept employer Component 2 data and create a data upload file to comply with the Component 2 Data Specifications. An additional 20 hours of time was spent by the firm's consultants and subject matter experts advising their programming team on the Component 2 data requirements, reviewing, and approving the programming files, and communicating and resolving error messages with the batch upload file during the Component 2 filing process. Notably, the consulting firm rejected the notion that in the future employers would be able to file Component 2 data with little or no burden because of the time already invested for the 2017 and 2018 collections. According to the firm, the belief that the burden will be significantly less for future collections "reflects a complete misunderstanding of how employers store and use the data points being collected." This is just one of the numerous examples provided by commenters regarding the real-world burden experienced in attempting to complete the Component 2 data collection.

Despite expressing concern about pay inequities and reiterating their commitment to identifying and eliminating unfair pay practices, many of these commenters concluded the Component 2 summary pay data collection would be ineffective in addressing pay equity issues. Many commenters argued that both the W-2, Box 1 data and the hours-worked data were inaccurate and inappropriate measurements and, when combined together, created further inaccuracies because the W-2, Box 1 wages, which include pay for hours not worked, did not correspond with the hours-worked data. Commenters also argued that organizing the data into job categories and pay bands resulted in inaccurate and misleading comparisons. Some commenters also stated that collecting and reporting aggregate W-2, Box 1 wage data in wide pay bands across broad occupational categories increases

both "false positives" (Type 1 statistical errors) and "false negatives" (Type 2 statistical errors) and that extensive Type 1 and Type 2 errors would render the data of minimal to no utility for attributing any differences observed to the presence of illegal employment discrimination. Some commenters and some hearing witnesses (including EEO-1 filers and entities that provide filing assistance to said filers) said their experience conducting the 2017 and 2018 Component 2 collections demonstrated that the Component 2 pay data would not be useful to them for assessing their own pay policies and practices and that it was burdensome. Commenters similarly argued that any EEOC publications of aggregated data organized in pay bands and job categories would not be useful to employers in undertaking self-assessments for the purposes of voluntarily complying with equal pay laws. One economist/consultant who worked with employers filing Component 2 data testified that the Component 2 pay bands are unlikely to reflect actual compensation distribution at many companies, and that Component 2 does not collect any information about the legitimate factors for pay differentials (e.g., length of employment). He noted that an employee starting her career would be reported in the same way as an employee with 30 years of experience in the same occupation. This consultant also stated that a simulated study found the predictive value of Component 2 pay data was no better than random selection (using either Mann-Whitney or compared to other firms).

Some commenters noted that the EEOC failed to implement the recommendations in the 2012 report from the National Research Council, National Academy of Sciences (NAS Report).<sup>22</sup> Many of these commenters argued that the EEOC failed to implement the NAS Report's recommendation to conduct a true pilot study. Some commenters argued that the Commission possibly could have developed a pay data collection that addressed their utility and burden concerns had it more fully implemented the recommendations of the NAS Report. Other commenters suggested there may be no form of pay data collection that would have sufficient utility to justify the burden on respondents.

<sup>22</sup> National Research Council, 2012. *Collecting Compensation Data from Employers*. Washington, DC: National Academies Press, <http://www.nap.edu/read/13496/chapter/1#ii>.

Commenters also expressed concern that the EEOC failed to address adequately the NAS Report's recommendations that would more adequately protect the confidentiality of sensitive employer pay data and that would ensure employee personal identifying information would not be exposed in any EEOC publications of aggregated pay data. They also expressed concerns that the pay data may not be adequately protected from disclosure when it is shared outside the EEOC, including with OFCCP<sup>23</sup> and other agencies that are not bound by Title VII's confidentiality provisions.<sup>24</sup>

**b. Comments Opposing the Discontinuation of Component 2**

Comments opposing the EEOC's decision to discontinue the Component 2 collection were submitted by members of Congress, several employee advocacy groups representing diverse workers in several segments of the U.S. workforce, academics, and thousands of concerned individuals. Most of the thousands of individual comments were submitted as part of comment-writing campaigns. In many instances, those who had commented on the EEOC's 2016 proposal reiterated arguments supporting the Component 2 summary pay data collection that were reflected in those earlier comments.

