



Small Business Fact Sheet

Notice of Proposed Changes to the EEO-1 Report to Collect Pay Data from Certain Employers

BACKGROUND

- The Equal Employment Opportunity Commission (EEOC) collects EEO-1 reports through its Joint Reporting Committee and provides the data to the Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor.
- The EEO-1 report now requires employers to tally and report the number of workers they have by job category and then by ethnicity, race, and sex.
- The EEO-1 report has existed for 50 years (since 1966).
- On January 29, 2016, after coordinating with OFCCP, EEOC proposed to revise the Employer Information Report (EEO-1) to add pay data. The pay data would help EEOC and OFCCP improve enforcement of federal pay discrimination laws. It also would promote voluntary compliance with the law and help employers avoid enforcement actions.
- If your business is not required to file the EEO-1 now, it would not be required to file the EEO-1 with pay data. Under this proposal:
 - Federal contractors with 49 or fewer employees would *not* file the EEO-1. This is current practice.
 - Federal contractors with 50-99 employees would *not* report pay data. But they *would* report ethnicity, race, and sex by job category, like they do now.
 - Private employers with 99 or fewer employees *that are not federal contractors* would *not* file the EEO-1 at all. This is the same rule that applies now.
- The first EEO-1 with pay data would be due on **September 30, 2017**. The EEO-1 due this year - on September 30, 2016 - would be the current EEO-1 (no pay data).
- EEOC's Paperwork Reduction Act notice (Notice), describing the details of this proposal, is available at <https://www.federalregister.gov/articles/2016/02/01/2016-01544/agency-information-collection-activities-revision-of-the-employer-information-report-eeo-1-and>. An example of the proposed EEO-1 is available at http://www.eeoc.gov/employers/eeo1survey/2016_new_survey.cfm.
- Interested members of the public have **60 days from the date of publication of the Notice to provide comments**, or until April 1, 2016. Comments may be submitted online, by mailing a hard copy, or by facsimile transmission. Refer to the Notice for details.
- EEOC will also hold a public hearing on the proposed data collection at a time and date to be announced.

WHY EEOC AND OFCCP ARE PROPOSING TO COLLECT PAY DATA

- By any measure, there are significant pay disparities between men and women, between whites and people of color, and, especially, between women of color and white men.
- Although some of these pay disparities may be explained by differences in education, career, or experience, even when these factors are taken into account, significant unexplained racial, ethnic, and gender-based pay disparities remain. EEOC's experience enforcing pay discrimination laws reveals that discrimination is part of the problem.
- Pay discrimination has real consequences for all working families, and the families that depend on them. Eliminating or significantly reducing the pay gap will improve financial well-being for many hard-working Americans, help reduce the number of working poor, and benefit the nation's economy.
- Employees who experience pay discrimination may not know it, and therefore may not be able to report it to EEOC by filing charges.
- The data from the proposed EEO-1 will enable EEOC and OFCCP to focus their resources to more effectively enforce federal pay discrimination laws.
- EEOC will continue to work closely with the Department of Labor and the Department of Justice to coordinate federal enforcement of employment discrimination laws.

DETAILED DESCRIPTION OF CURRENT EEO-1

- Federal contractors with more than 50 employees and non-contractors with more than 100 employees now count and report the number of individuals they employ by job category and by race, ethnicity, and sex. A sample of the current EEO-1 report is at: <http://www.eeoc.gov/employers/eeo1survey/upload/eeo1-2-2.pdf>. This format would be used for the September 30, 2016, EEO-1 deadline.
- The current EEO-1 has seven race and ethnicity categories and ten job categories.
 - The seven race and ethnicity groups are: Hispanic or Latino, White (Not Hispanic or Latino); Black or African American (Not Hispanic or Latino); Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino); Asian (Not Hispanic or Latino); American Indian or Alaska Native (Not Hispanic or Latino); and Two or More Races (Not Hispanic or Latino).
 - The ten job EEO-1 job categories 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.

