



March 31, 2016

Bernadette Wilson
Acting Executive Officer
Executive Secretariat
Equal Employment Opportunity Commission
131 M Street N.E.
Washington, DC 20507

RE: The Proposed Revision of the Employer Information Report (EEO-1); Docket Number EEOC-2016-0002

VIA INTERNET SUBMISSION

Dear Ms. Wilson:

Biddle Consulting Group's Institute for Workforce Development (BCGi) is grateful for the opportunity to provide feedback in response to your solicitation of public input on the topic of the Equal Employment Opportunity Commission's (EEOC) proposed revision to the Employer Information Report (EEO-1).

Biddle Consulting Group's Institute for Workforce Development (BCGi) is a training and education resource for HR practitioners. With over 7,800 members made up of employers, consultants, and attorneys in the Equal Opportunity space, our mission is to inform and equip human resource professionals with the HR/EEO training necessary to enhance their productivity, amplify their competitive marketability, and escalate their technical capabilities in Equal Employment Opportunity (EEO), OFCCP compliance, Affirmative Action Planning, compensation analysis, employment law and discrimination statistics, test development, test validation, and a variety of human resource topics with a focus on EEO.

In March 2016, BCGi surveyed our members via a multiple-question survey. This survey queried respondents on topics wherein public comment was requested in the *Proposed Revision of the Employer Information Report (EEO-1)*, released February 1, 2016, by the EEOC. The survey was organized in an effort to request contractor feedback on three specific areas referred to within the proposal: (1) proposed utility of the revised reporting requirements; (2) proposed burden on contractors required to submit Component 2 of the EEO-1 report; and (3) the confidentiality/security of the data being sent to the EEOC. This response letter is also organized accordingly.

BCGi shares the commitment of the EEOC in promoting, encouraging, and sustaining equal pay irrespective of gender or ethnicity. We believe the input contained in our response letter offers a unique perspective because our feedback is based on the results of data we collected from 98 employers and/or AAP practitioners directly. We queried companies of varying size and number of establishments (see Tables 1 and 2) representing multiple industries including manufacturing, hospitality, healthcare, academia, construction, and financial services to present a distinct perspective from contractors on the subject of the proposed revision to the EEO-1 Report. We have included the comments and concerns of the contractor community as well as their suggestions and insight where proposed.

Table 1. *Number of Employees in Responding Organizations*

Number of Employees	Response Percent
1-99	15%
100-249	13%
250-999	33%
1,000-4,999	17%
5,000-9,999	9%
10,000 or more	13%

Table 2. *Number of Establishments Within Your Organization*

Number of establishments	Response Percent
1	22%
2-10	41%
11-50	23%
51-100	8%
More than 100	6%

Utility

Use of W-2 Information

The use of W-2 information, as proposed, is viewed by 70% of those surveyed as being an inappropriate compensation metric for purposes of determining whether there are pay discrepancies amongst similarly situated employee groups. Furthermore, 65 % of respondents disagreed with the EEOC’s claim in the proposal that the collection of W-2 data and hours worked would allow the EEOC and OFCCP to accurately “assess claims of discrimination, focus investigations, and identify employers with existing pay disparities that might warrant further examination.” Many participant responses focused primarily on the fact that W-2 data does not cover all potential reasons for differences in employee compensation; for instance “too many variables impact salary data and hours worked.(i.e., pay is tied to previous experience, education, skill set, knowledge and performance). Hours are based on business

needs, availability of work within a department, and availability of employees to work. For instance, overtime may be offered, but not all employees are available to work when OT is offered.” As indicated by this response, participants felt the information collected and reported within the W-2 did not take into account several important factors as it relates to employee compensation. Some factors that were suggested that may give a better depiction of compensation include “base salary alone,” “gross pay (base pay, overtime, other pays),” and “starting salary,” with one respondent recommending to the EEOC that they may “want to consider focusing on the actual starting salaries or wages of persons hired in the 12 months prior to the EEO-1 snapshot date. Pay differences, legitimate or otherwise, are driven more by starting salaries than any subsequent pay increases.”

Use of Statistical Tools

The proposal states that the EEOC and OFCCP plan to develop statistical tools to utilize the EEO-1 pay data to determine whether there are pay discrepancies within organizations. Not only would these statistical tools be used in-house by the government agencies, these tools would also be available to stakeholders in an effort to support analysis of aggregated EEO-1 data. Of those surveyed, 67% said they would use these statistical tools if they were made available. Of those who said they would not, the reasons given primarily focused on the belief that the compensation data being collected does not accurately reflect all that goes into an employee’s take-home pay. Therefore, any tool being proposed would have little to no impact on their overall desire of including this data in the report. One respondent commented, “I’m not sure most companies have the time, money, or manpower to dedicate to the question of ‘are we doing something wrong.’ Most of our time, effort and money goes into making sure we’re doing things right. This tends to just create more bureaucracy. Look at the ACA and the INCREDIBLE burden this has placed on employers having to produce forms 1095.” Others who commented felt they currently have a “review system in place that shows why people made different amounts of money,” and would not have a need to use these proposed statistical tools. Additionally, as it is not clear whether these tools would have a direct tie to the EEOC or OFCCP’s database, it may make those in the contracting community hesitant to use them since it could inadvertently expose them to increased audit potential.