Comments opposing the discontinuation of Component 2 generally argued that Component 2 is a necessary and effective tool for identifying and addressing the persistent gender and race/ethnicity pay gaps, and that the decision not to continue the Component 2 collection undermines the EEOC's ability to combat pay discrimination. They asserted that Component 2 not only is an essential tool for the EEOC to fulfill its enforcement mandate, but that it also provides critical information for workers and employers to help identify pay inequities. The majority of these commenters also criticized the EEOC for not addressing and analyzing the utility of Component 2 in the 60-Day Notice before concluding its utility could not justify the reporting burden on employers. Commenters stated that the EEOC's burden calculations were

inadequately explained and/or based on faulty assumptions or calculations.

In addressing the pay gap, commenters focused on how the pay gap impacts workers, their families, businesses, and the economy as a whole. Commenters often cited pay gap statistics, frequently focusing on the pay gap impacting their members and constituents. Commenters also frequently highlighted statistics showing how the pay gap is wider for women of color. These commenters concluded that the Component 2 collection was a critical tool for identifying and addressing these pay inequalities. In addition to serving as a critical tool for the EEOC's effective and efficient enforcement of equal pay laws, the commenters argued Component 2 would incentivize employers to voluntarily comply with those laws and would provide them useful data that will assist their self-assessments.<sup>25</sup> Finally, commenters contended the aggregated data (job categories and pay bands) would help to identify pay trends in industries and geographic areas, and would also expose other forms of discrimination such as job segregation.

Some commenters argued that the EEOC was premature in concluding that the Component 2 collection was overly burdensome because the 2017 and 2018 collections were still underway when the EEOC reached that conclusion. These commenters questioned the EEOC's motivations for not seeking renewal of the Component 2 collection, suggesting the EEOC should have continued the Component 2 collection and assessed its burden only after the 2017 and 2018 collections had concluded, thereby allowing the EEOC to take into consideration the actual experience of employers who filed Component 2 for 2017 and 2018.

Some commenters asserted that many of the initial implementation costs of the Component 2 collection have already been incurred by employers and therefore future Component 2 collections would be less burdensome; relatedly, they argued that a different form of pay data collection would increase employer burden. Commenters also argued the EEOC's burden calculations do not adequately account for how, in the long term, automation and technology decrease employer burden.

Finally, some commenters contrast the process the EEOC used to develop the 60-Day Notice burden estimates

with the process the EEOC used to develop the 2016 burden calculations, arguing the 2016 process was more transparent and the result of many years of careful study and analysis, in addition to notice and comment under the PRA process and Title VII's requirement for a public hearing.

**c. Comments Specific to the Burden Estimation Methodology**

The EEOC also received several comments about the burden estimate stated in the 60-Day Notice. Some commenters said the 60-Day Notice inadequately explained the estimated time needed to complete the type 1 and type 2 reports. Some commenters expressed concern about how the EEOC calculated the burden for single- vs. multi-establishment firms and about the EEOC's assumptions relating to the time needed to complete each report. One commenter argues that the GAO guidance referenced in the 60-Day Notice does not require a calculation based on number of forms. At least one commenter questioned why the EEOC included burden calculations for some forms that employers would no longer use. One commenter suggested that the burden calculation includes an arithmetic mistake and questioned why the burden calculation does not assume employers will use only the least costly and least time-consuming alternatives for filing.

**IV. Commission Decisions and Final EEOC Proposals to OMB**

*A. The EEOC Will Seek Three-Year Extension of the EEO-1, Component 1, and Request a New OMB Control Number for Component 1*

After evaluating the comments and holding a public hearing, the Commission will seek OMB approval for a three-year extension of Component 1 of the EEO-1. The EEOC also will request that OMB assign a new Control number to Component 1, thereby separating it from the collection of Component 2 data under OMB Control number 3046-0007 that was ongoing until February 2020. The Component 1 data collection, which the Commission has conducted for over 50 years, continues to prove its utility to the EEOC's enforcement of employment discrimination laws on a regular basis. Component 1 EEO-1 data remains an important tool for the Commission's enforcement of federal laws prohibiting discrimination in employment. EEOC investigators use the EEO-1, together with other data sources, in their assessments of allegations of discrimination. The EEOC also uses the

<sup>23</sup> The EEOC's 2016 Component 2 proposal had reflected the contemporaneous expectation that the EEOC would share some part of the Component 2 dataset with OFCCP. As discussed in the "Data Sharing" section below, the EEOC no longer intends to provide any Component 2 data to OFCCP.

