Submitted via regulations.gov

August 24, 2026

Raymond Windmiller
Executive Officer, Executive Secretariat
U.S. Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507

RE: Comments on Notice of Proposed Rulemaking, RIN 3046-AB37, Removal of Reporting Requirements

Dear Mr. Windmiller:

The undersigned organizations, committed to promoting gender justice in the workplace, write in strong opposition to the Equal Employment Opportunity Commission's ("the Commission") notice of proposed rulemaking, Removal of Reporting Requirements, RIN 3046-AB37 ("the Proposed Rule"), to rescind requirements to file EEO-1, EEO-2, EEO-3, EEO-4, EEO-5, and EEO-6 reports.[1] While we oppose rescinding all reporting requirements, this comment focuses on EEO-1 reporting requirements.[2]

By rescinding requirements for employers to report workforce demographic data, the Proposed Rule would make it harder to prevent and address discrimination in the workplace. As outlined below, the Commission fails to consider how the Proposed Rule undermines efforts to combat workplace discrimination, fails to comply with statutory requirements to consult and coordinate with state agencies,[3] relies on unsupported and inaccurate legal justifications, and omits a full analysis of the Proposed Rule's costs and regulatory alternatives.  For these reasons, the Proposed Rule is not the result of "reasoned decisionmaking" and is arbitrary and capricious in violation of the Administrative Procedure Act.[4] We urge the Commission to withdraw the Proposed Rule.

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[1] Removal of Reporting Requirements, 91 Fed. Reg. 46332 et. seq. (proposed July 23, 2026).

[2] While this comment focuses on EEO-1, we also note our strong opposition to removing filing requirements for the EEO-2, EEO-3, EEO-4, EEO-5, and EEO-6 reports. These data collections serve as an important self-auditing tool and help ensure local unions, state and local governments, and schools are complying with anti-discrimination law and addressing potential barriers to equal employment.

[3] 42 U.S.C. § 2000e-8(d).

[4] 5 U.S.C. § 706(2); *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 53 (1983).

## I. THE PROPOSED RULE UNDERMINES EFFORTS TO COMBAT WORKPLACE DISCRIMINATION, INCLUDING SEX-BASED DISCRIMINATION

Despite the enactment of federal anti-discrimination laws, including Title VII of the Civil Rights Act, the Equal Pay Act of 1963, the Pregnancy Discrimination Act of 1978, and the Pregnant Workers Fairness Act of 2022, sex-based discrimination in the workplace remains widespread.[5] Women face high rates of harassment, are passed over for promotions based on their gender or caregiving responsibilities, and are treated as less competent and committed than men based on sex-based stereotypes.[6] Research documents ongoing sex-based discrimination in all aspects of work, including recruitment, hiring, pay, and promotion.[7] Women, particularly women of color, are also frequently segregated into lower paying occupations—a direct result of our nation's history of undervaluing the labor of

[5] *See, e.g.*, *Enforcement and Litigation Statistics*, *Table E1a, Charge Receipts by Basis or Statute (All Statutes) FY 1997 - FY 2025,* U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.eeoc.gov%2Fsites%2Fdefault%2Ffiles%2F2026-04%2FTable_E1a._Charge_Receipts_by_Basis_or_Statute_%2528All_Statutes%2529_FY_1997_-_FY_2025_0.xlsx&wdOrigin=BROWSELINK (last visited Aug. 12, 2026) (showing that EEOC received 26, 941 charges alleging sex discrimination in FY 2025); Isabella Salas-Betsch, CTR. FOR AM. PROGRESS, *Ending Discrimination and Harassment at Work*, *in* PLAYBOOK FOR THE ADVANCEMENT OF WOMEN IN THE ECONOMY (Mar. 14, 2024), https://www.americanprogress.org/article/playbook-for-the-advancement-of-women-in-the-economy/ending-discrimination-and-harassment-at-work/; Adia Harvey Wingfield, *Women Are Advancing in the Workplace but Women of Color Still Lag Behind*, BROOKINGS INSTITUTE (Oct. 2020), https://www.brookings.edu/articles/women-are-advancing-in-the-workplace-but-women-of-color-still-lag-behind/; *Occupational Segregation of Black Women Workers in the U.S.*, NAT'L EMPLOYMENT LAW CTR. (Apr. 9, 2024), https://www.nelp.org/insights-research/occupational-segregation-of-black-women-workers-in-the-u-s/.

