



BILLING CODE 4510-CM

## DEPARTMENT OF LABOR

### Office of Federal Contract Compliance Programs

#### Intention Not to Request, Accept, or Use Employer Information Report (EEO-1)

##### Component 2 Data

**AGENCY:** Office of Federal Contract Compliance Programs.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) collect workforce data through the Employer Information Report (EEO-1) (currently OMB Control No. 3046-0007) under the Joint Reporting Committee. The EEOC's legal authority to collect this data derives from Title VII of the Civil Rights Act, and OFCCP's authority derives from Executive Order 11246. The EEO-1 collects information from private employers and federal contractors regarding the number of employees by job category, and by sex, race, and ethnicity (Component 1). This information is shared between the two agencies to avoid duplicative information collections and minimize the burden on employers. A recent court decision, *National Women's Law Center v. Office of Management and Budget*, 358 F. Supp. 3d 66 (D.D.C. 2019), appeal docketed, No. 19-5130 (D.C. Cir. May 8, 2019), ordered reinstatement of the approval by the Office of Management and Budget (OMB) of a 2016 revision to the EEO-1 that requires filers to additionally submit aggregated employee pay and hours worked (Component 2). However, EEOC, the agency responsible for securing OMB approval of the EEO-1 data collection under the Paperwork Reduction Act, has now given notice that it does not intend to submit to OMB a request to renew Component 2 under the current OMB control number, and it has requested that

Component 1 be assigned a new OMB control number. OFCCP will not request, accept, or use Component 2 data, as it does not expect to find significant utility in the data given limited resources and its aggregated nature, but it will continue to receive EEO-1 Component 1 data.

**DATES:** This action is effective immediately.

**FOR FURTHER INFORMATION CONTACT:** Harvey D. Fort, Deputy Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, Room C-3325, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Telephone: (202) 693-0103 (voice) or (202) 693-1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

**SUPPLEMENTARY INFORMATION:**

OFCCP administers and enforces Executive Order 11246, as amended (EO 11246), which applies to federal contractors and subcontractors. Executive Order 11246 prohibits employment discrimination and requires affirmative action to ensure equal employment opportunity regardless of race, color, religion, sex, sexual orientation, gender identity, or national origin. It also prohibits federal contractors and subcontractors from discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers, subject to certain limitations.

OFCCP has reviewed the parameters of the EEO-1 Component 2 data collection and has determined that it does not find Component 2 data necessary to accomplish its mission to ensure federal contractors are not engaged in unlawful pay discrimination. This data is collected in a format that is highly aggregated. Although the data could potentially inform OFCCP's scheduling process for compliance evaluations, it is too broad to provide much utility to OFCCP.

The data is not collected at a level of detail that would enable OFCCP to make comparisons among similarly situated employees as required by the Title VII standards that OFCCP applies in administering and enforcing Executive Order 11246. OFCCP receives up-to-date, employee-level pay data from contractors that are selected for compliance evaluations. This data enables OFCCP to identify disparities in pay that may violate Executive Order 11246 by comparing the pay of employees who are similarly situated under the contractors' pay practices. Therefore, OFCCP does not need the EEO-1 Component 2 pay data for that purpose.

Analyzing EEO-1 Component 2 pay data would therefore put an unnecessary financial burden on OFCCP. The agency's limited resources do not support the enhanced scope of review of employer practices or provide the human capital and technical capacity that would be required to make use of the data.

Given the limited utility of the data for OFCCP's purposes within the constraints of OFCCP's available resources, OFCCP will not request or accept EEO-1 Component 2 data. OFCCP will continue to receive EEO-1 Component 1 data from covered contractors and subcontractors through the Joint Reporting Committee for purposes of reviewing their compliance with Executive Order 11246 and its implementing regulations, including the reporting requirements at 41 CFR 60-1.7.

**Harvey D. Fort,**

*Deputy Director, Division of Policy and Program Development,*

*Office of Federal Contract Compliance Programs.*