<sup>24</sup> 42 U.S.C. 2000e-8(e). Title VII forbids the EEOC or any EEOC officer or employee from making public any information, including EEO-1 data, before a Title VII proceeding is instituted that involves that information.

<sup>25</sup> Many of these commenters also argued that the Component 2 data would enhance OFCCP's enforcement efforts.

Component 1 data to analyze employment patterns within companies, industries, or regions. For these reasons, and even with the higher burden estimate for Component 1 outlined below, as compared to the 2016 burden estimates, the EEOC believes the collection of Component 1 data is necessary for the proper performance of the agency's functions and concludes its practical utility to the fulfillment of the EEOC's mission justifies the burden on employers.

Further, because the EEOC is not seeking renewal of Component 2 for the reasons addressed below, the EEOC is requesting a new OMB control number for Component 1 that is separate from the current control number under which the 2017 and 2018 Component 2 summary pay data collections were being conducted until February 2020. As noted in the 60-Day Notice and above, Component 2 approval under control number 3046-0007 will expire no later than April 5, 2021, by order of the court in *National Women's Law Center, et al. v. Office of Management and Budget, et al.*<sup>26</sup> A new and separate control number for Component 1 will minimize confusion for EEO-1 filers.

Because the number of Component 1 filers increased to 87,021 by the close of data year 2018, the EEOC estimates that the number of filers required to submit Component 1 will increase again to approximately 90,000 for data years 2019 through 2021. Table 1 below in the 'Component 1' subsection of the Formal Paperwork Reduction Act Statement section provides a breakdown of the number of estimated records by type that will be submitted by the estimated 90,000 filers. Accordingly, the EEOC is calculating the burden estimates in this 30-Day Notice based on this revised estimate of the number of filers.

#### B. The EEOC Will Not Seek a PRA Extension of Component 2

The necessity of filing now with OMB to request a new PRA approval of the EEO-1 requires the EEOC to make decisions based on the information available. After evaluating the comments and holding a public hearing, the Commission will not seek OMB approval for an extension of Component 2. The Commission concludes that at this time it cannot state that Component 2 data has significant practical utility in assisting the Commission in fulfilling its mission in combating illegal employment discrimination. The Commission's decision is supported by

<sup>26</sup> Civil Action No. 17-cv-2458 (D.D.C.) On February 10, 2020, the court ordered that the 2017 and 2018 Component 2 collections were complete.

written comments and by testimony at the November 20, 2019 hearing from those with actual experience collecting Component 2 data.<sup>27</sup> Based on the Commission's evaluation of the public comments received in response to the 60-Day Notice and the agency's own burden calculations,<sup>28</sup> and because the PRA requires an agency to demonstrate that the practical utility of the information collection outweighs the burden of the collection, the Commission cannot justify continuing to collect Component 2 data.

If the EEOC seeks to pursue a pay data collection in the future, it will do so using notice and comment rulemaking and a public hearing pursuant to Title VII<sup>29</sup> because a pay data collection would be a significant new collection and reporting requirement. The EEOC believes that there should be a transparent and open process, aligning with the recommendations in the EEOC-

<sup>27</sup> See the summary of comments in Section III.B.2 above.

<sup>28</sup> The estimated number of respondents who must file EEO-1 Component 2 data was 62,718 filers for calendar year 2017 and 66,126 filers for calendar year 2018. The estimated number of responses was 1,558,927 for reference year 2017 and 1,588,882 for reference year 2018. The EEOC estimated that about 40% of Component 2 respondents (23,149 in 2017 and 24,182 in 2018) would report data on a single establishment, and that it would take these filers an average of 60 minutes per reporting year to complete their Component 2 EEO-1 report. About 60% of Component 2 filers (39,569 in 2017 and 41,944 in 2018) would report data on multiple establishments. Multi-establishment filers complete both type 2 and type 3 reports, in addition to completing either a type 4, 6, or 8 report for each establishment, totaling 1,535,778 multi-establishment reports for reporting year 2017 and 1,564,700 multi-establishment reports for reporting year 2018. Single establishments submitted 23,149 reports in 2017 and 24,182 in 2018.