[6] Salas-Betsch, CTR. FOR AM. PROGRESS, *supra* note 5; Kim Parker & Cary Funk, *Gender Discrimination Comes in Many Forms for Today's Working Women*, PEW RESEARCH CTR. (Dec. 14, 2017), https://www.pewresearch.org/short-reads/2017/12/14/gender-discrimination-comes-in-many-forms-for-todays-working-women/.

[7] Parker & Funk, *supra* note 6; Alan Benson, Danielle Li & Kelly Shue, *"Potential" and the Gender Promotion Gap,* 116 AM. ECON. REV. 375 (2026), https://danielle.li/assets/docs/PotentialAndTheGenderPromotionGap.pdf); Diana Roxana Galos & Alexander Coppock, *Gender Composition Predicts Gender Bias: A Meta-Reanalysis of Hiring Discrimination Audit Experiments*, SCI. ADVANCES (May 2023), https://doi.org/10.1126/sciadv.ade7979; Benard, Stephen, and Shelley J. Correll, *Normative Discrimination and the Motherhood Penalty*, 24 GENDER & SOCIETY 616 (Oct. 2010), https://gap.hks.harvard.edu/normative-discrimination-and-motherhood-penalty; Claudia Goldin & Cecilia Rouse, *Orchestrating Impartiality: The Impact of "Blind" Auditions on Female Musicians*, 90 AM. ECON. REV. 715 (Sept. 2000), https://gap.hks.harvard.edu/orchestrating-impartiality-impact-%E2%80%9Cblind%E2%80%9D-auditions-female-musicians.

women[8] and people of color,[9] as well as ongoing discrimination.[10]

The occupational segregation and discrimination described above are key drivers of the persistent gender wage gap.[11] In 2024, women working full-time and year-round were paid 81 cents for every dollar paid to men who work full-time, year-round, and many women of color experience significantly larger pay gaps.[12]

Strong enforcement of anti-discrimination laws is critical to breaking down barriers to opportunity, closing the wage gap, and ensuring economic security for women and their families. In the Proposed Rule, the Commission argues, without supporting evidence, that "wholesale collection of [workforce demographic] information through the EEO Reports—unconnected to any specific allegation of discrimination—may hinder effective enforcement of the EEO laws. . ."[13] In reality, as outlined below, EEO-1 data has been vital to the efficient and effective enforcement of civil rights laws at the federal and state level and in private enforcement. The Proposed Rule fails to consider these important factors.

### a. The Proposed Rule Would Undermine the Commission's Effective and Efficient Enforcement of Federal Anti-Discrimination Laws

The Commission is tasked with enforcing employment discrimination laws that cover millions of workers. While employers generally have significant resources, workers are at an enormous disadvantage in knowing whether they are being treated fairly and in vindicating their rights.[14] The Commission has a responsibility to use its limited

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[8] JESSICA MASON & KATHERINE GALLAGHER ROBBINS, NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, WOMEN'S WORK IS UNDERVALUED, AND IT'S COSTING US BILLIONS 3-4 (Mar. 2023), https://nationalpartnership.org/wp-content/uploads/2023/04/womens-work-is-undervalued.pdf.

[9] *See* Christian Collins, *The Entitlement to Black Labor Often Comes at the Cost of Black Humanity*, CTR. FOR LAW AND SOC. POLICY (Feb. 2025), https://www.clasp.org/blog/black-labor-comes-at-cost-black-humanity/; Danyelle Solomon, Connor Maxwell & Abril Lastro, *Systemic Inequality and Economic Opportunity*, CTR. AM. PROGRESS (Aug. 2019), https://www.americanprogress.org/article/systematic-inequality-economic-opportunity/.

[10] Marina Zhavoronkova et al., *Occupational Segregation in America*, CTR. FOR AM. PROGRESS (Mar. 29, 2022), https://www.americanprogress.org/article/occupational-segregation-in-america/.

