

August 15, 2016

Joseph B. Nye  
Policy Analyst, Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Mr. Nye:

We write to express our significant concerns with the Equal Employment Opportunity Commission's (EEOC) recent proposal to revise the Employer Information Report (EEO-1) and require tens of thousands of private sector employers to report to the EEOC data regarding employees' pay and hours worked ("proposal"). We ask that the Office of Management and Budget (OMB) disapprove of this proposal as published in the Federal Register on July 14, 2016.

The Paperwork Reduction Act, which requires OMB to review and approve this proposal before it can be implemented, was passed by Congress to "minimiz[e] paperwork and reporting burdens on the American public" and "ensur[e] the maximum possible utility from the information that is collected." The EEOC's proposal does not meet these goals and, instead, significantly increases the current paperwork and reporting burden. EEOC's current EEO-1 requires 61,000 employers with 100 or more employees to annually submit data to EEOC about its workforce, categorized by race/ethnicity, gender, and job category, for a total of 180 pieces of information about those employees each year. The pending proposal would increase this data collection twentyfold from 180 to 3,660 for each employer's establishment. In total, EEOC would be collecting up to nearly three billion data fields according to one estimate—in no way "minimiz[ing] paperwork and reporting burdens on the American public."

EEOC stated it believes collecting this new data will help identify illegal wage discrimination. However, it is unclear how EEOC will be able to accomplish this goal as its proposal would merely provide EEOC with aggregate pay data within twelve pay bands and 10 job categories without any additional information such as work history, education, and specific job category information.

In 2012, the National Academy of Sciences issued a study, *Collecting Compensation Data from Employers* (NAS Study), that specifically discouraged the EEOC from using pay bands to collect pay data because it lacked the rigor of other methods. In addition, the 10 job categories are so broad that preschool teachers, lawyers, actors, umpires, and anesthesiologists would all be lumped into the same job category of aggregate data.

The NAS Study also recommended that EEOC, in conjunction the Department of Labor and Department of Justice, "should prepare a comprehensive plan for use of earnings data before initiating any data collection." While EEOC does provide a limited explanation of how it will use the data in its proposal, its explanation is far from a "comprehensive plan" developed with the two other federal agencies.

To add to our concern with this proposal, EEOC has a track record of pursuing high-profile lawsuits without complaints, while facing an ever-increasing backlog of actual complaints. In fact, courts have found EEOC's litigation tactics to be so egregious they have ordered EEOC to pay defendants' attorney's fees in at least 13 cases since 2011 and criticized EEOC for misuse of authority, poor expert analysis, and pursuit of novel cases unsupported by law. Meanwhile, EEOC has a backlog of

more than 76,000 unresolved complaints of discrimination. The proposal is likely to worsen that backlog as EEOC will now be sifting through the billions of pieces of new data instead of focusing on its mission of investigating complaints of discrimination in the workplace.

EEOC did not meet the Paperwork Reduction Act's two goals: to minimize paperwork and reporting burdens and to ensure the maximum possible utility of the data collected. Therefore, we urge you to not approve EEOC's proposal.

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