For the 2017 and 2018 Component 2 data collection effort, we estimated that a total of 3,147,809 reports would be submitted. While the actual time spent by multi-establishment filers varies based on a number of factors, as noted in the Component 1 section above, we estimated that it would take a filer, on average, 7.3 hours to complete Component 2 data for 2018. We further estimated that completing 2017 Component 2 data would be more burdensome for filers than completing 2018 Component 2 data because filers would need additional time to locate historical records. As a result, we estimated that it would take a filer, on average, 7.4 hours to complete Component 2 data for 2017. We estimated the average burden for filers to submit 2017 and 2018 Component 2 data to be 7.3 hours.

The collection of EEO-1 Component 2 data for calendar years 2017 and 2018 is estimated to have imposed total burden hours of 22,744,870 for 3,147,809 Component 2 reports. We estimate the total cost of the 2017 collection (\$366,443,051) and 2018 collection of (\$371,400,532) Component 2 data to be \$737,843,583.

<sup>29</sup> See, 42 U.S.C. 2000e-8(c). See also, "Amendments to the Regulations at 29 CFR part 1602 to Provide for a Pay Survey" in the EEOC's Fall 2019 Regulatory Agenda, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201910&RIN=3046-AB15>.

commissioned 2012 study from the National Academy of Sciences (NAS), entitled "Collecting Compensation Data from Employers," (NAS Study),<sup>30</sup> that the EEOC:

1. Develops a plan for using pay data before initiating any data collection. Clearly articulating the ultimate uses of the data will help determine both which data elements need to be collected as well as the best approach to collecting the data to ensure the validity, reliability, and utility of the data collected.

2. Initiates a scientifically sound pilot study to test the pay data collection instrument and the plan for the use of the data; and

3. Uses a definition of compensation that is measurable, collectable, and meaningful.

Further, the EEOC concludes that the 2016 burden estimate was developed using an inadequate methodology that significantly underestimated the burden of the Component 2 collection. By contrast, the methodology used to develop the burden estimates in this 30-Day Notice returns to the methodology used by the EEOC prior to 2016 and takes into consideration GAO and OMB guidance on calculating burden estimates in federal information collections. Commenters' experience with submitting Component 2 data confirmed the EEOC's revised burden estimates to submit Component 2 data. These commenters explained why every year, gathering and submitting Component 2 data would continue to be very time consuming, and that increased automation would not meaningfully reduce the burden and drive cost savings. Based on these comments and the Commission's own calculations, the burden estimate contained in the 60-Day Notice and this Notice is more accurate than the 2016 burden estimate.

In response to specific comments about the burden calculations in the 60-Day Notice, the EEOC responds as follows:

1. Regarding the comments about the estimated time needed to complete the reports, as the EEOC indicated in the 60-Day Notice and also concludes in this 30-Day Notice, the estimated average of 45 minutes<sup>31</sup> each to complete both the

<sup>30</sup> National Research Council. 2012. Collecting Compensation Data from Employers. Washington, DC: National Academies Press. Available at <https://www.nap.edu/catalog/13496/collecting-compensation-data-from-employers>.

<sup>31</sup> This is the estimate for a single establishment to file their EEO-1 Component 1 report, which is being used because the Commission is seeking approval for the collection of Component 1. The Commission estimates under the burden methodology set forth in the 60-Day Notice and this Notice, that it would take a single establishment 60

type 1 and the type 2 report was based on feedback that EEO-1 project staff received from employers filing type 1 and type 2 reports during the 2018 EEO-1 Component 1 data collection. As stated above, feedback from commenters who file EEO-1 reports largely supported the Commission's revised burden estimates and the determination that the burden was higher for the EEO-1 than the Commission estimated in 2016.

2. On the concerns about single vs. multi-establishment firms, the 60-Day Notice explains in detail the calculations for single vs. multi-establishment firms as well as the estimated completion time for each type of required report. This 30-Day Notice also explains that calculation in detail. It also includes Table 1 (see below) to further elucidate the Commission's approach.

3. Regarding the comment about GAO guidance, as the EEOC explains in the 60-Day Notice and again in this 30-Day Notice, the GAO report provides guidance on scientifically sound methods and techniques for calculating burden for federal information collections. In light of the GAO guidance, we believe the scientifically sound way to conduct this data collection is to calculate based on forms. Agency submission of accurate burden estimates using scientifically sound methods and techniques is required by the PRA.