[11] NAT'L WOMEN'S LAW CTR., A WINDOW INTO THE WAGE GAP (Jan. 2026), https://nwlc.org/wp-content/uploads/2025/02/2026-Window-into-the-Wage-Gap-Factsheet.pdf.

[12] Press Release, Nat'l Partnership for Women & Families, *For Second Year, Wage Gap Grows Wider for Women* (Sept. 10, 2025), https://nationalpartnership.org/news_post/for-second-year-wage-gap-grows-wider-for-women/; INSTITUTE FOR WOMEN'S POLICY RESEARCH, GENDER WAGE GAP WORSENS FOR SECOND YEAR IN A ROW (Sept. 2025), https://iwpr.org/wp-content/uploads/2025/09/National-Wage-Gap-Fact-Sheet-2025.pdf.

[13] 91 Fed. Reg. 46334-35.

[14] *See, e.g.*, Jenny R. Yang & Jane Liu, *Strengthening Accountability for Discrimination: Confronting Fundamental Power Imbalances in the Employment Relationship*, ECON. POL'Y INST. (Jan. 19, 2021),

resources—resources that workers do not have—to root out discrimination.

Recordkeeping and reporting requirements are an important part of Title VII's enforcement scheme. Section 709(c) of Title VII of the Civil Rights Act of 1964 requires covered employers to make and keep employment records relevant to determining if there has been a violation.[15] The law further grants the Commission authority to require employers, through regulation, to submit reports from these records.[16] Congress recognized that these requirements are "particularly essential in title VII because whether or not a certain action is discriminatory will turn on the motives of the respondent, which will usually be best evidenced by his pattern of conduct on similar occasions."[17]

Since 1966, the Commission has exercised its authority by requiring, by regulation, that employers file EEO-1 forms with the Commission.[18] Data gathered in the early years of the Commission helped the agency assess "major patterns of exclusion and discriminatory practices" and supported later public hearings that showed widespread discrimination in certain industries.[19] The Commission continues to use EEO-1 data to support effective enforcement of the law.

i. The Proposed Rule Ignores How Loss of EEO-1 Data Would Make Enforcement More Costly and Less Efficient

The Proposed Rule argues that the burden of the EEO-1 on the Commission is too high because of the agency's limited budget.[20] But the Proposed Rule fails to consider that EEO-1 data is important *because* of limited agency resources; loss of data will make enforcement more costly and less efficient.

The Commission receives tens of thousands of charges each year,[21] which it is required by

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https://www.epi.org/unequalpower/publications/strengthening-accountability-for-discrimination-confronting-fundamental-power-imbalances-in-the-employment-relationship.

[15] 42 U.S. Code § 2000e-8(c).

[16] *Id.*

[17] Memorandum: Investigatory Powers of Equal Employment Opportunity Commission Under Title VII, 112 Cong. Rec. 7245 (1964), available at https://www.congress.gov/88/crecb/1964/04/08/GPO-CRECB-1964-pt6-2-1.pdf#page=57.

[18] Employer Reporting and Recordkeeping Requirements, 31 Fed. Reg. 2832, 2833 (Feb. 17, 1966) (codified at 29 C.F.R. § 1602.7 et seq.).

[19] U.S. EQUAL EMP. OPPORTUNITY COMM'N, THE STORY OF THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION: ENSURING THE PROMISE OF OPPORTUNITY FOR 35 YEARS, 1965-2000 9 (2000), https://babel.hathitrust.org/cgi/pt?id=mdp.39015053177500&seq=21.

[20] 91 Fed. Reg. 46339.

[21] Enforcement and Litigation Statistics, U.S EQUAL EMP. OPPORTUNITY COMM'N,

law to investigate,[22] and it has limited resources at its disposal. When adjusting for inflation, the Commission is now receiving less funding than it was 45 years ago, despite increased demands on the Commission.[23] Limited funding has contributed to historically low staff levels. At the end of fiscal year 1980, the agency had 3,390 full-time equivalent staff.[24] At the end of fiscal year 2025, that number was down to 2,027.[25]

