



Questions and Answers

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

BACKGROUND

These Questions and Answers explain Equal Employment Opportunity Commission's (EEOC's or Commission's) proposal to collect data about employees' pay on the Employer Information Report (EEO-1) for employers with 100 or more employees starting in 2017. The EEO-1 is a well-established, annual report. Every year by September 30th, most federal contractors and other private employers (with at least 100 employees) tally and report their employee numbers for one pay period by job category and then by sex, race, and ethnicity (Hispanic or Latino). The current proposal would build on the existing reporting structure to collect from employers the number of workers within 12 specified pay bands.

This pay data collection proposal expands on and replaces an earlier plan by the Department of Labor (DOL) to collect similar information from federal contractors. The pay data would help the EEOC and the Office of Federal Contract Compliance Programs (OFCCP) at DOL improve enforcement of federal pay discrimination laws and support employers' voluntary compliance with those laws. Employers would continue to submit the EEO-1 to the Joint Reporting Committee at EEOC, which would process the data and share it with OFCCP.

An example of the proposed EEO-1 form is available at http://www.eeoc.gov/employers/eeo1survey/2016_new_survey.cfm.

OVERVIEW OF THE EEO-1 PAY DATA COLLECTION PROPOSAL

1. What is a Paperwork Reduction Act Notice? Can an interested person or entity provide comments about it? If so, how?

The Paperwork Reduction Act Notice alerts the public that EEOC in coordination with OFCCP proposes to change federal form EEO-1. EEOC has issued such notices before when amending or updating the EEO-1. In this instance, the Notice proposes to collect data about pay from employers with 100 or more employees starting in 2017.

Anyone who wants to comment on this proposal has 60 days after publication to do so, or until April 1, 2016. Comments may be submitted online, by mailing a hard copy, or by facsimile transmission. Please refer to the Notice for further details.

EEOC will hold a public hearing about this proposal at a time and place to be announced. After coordination with OFCCP, the Commission will vote on a final version of the revised EEO-1 survey and send it to the Office of Management and Budget for final review and approval under the Paperwork Reduction Act.

2. Why is EEOC proposing to collect pay data on the EEO-1?

Too often pay discrimination goes undetected because of a lack of accurate information about what people are paid. The proposed pay data collection will provide a much needed tool to identify discriminatory pay practices where they exist in order to ensure that fair pay practices are put in place.

Employees may face retaliation for inquiring about wages. It is difficult for workers to remedy wage disparities if they cannot find out that they are being paid less. Pay discrimination has real consequences for working Americans, 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.

Access to pay data will help EEOC and OFCCP identify and combat pay discrimination. EEOC proposes to collect pay data by sex, race, and ethnicity by job category from private employers, including federal contractors,

with 100 or more employees through the EEO-1 report. Data collected from the proposed EEO-1 will help EEOC and OFCCP better understand the scope of the pay gap and focus enforcement resources on employers that are more likely to be out of compliance with federal laws.

EEOC and OFCCP are both addressing the continued existence of wage disparities based on gender, race, and ethnicity that limit equal pay and equal opportunities across industries for women and workers of color. Although some pay disparities may be explained by differences in education, career or experience, even when these factors are taken into account, significant unexplained earnings gaps remain between gender, racial, and ethnic groups.

EEOC will continue to work closely with the Department of Labor and the Department of Justice to coordinate an interagency approach on the use of pay data in enforcement efforts.

3. How would EEOC and OFCCP use this pay data?

The pay data will provide EEOC and OFCCP with insight into pay disparities across industries and occupations and strengthen federal efforts to combat discrimination. EEOC and OFCCP will use this data to more effectively focus agency investigations, assess complaints of discrimination, and identify existing pay disparities that may warrant further examination. This data will also help employers evaluate their own pay practices to prevent pay discrimination in their workplaces. EEOC will compile and publish aggregate data that will help employers in conducting their own analysis of their pay practices.

How did EEOC and OFCCP develop this proposal?

The proposed EEO-1 data collection represents the culmination of several years of research and collaboration. Starting in 2010, both agencies participated in the President's National Equal Pay Task Force, which recommended that EEOC commission a National Academy of Sciences study on how to collect pay data from employers. EEOC commissioned the study, and the National Academy of Sciences issued a report in 2012, which informed the agencies' approach to the proposed EEO-1 survey. The report is available at: http://www.nap.edu/openbook.php?record_id=13496.

Based on a recommendation from that report, EEOC contracted to conduct an independent pilot study on collecting pay data, which was completed in September 2015. The pilot study is available at: <http://www.eeoc.gov/employers/eeo1survey/pay-pilot-study.pdf>. In 2012, EEOC also convened human resources information systems (HRIS) experts, information technology specialists, and employer stakeholders, to discuss EEO surveys, including the EEO-1 and pay data. Finally, EEOC discussed with OFCCP its pay data proposal and considered the public comments submitted in response to OFCCP's August 8, 2014, Notice of Proposed Rulemaking (NPRM), *Government Contractors, Requirement to Report Summary Data on Employee Compensation*, 79 Fed. Reg. 46563 (August 8, 2014) (NPRM). The NPRM is available at: <https://www.gpo.gov/fdsys/pkg/FR-2014-08-08/pdf/2014-18557.pdf>.