4. On the comment about estimating for forms that are no longer used, all estimates used by the EEOC in both the 60-Day Notice and this 30-Day Notice are based on forms that were actually filed by employers in the 2018 EEO-1 Component 1 data collection. As the EEOC noted, not all employers are required to file all form types.

5. Regarding the comment alleging an arithmetic mistake, the burden calculations in 60-Day Notice do not contain any arithmetic mistakes. The commenter is attempting to calculate average burden at the individual employer level which changes the unit of analysis. As the EEOC explains in both the 60-Day Notice and this 30-Day Notice, the appropriate unit of analysis for burden estimation is at the form type level. Additionally, the EEOC does not dictate filing methods (*i.e.*, online portal or upload) and employers are free to choose whichever filing method they deem appropriate.

As required by the PRA, the EEOC has evaluated the significant burden of the

minutes to file an EEO-1 Component 2 report due to the additional data elements. *See* footnote 28, *supra*.

Component 2 collection against its practical utility. Based on this assessment, the EEOC has concluded that the utility of the current Component 2 collection does not justify the burden of the collection on employers. For this reason, the EEOC does not seek OMB's PRA approval to continue the Component 2 information collection.

#### C. Data Sharing

Title VII forbids the EEOC or any EEOC officer or employee from making public any information, including EEO-1 data, before a Title VII proceeding is instituted that involves that information.<sup>32</sup> EEOC staff who violate this prohibition may be found guilty of a criminal misdemeanor and could be fined or imprisoned.

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, 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).<sup>33</sup>

The EEOC directly imposes Title VII's 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

<sup>32</sup> 42 U.S.C. 2000e-8(e). Consistent with these confidentiality requirements, the EEOC has released aggregate EEO-1 data in the past that does not reveal the identity of individual filers.

<sup>33</sup> In the Supporting Statement issued with the 2016 PRA, the EEOC stated: "OFCCP will not receive EEO-1 summary pay data for companies that are not federal contractors under OFCCP's jurisdiction." FINAL EEO-1 Supporting Statement (September 28, 2016). Notwithstanding this statement, the EEOC's practice was to share all employer Component 1 data with OFCCP (regardless of federal contractor status). The EEOC has ceased the practice of sharing all Component 1 employer data with OFCCP and going forward, the Commission will only provide OFCCP Component 1 EEO-1 data for federal contractors.

comply with the confidentiality provisions of Title VII. For the EEOC, its agents and contractors, Title VII only permits disclosure of information after suit is filed in a particular matter on the issues that were investigated at the administrative level.

With respect to data-sharing with state and local fair employment practices agencies (FEPA), Title VII itself states that the EEOC may only give FEPA 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>34</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.<sup>35</sup>

To align with provisions of Title VII, the Federal Information Security Modernization Act of 2014 (FISMA),<sup>36</sup> the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act),<sup>37</sup> and OMB Memorandum M-19-15 *Improving Implementation of the Information Quality Act* issued on April 24, 2019,<sup>38</sup> the EEOC is modernizing its policies and procedures concerning data 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 the Evidence Act, "evidence" only means "information produced as a result of statistical activities conducted for a statistical purpose." *See*, 44 U.S.C. 3561(6).

<sup>34</sup> 42 U.S.C. 2000e-8(d).

<sup>35</sup> *Id.*

<sup>36</sup> Public Law 113-283 (2014).

<sup>37</sup> Public Law 115-435 (2019).

<sup>38</sup> <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-15.pdf>.

## V. Formal Paperwork Reduction Act Statement

### A. Overview of Information Collection

#### Component 1

*Collection Title:* Employer Information Report (EEO-1) Component 1.

*OMB Number:* 3046-XXXX (previously 3046-0007).

*Frequency of Report:* Annual.

*Type of Respondent:* Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

*Description of Affected Public:* Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.

*Reporting Hours:* 9,167,393.

*Respondent Burden Hour Cost:* \$297 million.<sup>39</sup>

*Federal Cost:* \$2 million.

*Number of Forms:* 1.