Because of limited resources and staff, charge prioritization and efficient investigations are necessary to promote the efficient use of staff time. According to the Commission, when the agency receives a charge, "data are used to evaluate and prioritize charges under the Commission's charge handling procedures and to inform appropriate investigative approaches."[26] Investigators may review an employer's EEO-1 data to see if the sex and race/ethnicity composition provides insight into a claim.[27] This data can indicate whether certain workers are under- or overrepresented in a particular occupation or among the employer's workforce, providing context for allegations of discrimination.[28] Commission staff may also use statistical analysis to compare the employer's workforce to the local labor pool.[29] This information can help inform the next steps of the investigation, including whether to seek additional information or workforce data from the employer under investigation.[30]

Without EEO-1 data, the agency will lose on-hand information that will help it prioritize charges and conduct investigations. In 2023, when the Commission sought renewal of Paperwork Reduction Act approval, it lamented the potential negative impact of not receiving data *annually*: "[a] delay in collecting data . . . would undermine the EEOC's

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https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0 (last visited Aug. 17, 2026); Fiscal Year 2027 Congressional Budget Justification, U.S EQUAL EMP. OPPORTUNITY COMM'N (Mar. 2026), https://www.eeoc.gov/fiscal-year-2027-congressional-budget-justification.

[22] 42 U.S.C. § 2000e-5(b).

[23] Delesiya Davis & Udochi Onwubiko, *Congress Keeps Shortchanging the EEOC – And Workers Are Shouldering the Consequences*, NAT'L PARTNERSHIP FOR WOMEN & FAMILIES (Sept. 17, 2025), https://nationalpartnership.org/congress-keeps-shortchanging-the-eeoc-and-workers-are-shouldering-the-consequences/.

[24] *EEOC Budget and Staffing History 1980 to Present*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/eeoc-budget-and-staffing-history-1980-present (last visited Aug. 17, 2026).

[25] *Id.*

[26] Supporting Statement A, Recordkeeping and Reporting Requirements for Employer Information Report (EEO-1) Component 1, OMB Number 3046-0049, U.S. Equal Emp. Opportunity Comm'n at 2 (May 2, 2023), https://www.reginfo.gov/public/do/DownloadDocument?objectID=137280001.

[27] NAT'L ACADEMIES SCIENCES ENGINEERING MEDICINE, EVALUATION OF COMPENSATION DATA COLLECTED THROUGH EEO-1 FORM 35 (2023), https://www.nationalacademies.org/read/26581/chapter/3#35.

[28] *Id.*

[29] Supporting Statement A, *supra* note 26 at 2; NAT'L ACADEMIES SCIENCES ENGINEERING MEDICINE, *supra* note 27, at 35.

[30] NAT'L ACADEMIES SCIENCES ENGINEERING MEDICINE, *supra* note 27, at 35.

ability to investigate and enforce the federal anti-discrimination statutes because the agency would be forced to rely on outdated and inaccurate data with respect to employers."[31] A complete lack of data would be far more detrimental.

It is worth nothing that during virtually all of the agency's 60 years of existence, it has had EEO-1 data. Without it, the agency may be forced to reconsider how it processes charges and investigates cases. Any option available to the agency will be more costly or time-consuming. For example, the Proposed Rule indicates that instead of using on-hand EEO-1 data, the Commission will request data from an employer when there's a specific charge filed.[32] This means that, instead of examining existing data the agency has access to, the agency would have to make the request and wait for a response from an employer. In such circumstances, an employer that has stopped collecting data regularly would need to collect the data, taking time. Where employers who do have data resist requests for information, the Commission will need to compel employers to provide relevant information, requiring more resources. In either case, enforcement becomes more costly and time consuming.

Under the Proposed Rule, the Commission would also lack the data that is critical to filling in the blanks when employers provide inadequate information in response to requests during investigations. The Commission has been clear that it uses EEO-1 data "during investigations to help validate analyses based on limited or flawed respondent data and to assist in assessing reasonable cause in the absence of respondent data."[33] Without EEO-1 data, the Commission will only expend more time and resources seeking reliable data that some employers may be reluctant to share.

ii. <u>The Proposed Rule Would Make It Harder for the Commission to Detect and Address Systemic Discrimination</u>