Use of Pay Bands

Compensation structures within organizations are a complex process. The creation of a “one-size-fits-all” solution, such as assigning salary information into the EEOC’s provided pay bands seems contrary to the OFCCP’s current compensation analysis philosophy of trying to learn as much about an organization as possible to accurately capture the company’s compensation methods when undergoing analyses related to an audit. With 69% of respondents disagreeing with the statement in the proposal that “using pay bands appears to be more likely to generate reliable data while being less burdensome for employers than other reporting alternatives,” it seems as though the proposed collection of information would not clarify the EEOC or OFCCP’s view of which organizations could potentially be discriminating, thus causing more of a hardship on employers rather than providing a benefit.

When asked what other option would be more appropriate in collecting aggregate pay data, the majority (54%) felt pay rates (i.e., base salary) would be the better alternative. Other suggested factors include pay grades, range of pay with maximum and minimum provided by employer, total pay, and average/median pay.

While we appreciate the EEOC and OFCCP attempting to identify a homogenous indicator across all contractor companies, we anticipate the agency may waste many valuable resources identifying false-positive offenders because the proposed methodologies are too broad for such complex systems.

Use of Hours Worked

The EEOC sought public comment in determining how hours worked should be calculated for salaried employees. Most employers (77%) agreed with the approach of using a standard 40-hour week methodology for exempt workers as “any other suggestion would require tracking of exempt employee hours which our company does not do.” For those organizations that do not currently track salaried employee’s hours, this would require those employers to potentially change their overall company protocol so that salaried employees would be required to keep track of their hours worked.

Of those who disagreed with using the 40-hour week, as it could inaccurately show compensation disparities within certain EEO categories, some alternative suggestions included “having salaries broken out for over 40 hours and under 40 hours,” using “actual hours worked OR annualize all employees to 40hrs,” “use a formula of daily hours time 5 to get average weekly hours,” and “report hours worked for FLSA nonexempt employees only. Report full-time equivalence (FTE) counts for salaried employees, not their hours worked. For example, a part-time salaried employee who works 3 of 5 days per week could be reported as 0.6 FTE.”

Security/Confidentiality

According to the proposal, “the EEOC is required to hold its EEO-1 data confidential under §709(e) in Title VII, which forbids ‘any [EEOC] officer or employee from making public in any manner whatsoever any information obtained by the commission... prior to the institution of any [Title VII] proceeding...involving such information’.” When polled, 64% of our respondents indicated they have concerns regarding the confidentiality/security of the proposed data. Almost all (91%) of those who reported being concerned expressed “security of the EEOC’s servers where data will be stored” as their primary concern for the data that is required to be submitted for component two of the proposal. Of those respondents, 85% indicated that “confidentiality in case of a Freedom of Information Act request” was of concern and 74% of respondents indicated “security of submitting data over the Internet” as a potential area of concern.