*Abstract:* Section 709(c) of Title VII of the Civil Rights Act of 1964 (Title VII) requires employers to make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order.<sup>40</sup> Pursuant to this statutory authority, the EEOC in 1966 issued a regulation requiring certain employers to file executed copies of the EEO-1 in conformity with the directions and instructions on the form, which called for reporting employee data by job category, ethnicity, race, and sex.<sup>41</sup> Pursuant to Executive Order 11246,<sup>42</sup> the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, in 1978 issued its regulation describing the EEO-1 as a report “promulgated jointly with the Equal Employment Opportunity Commission” and requiring certain contractors to submit “complete and

<sup>39</sup>This estimate is based on the most recent median pay data from the Bureau of Labor Statistics. We estimated 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 an CEO would account for 5%, for a total estimated hourly wage 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>.

<sup>40</sup>42 U.S.C. 2000e-8(c).

<sup>41</sup>The EEOC's EEO-1 regulation is at 29 CFR part 1602 Subpart B. The EEOC is responsible for obtaining OMB's PRA approval for the EEO-1 report.

<sup>42</sup>Exec. Order No. 11,246, 30 FR 12,319 (Sept. 24, 1965).

accurate reports” annually.<sup>43</sup> Currently, Component 1 of the EEO-1 directs certain covered employers with more than 50 employees (contractors) or 100 employees (private industry) to report annually the number of individuals they employ by job category and by race, ethnicity, and sex.<sup>44</sup> The data include seven race and ethnicity categories<sup>45</sup> and ten job categories,<sup>46</sup> by sex. The individual EEO-1 reports are confidential. 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.<sup>47</sup>

#### B. Burden Statement

The previous annual estimated burden for Component 1 under the 2016

<sup>43</sup>41 CFR 60-1.7(a). The EEOC may also share EEO-1 data with state and local Fair Employment Practices Agencies under the authority of section 709(d) of Title VII. Subject to their agreement to retain confidentiality as required by 42 U.S.C. 2000e-8(e), the EEOC shares EEO-1 reports with the Department of Justice (DOJ), the Federal Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA). The FDIC and NCUA use EEO-1 data pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 to help analyze diversity in management, employment, and business activities. DOJ uses the EEO-1 data when it defends OFCCP in litigation, in the event a federal contractor sues OFCCP to prevent debarment.

<sup>44</sup>The EEO-1 uses federal race and ethnicity categories, which were adopted by the Commission in 2005 and implemented in 2007.

<sup>45</sup>*Hispanic or Latino*—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

*White (Not Hispanic or Latino)*—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

*Black or African American (Not Hispanic or Latino)*—A person having origins in any of the black racial groups of Africa.

*Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)*—A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

*Asian (Not Hispanic or Latino)*—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

*American Indian or Alaska Native (Not Hispanic or Latino)*—A person having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.

*Two or More Races (Not Hispanic or Latino)*—All persons who identify with more than one of the above five races.

<sup>46</sup>The ten job groups are: Executive/Senior Level Officials and Managers; First/Mid Level Officials and Managers; Professionals; Technicians; Sales Workers; Administrative Support Workers; Craft Workers; Operatives; Laborers and Helpers; and Service Workers.

<sup>47</sup>Any reports the EEOC publishes based on EEO-1 data include only aggregated EEO-1 data that protects the confidentiality of each employer's information, as well as the privacy of each employee's personal information.

clearance<sup>48</sup> was 1,952,146 hours. After reviewing the methodology used to calculate the 2016 burden for Component 1, we identified an approach we believe is substantially more precise and is supported by comments received in response to the 60-Day Notice and public hearing on November 20, 2019.

The methodology used in this 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. During the 2018 data collection cycle (which took place in 2019), 80,396 of the 87,021 eligible EEO-1 Component 1 filers submitted a total of 1,628,897 records. Based on data trends over the last five data collection years, we expect that the total number of eligible filers submitting data will increase to 90,000 filers. We further estimate that of the 90,000 filers, Type 1 filers will continue to represent about 40% of filers and these filers will submit less than 2% of all records, while type 2 filers will continue to represent about 60% of filers and will submit more than 98% of records. We have no reason to believe that completion time by record type will vary from previous years and we believe that filers will continue to submit the same record combination 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, we estimate that Component 1 EEO-1 filers will submit a total of 1,915,345 records annually, for data years 2019 and 2021. We estimate that the 36,223 type 1 filers will submit 36,223 type 1 records, and it will take them 27,167 hours to submit these records. We estimate the 53,777 type 2 filers will submit 1,879,122 records. Based on 2018 data, we calculated that the ratio of type 2 records to type 3 records was 1:1, or type 2 filers submit an equal number of type 3 headquarters records. Since type

<sup>48</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.