EEO-1 reporting requirements also support the agency's efforts to bring high-impact systemic cases. Section 707(a) of Title VII authorizes cases against employers who engage in a "pattern or practice of resistance to the full enjoyment of any of the rights secured" under Title VII.[34] In amending Title VII in 1972 to provide this authority to the Commission, Congress understood the importance of these systemic enforcement efforts: "[u]nrelenting broad-scale action against patterns or practices of discrimination is . . . critical in

[31] Supporting Statement A, *supra* note 26, at 7.
[32] 91 Fed. Reg. 46334.
[33] Supporting Statement A, *supra* note 26, at 2.
[34] 42 U.S.C. § 2000e-6(a).

combating employment discrimination. The Committee believes these powers should be exercised by the Commission as an integral and coordinated part of the overall enforcement effort."[35]

The Commission has noted how these cases are effective and efficient, helping more workers at once:

> EEOC can protect many more workers from discrimination through systemic enforcement than it can by investigating or litigating individual charges one by one. . . . Bringing one systemic action that changes the unlawful practice and provides remedies to the many workers harmed is more efficient than undertaking one individual investigation or lawsuit at a time that may not fully resolve the issue underlying the discrimination.[36]

EEO-1 data are vital for systemic cases. The Commission uses EEO-1 data to compare demographic workforce data of the employer under investigation to other employers in the industry or section.[37] In the absence of this data, it would be harder for the Commission to identify whether an investigation of an individual charge should be expanded to address systemic discrimination. This means systemic discrimination would be more likely to go unnoticed and unchecked.[38]

The Commission has underscored that its available data, including EEO-1 data, make the agency uniquely able to help address systematic discrimination:

> The agency has access to substantial data, including information on employment trends and demographic changes, that can help identify possible systemic discrimination. This data gives EEOC particular insight into areas such as hiring discrimination, where victims of discrimination often are not aware that they may have been denied employment based on unlawful criteria.[39]

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[35] H.R. Rep. No. 92-238 (1971), in 1972 U.S.C.C.A.N. 2137, 2149-50.
[36] *Advancing Opportunity A Review of the Systemic Program of the U.S. Equal Employment Opportunity Commission*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (July 7, 2016), https://www.eeoc.gov/advancing-opportunity-review-systemic-program-us-equal-employment-opportunity-commission.
[37] NAT'L ACADEMIES SCIENCES ENGINEERING MEDICINE, *supra* note 27, at 35.
[38] *Id.*
[39] *Advancing Opportunity A Review of the Systemic Program of the U.S. Equal Employment Opportunity Commission*, *supra* note 36.

Under current leadership, the Commission reached several settlements in sex discrimination cases where EEO-1 data showed patterns of disparities in hiring. In 2026, the Commission filed a lawsuit against Central Trucking alleging hiring discrimination against female truck drivers over the course of a decade.[40] According to the Commission's complaint, the company's EEO-1 reports showed "the number of female applicants hired as compared to male applicants for the same truck driving positions resulted in a statistically significant disparity in the ratio of male to female truck drivers hired."[41] This data, along with the testimonies of female applicants who were not hired, supported the Commission's cause finding that the company had engaged in hiring discrimination.[42] The Commission reached an early resolution with the company in May 2026, under which the company agreed to pay $5.5 million to female truck drivers, allow impacted applicants to apply for jobs, review its hiring policies, and provide anti-discrimination training.[43]

In 2026, the Commission also settled a lawsuit against Allied Waste Services for hiring discrimination.[44] In this case, an individual applicant filed a charge with the EEOC alleging she was denied a job based on her sex, but the Commission also identified a broader pattern of sex-based hiring discrimination based on EEO-1 data. In its complaint, the Commission alleged that the company "routinely failed to hire qualified female applicants for driver positions because of their sex" based on EEO-1 data showing that the company employed no female drivers at the time of this incident, and that, from 2018 to 2021, the company had employed only one woman in the job category that included drivers—far fewer than similar employers in the relevant labor market.[45] Without access to EEO-1 data and the ability to compare workforce composition across employers, it would require far more time and resources for the Commission to uncover patterns of discrimination, and systemic cases like these would be more likely to go undetected.