CURRENT EEO-1

4. What data is collected on the *current* EEO-1?

The current EEO-1 directs certain federal contractors with 50-99 employees and other private employers with 100 or more employees to report annually, by September 30th, the number of individuals they employ by job category and by race, ethnicity, and sex. The data include seven race and ethnicity categories and ten job categories, by sex.

- The ten 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; Service Workers.
- 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).

PROPOSED EEO-1 PAY DATA COLLECTION

5. Which employers would be required to submit data about pay on the proposed EEO-1?

- Employers, including federal contractors, with 100 or more employees would submit data about pay;
- Federal contractors with 50-99 employees would **not report pay data** but would continue to report ethnicity, race, and sex by job category;
- Consistent with current practice, non-contractor employers with 1-99 employees and federal contractors with 1-49 employees would not be required to file the EEO-1 report.

6. By what date would employers submit pay data for the first time?

Employers would submit pay data as of the *September 30, 2017* EEO-1 filing deadline.

7. What measure of pay would be used on the proposed EEO-1?

Employers would identify employees' total W-2 earnings for a 12-month period looking back from a pay period between July 1st and September 30th.

- W-2 earnings are useful for assessing pay discrimination because they include not only wages and salaries, but also other compensation such as commissions, tips, taxable fringe benefits, and bonuses. Most employers' existing HRIS and pay systems include W-2 earnings data elements.
- HRIS systems generally allow the calculation of W-2 earnings for any 12-month period, and not just for the calendar year. The EEO-1 would use aggregate pay for a 12-month period looking back from a pay period between July 1st and September 30th of the reporting year, as selected by the employer. For example, an employer could use aggregated W-2 data for the twelve months looking back from the second pay period in July of the reporting year.
- The proposal also would account for part-time workers, those who worked less than a full 12 months, and workers with W-2s from multiple employers. It would do so by collecting the number of hours worked by the employees counted in the pay bands. See Question 10 for additional information about part-time and partial-year employment.

8. In what format would the proposed EEO-1 report W-2 earnings?

For each of the EEO-1 job categories, the proposed EEO-1 would have **12 pay bands**.

- Employers would tabulate and report the number of employees whose W-2 earnings for the prior 12 months fell within each pay band.
 - For example, an employer would report on the EEO-1 that it employs 10 African American men who are Craft Workers in the second pay band (\$19,240-\$24,439).
- The pay bands track the 12 pay bands used by the Bureau of Labor Statistics in the Occupation Employment Statistics survey:

- (1) \$19,239 and 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.

9. Why is the proposed EEO-1 using pay bands to report compensation?

Pay bands would generate reliable aggregated data to support meaningful statistical analysis. Pay bands would allow EEOC and OFCCP to compute within-job-category variation, across-job-category variation, and overall variation, thus supporting the agencies' ability to discern potential discrimination while preserving confidentiality. Human Resources Information Systems (HRIS) software developers also are accustomed to using pay bands for EEOC's EEO-4 survey, which has long reported pay data for employees of state and local governments.

The agencies considered other formats for reporting pay data. For example, one option would have been to report pay data at the individual employee level. While this option would have collected the most comprehensive information, it also would raise potential privacy concerns. Another option would be to require employers to calculate a mean and standard deviation of W-2 earnings for employees in each category, but this would have required computations that could be burdensome or incorrect.

10. Will the proposed EEO-1 take into account part-time or partial-year employment in analyzing rates of pay?

Yes. The proposed EEO-1 would report hours worked as well as data about W-2 earnings. This would allow EEOC and OFCCP to meaningfully analyze pay differences by taking into account periods of time when employees were not employed, such as when an employee worked part time or for less than the entire year. Almost all employer payroll systems already maintain data on the hours worked by employees. The Notice requests employer input on how to report hours worked for salaried employees.

For each pay band on the proposed EEO-1, the employer would report the total number of hours worked by the employees counted in that pay band for the last 12 month period, by their ethnicity, race, and sex. For example,

an employer would report on the EEO-1 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.

11. How will data on pay and hours be protected from public disclosure?

All EEO-1 data is submitted by filers to the Joint Reporting Committee based at EEOC. The Joint Reporting Committee has represented EEOC and OFCCP for the purposes of administering the EEO-1 since the joint reporting requirement began.

EEOC holds EEO-1 data confidential as required by law. Section 709(e) of Title VII, 42 U.S.C. Sec. §2000e-8(e), 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 that it receives from the Joint Reporting Committee confidential to the maximum extent permitted by law, in accordance with Freedom of Information Act Exemption 4 and the Trade Secrets Act.

EEOC does not publish individual EEO-1 reports. EEOC only publishes aggregated EEO-1 data in a manner that does not reveal any particular employer's or employee's information. Examples of past reports EEOC has published based on aggregated EEO-1 data are available at:

<http://www.eeoc.gov/eeoc/statistics/reports/index.cfm>

12. How will employers know if the proposal has been approved?

Upon the Office of Management and Budget's approval of the revised EEO-1, EEOC will post a notice of its approval on its website, www.eeoc.gov. In addition, EEOC will correspond with EEO-1 respondents notifying them that the revised pay data collection has been approved and that they will not have to submit pay data until the 2017 EEO-1 collection cycle.