4, 6 and 8 records report establishment data, the ratios of type 4-to-type 2; type 6-to-type 2; and type 8-to-type 2 records are considerably larger. Specifically, the ratio of type 4 records to type 2 records is 4.9:1, or for every type 2 record submitted, nearly 5 type 4 records were submitted. The ratio for type 6 records to type 2 records is 14.9:1, or for every type 2 record submitted, nearly 15 type 6 records were submitted. The ratio for

type 8 records to type 2 records is 13.1:1, or for every type 2 record, about 13 type records were submitted. These ratios were then applied to the estimated number of type 2 filers—53,777—to estimate the total number of records by type we expect to receive for data years 2019 through 2021. We estimate it will take filers a total of 9,140,226 hours to submit these records. 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 record 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 that number of records, the average reporting time by record type, and the total number of hours estimated to submit these records.

TABLE 1—PROJECTED ANNUAL BURDEN FOR COMPONENT 1 DATA YEARS 2019–2021, BY REPORT TYPE AND REPORTING TIME

	Number of records	Average reporting time (minutes)	Aggregate reporting time, hours
Type 1 .....	36,223	45	27,167
Type 2 <sup>a</sup> .....	53,777	45	40,333
Type 3 <sup>b</sup> .....	53,777	45	40,333
Type 4 <sup>c</sup> .....	264,403	120	528,806
Type 6 <sup>d</sup> .....	801,852	480	6,414,815
Type 8 <sup>e</sup> .....	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 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.

*An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of respondents who must annually file EEO-1 Component 1 data for the next three years is 90,000 filers each year. The EEOC estimates that the 90,000 filers will submit 1,915,345 reports. Reports represent the annual number of responses. About 40% of Component 1 filers (36,223 filers) will submit a single report on a single establishment, and it is estimated that it will take these filers an average of 45 minutes per reporting year to complete their Component 1 EEO-1 report. About 60% of Component 1 filers (53,777 filers) will report data on multiple establishments. All multi-establishment filers must complete both type 2 and type 3 reports, in addition to completing either a type 4, 6, or 8 report for each establishment for each reporting year, for a total of 1,879,122 multi-establishment EEO-1 reports submitted by 53,777 multi-establishment filers. While the actual submission time for single and multi-

establishment filers varies,<sup>49</sup> for purposes of this exercise we estimate that it will take a filer, on average, under 5 hours to complete their Component 1 EEO-1 report. Each filer will be asked to respond to Component 1 of the EEO-1 once annually. The burden estimate is

<sup>49</sup> Burden for single establishment filers is based on a single report. Burden for multi-establishment reporters is cumulative and is based on the report type combination. EEO-1 project staff estimate that the average completion time for the type 2 report would be 45 minutes, the completion of the type 3 report adds an average of 45 minutes to the burden, and the completion of type 4 reports adds an average of 2 hours to the burden, so a Type 2 filer completing type 4 reports will have an average burden of 3.5 hours (45 minutes for the type 2 report, plus 45 minutes for the type 3 report, plus 2 hours for the type 4 reports). A Type 2 filer completing type 6 reports will add—on average—8 hours to the burden, for a total burden of 9.5 hours. A Type 2 filer completing type 8 reports will add—on average—3 hours to the burden, for a total burden of 4.5 hours. While this analysis recognizes that individual filers' burdens will vary, on average a multi-establishment filer submitting 2/3/4 reports would have the lowest estimated burden of 3.5 hours while a filer submitting 2/3/6 reports would have the highest estimated average burden of 9.5 hours. Once Type 1, or single establishment filers, and filers submitting 2/3/8 are considered, the average estimated burden for EEO-1 filers is approximately 5 hours.

based on data from prior administrations of Component 1 of the EEO-1.

*An estimate of the total public burden (in hours) associated with the collection:* The collection of EEO-1 Component 1 data for calendar years 2019, 2020, and 2021 is estimated to impose a total of 9,167,393 annual burden hours for 1,915,345 Component 1 reports. Filers are encouraged to report data electronically to decrease burden.

Dated: March 11, 2020.

For the Commission.

**Janet Dhillon,**

*Chair.*

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## FEDERAL TRADE COMMISSION

### Privacy Act of 1974; System of Records

**AGENCY:** Federal Trade Commission (FTC).