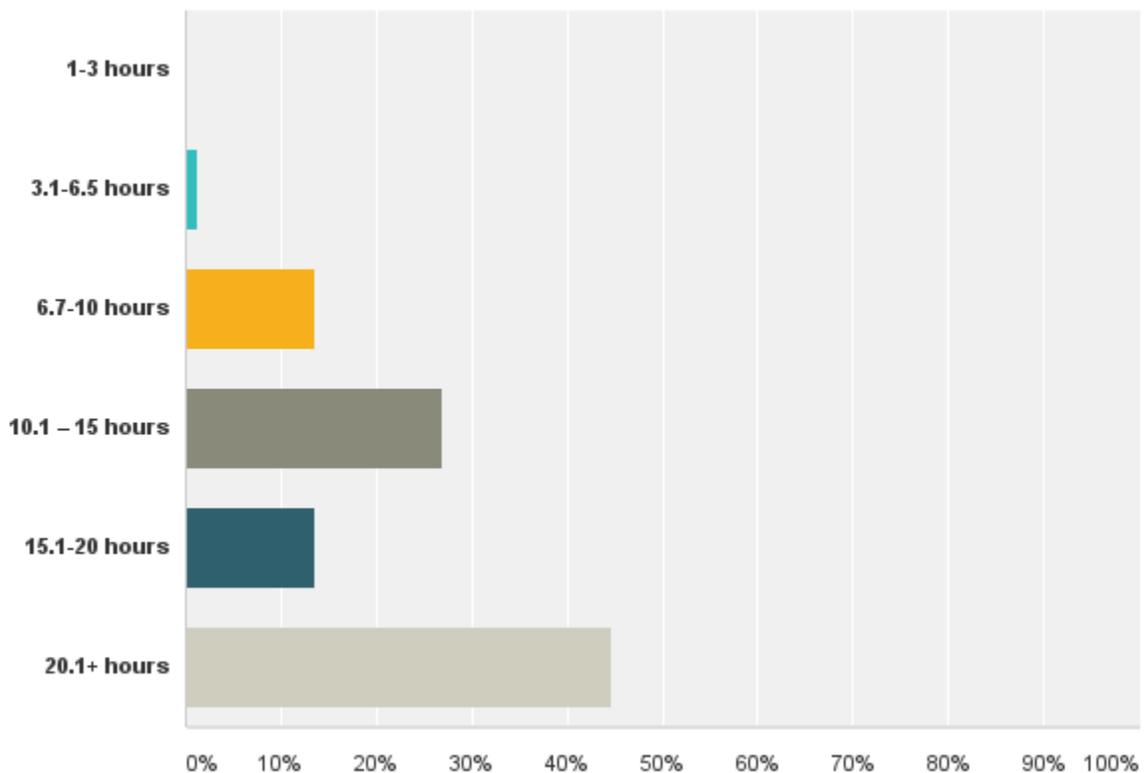
Additionally, 65% of total respondents indicated that they do not have confidence that the EEOC will publish the EEO-1 compensation data “in a manner that does not reveal any particular employer’s data.” Of those indicating concern, 82% identified “information could be leaked due to Federal government security breaches” as a reason behind their lack of confidence. “Aggregation of data may still allow for potential company identification” was also identified as a reason for respondent’s concern at the same rate (i.e., 82%). Respondents also expressed concern over what will happen to the data once it is submitted with 67% indicating “lack of institutional transparency outline the life-cycle of data once received” as a reason for their lack of confidence in the EEOC to maintain the confidentiality and security of their submitted data.

Proposed Burden

The estimated burden identified in the proposal would seem to represent a significant misalignment between the expectations of the Commission, versus the expectations of our queried employers.

The proposal estimates 6.6 hours per filer in ongoing/yearly burden to file components one and two (one hour to read the instructions and 5.6 hours to collect, verify, validate, and report the data). When asked whether or not respondents felt this to be an accurate burden assessment, 97% of respondents indicated this estimate to be low (38%) or very low (59%) for their organization. When asked to estimate the amount of hours it would take their organization to file both components one and two, 45% identified this burden would exceed 20.1 hours per filer per year. Please see hourly breakdown in Table 1.

Table 3. *Please estimate the amount of hours it will take your organization to file components 1 and 2 of the EEO-1 report.*



Respondents who currently outsource their payroll were queried regarding the proposal’s suggestion that a “one-time burden to implement the writing of custom programs” will be eight hours. Of these respondents, 75% reported this was not an accurate assessment of the time required to implement the writing of a custom program. When queried for specifics, common responses indicated the eight-hour estimate to be lower or much lower than what will actually be required. Respondents commented, “the

average for our third party to write custom reports is usually around 20 hours,” and “the vendor’s typical estimate for custom reporting is 24-40 hours.” With similar responses coming from many of our respondents, it is our suggestion that the EEOC reconsider the burden associated with this portion of the proposal.

For organizations that do not use a third party vendor to complete these reports, the burden falls on the employer to gather the corresponding compensation data and hours worked from internal sources. The difficulty of this depends on the availability of the data which, in response to the question asking how easily the W-2 information could be pooled during the proposed time period (July 1 – August 31), 75% said this data is not easily accessible within their HRIS. Not only is this type of data not easily accessible for most, but 83% of respondents indicated they would need additional resources given that their current HRIS or payroll system does not store W-2 data or they would have to gather the information from multiple systems, thus increasing the amount of time and money necessary in order to file these revised reports.

Conclusion

We believe the input contained in our response letter to be extremely valuable input to the EEOC. Our respondents represent a good cross-section of employers who would be impacted by this new proposed reporting requirement. As mentioned previously, BCGi shares the commitment of the EEOC and OFCCP in promoting, encouraging, and sustaining equal pay irrespective of gender or ethnicity and appreciates the opportunity to submit feedback on behalf of our BCGi community.

We invite your comments or questions regarding this report. If the Commission desires to discuss this letter or the survey described herein, please direct questions to Heather J. Patchell, BCGi Executive Director, at (916) 294-4250 x 155 or hpatchell@biddle.com.

Respectfully,

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