DETAILED DESCRIPTION OF PROPOSED EEO-1 PAY DATA COLLECTION

- **W-2 wage data would be collected.**
 - Employers already keep W-2 data in the ordinary course of business. The proposed EEO-1 would not require them to collect data they do not already have.
 - W-2 earnings are useful for assessing pay discrimination. They include not only wages and salaries, but also other compensation such as commissions, tips, taxable fringe benefits, and bonuses.
 - Most employers' existing human resource information systems and pay systems include W-2 earnings data elements. These systems generally allow the calculation of W-2 earnings for any 12-month period, and not just for the calendar year.
- **W-2 pay would be reported in "pay bands."** Employers would tally and report the number of employees whose W-2 pay for 12 months was in each pay band.
 - Employers **would not report** individual pay or salaries, thus supporting confidentiality.
 - Employers **would not calculate** average salaries or the standard deviation of those salaries, thus maximizing accuracy.
 - Data in pay bands **would be useful** for EEOC and OFCCP for statistical analysis of pay variations.
- **There would be 12 pay bands for each EEO-1 job category.** The pay bands would track the 12 pay bands used by the Bureau of Labor Statistics in the Occupation Employment Statistics survey:
 - (1) \$19,239 under;
 - (2) \$19,240 - \$24,439
 - (3) \$24,440 - \$30,679;
 - (4) \$30,680 - \$38,999;
 - (5) \$39,000 - \$49,919;
 - (6) \$49,920 - \$62,919;
 - (7) \$62,920 - \$80,079;
 - (8) \$80,080 - \$101,919;
 - (9) \$101,920 - \$128,959;
 - (10) \$128,960 - \$163,799;
 - (11) \$163,800 - \$207,999; and
 - (12) \$208,000 and over.
- The proposed EEO-1 would report the number of employees whose total W-2 pay **for the 12 months prior to the employer's EEO-1 pay period fell into each pay band.**
 - Employers would identify employees' total W-2 earnings for a 12-month period looking back from any pay period between July 1st and September 30th of each reporting year.
 - For example, an employer could use W-2 data for the 12 months looking back from the second pay period in July of the reporting year.
 - Then, an employer would report the number of workers in that pay band. For example, it would report that it has 15 African American women whose total W-2 earnings for the last 12 months are in pay band 4 (\$30,680-\$38,999) for the "Laborers and Helpers" job category.
- To show part-time and partial-year employment, the EEO-1 also would tally the total number of hours worked by the employees counted in each pay band over the last 12 months. This accounts for part-time or partial-year employment.
 - For example, an employer would report that total hours worked for 10 African American men who are Craft Workers in the second pay band (\$19,240-\$24,439) is 10,000 hours.
- The EEO-1 filing deadline would remain September 30th of each year.
- In 2016, all EEO-1 filers **will use the current EEO-1, which does not require pay data. This will ease the transition to the new pay data collection in 2017.**

CONFIDENTIALITY AND BURDEN FOR EMPLOYERS

EEOC and OFCCP will continue to **protect and maintain the confidentiality of the pay data.**

- The proposed EEO-1 will protect individual employees' privacy by using pay bands and collecting aggregated data.
- Employers will continue to submit EEO-1 data to the Joint Reporting Committee based at EEOC, which has successfully protected the confidentiality of EEO-1 data for nearly 50 years.
- **Title VII forbids 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. Any EEOC officer or employee who violates this prohibition is guilty of a misdemeanor.
- OFCCP holds contractor data confidential to the maximum extent permitted by law, as required by the **Freedom of Information Act Exemption 4 and the Trade Secrets Act**.

The Notice estimates the burden on employers in connection with the pay data collection.

- EEOC estimates the costs to employers based on electronic recordkeeping and reporting because, at the current time, nearly all EEO-1 filers already use this technology. Employers could ask for an exception to the electronic filing requirement if necessary.
- EEOC estimates that each employer that submits the pay data would incur a **minimal one-time cost** to develop new queries in its existing human resources information system. HR software developers are familiar with how to use pay bands to report pay data.
- In addition, EEOC estimates that each employer would incur a **minimal increase in its annual cost** to report this pay data electronically on the proposed EEO-1.