Without EEO-1 data, the agency deeply undermines its ability to uncover widespread

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[40] Compl., *EEOC v. Central Transport, LLC*, No. 2:26-cv-02201-JJT (D. Ariz., Mar. 31, 2026), https://nefi.com/NEON/NEON_issues/040726/EEOC_v._Central_Tranport_Complaint.pdf.
[41] *Id*. at ¶ 20
[42] *Id*. at ¶¶ 20-21
[43] Press Release, U.S. Equal Emp. Opportunity Comm'n, *EEOC Reaches Early $5.5 Million Resolution with Central Transport Over Nationwide Sex Discrimination in Hiring* (May 15, 2026), https://www.eeoc.gov/newsroom/eeoc-reaches-early-55-million-resolution-central-transport-over-nationwide-sex.
[44] Press Release, U.S. Equal Emp. Opportunity Comm'n, *Republic Services to Pay $200,000 in EEOC Sex Discrimination Lawsuit* (Apr. 10, 2026), https://www.eeoc.gov/newsroom/republic-services-pay-200000-eeoc-sex-discrimination-lawsuit.
[45] Compl. ¶¶ 30-32, *EEOC v. Allied Services*, Case No. 6:23-cv-03308 (W.D. Mo., Sept. 28, 2026), https://d12v9rtnomnebu.cloudfront.net/diveimages/US_DIS_MOWD_6_23cv3308_d99779463e277_COMPLAINT_against_Allied_Services_LLC_filed_by_Mer.pdf.

discrimination and engage in systemic cases, which can help more workers obtain relief. The Commission has pledged to prioritize such cases[46] and should not rob itself of a tool that allows it to actualize that commitment.

iii. The Proposed Rule Would Make It More Difficult for the Commission to Help Vulnerable Workers through Commissioner Charges

EEO-1 data also supports Commissioner charges. Although a significant number of workers report experiencing unfair treatment at work,[47] many workers are reluctant to report potential discrimination for fear of retaliation.[48] Additionally, workers may not recognize potential discrimination or know to file a charge.[49] Title VII grants individual Commissioners the authority to initiate charges,[50] allowing the agency to act where workers lack information or fear retaliation. EEO-1 data support the initiation of these charges, including by showing that an employer's workforce makeup deviates from peer employers in their industry or local area.[51] Without EEO-1 data, Commissioners would be left with procedures that allow for the gathering of data only in the course of investigating filed charges, limiting the agency's ability to carry out investigations where no specific charge has been filed. If Commissioners no longer had EEO-1 data from covered employers readily available, their ability to identify potential discrimination would be much more limited, likely resulting in fewer Commissioner charges. While Commissioner charges represent a small percentage of total charges the agency investigates, the agency should not be undermining an avenue of redress for workers who are at significant disadvantage in obtaining justice.

iv. The Proposed Rule Would Undermine the Commission's Ability to Identify

[46] U.S. EQUAL EMP.OPPORTUNITY COMM'N, NATIONAL ENFORCEMENT PLAN (FY2025 – FY2029) (June 4, 2026), https://www.eeoc.gov/sites/default/files/2026-06/NEP_-_signed.pdf.
[47] Parker & Funk, *supra* note 6; Katherine Schaeffer, *Black Workers' Views and Experiences in the U.S. Labor Force Stand Out in Key Ways*, PEW RESEARCH CENTER (Aug. 31, 2023), https://www.pewresearch.org/short-reads/2023/08/31/black-workers-views-and-experiences-in-the-us-labor-force-stand-out-inkey-ways/.
[48] Nicole Buonocore Porter, *Ending Harassment by Starting with Retaliation,* 71 STANFORD LAW REV. ONLINE (Jun. 2018), https://www.stanfordlawreview.org/online/ending-harassment-by-starting-with-retaliation/.
[49] Pam Jenoff, *As Equal as Others? Rethinking Access to Discrimination*, 81 U. CIN. L. REV. 85, 115 (2013), https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1104&context=uclr.
[50] 42 U.S.C. § 2000e-5(b) (referring to charges "filed by or on behalf of a person claiming to be aggrieved, *or by a member of the Commission*" (emphasis added)).
[51] NAT'L ACADEMIES SCIENCES ENGINEERING MEDICINE, *supra* note 27, at 35. *See also U.S. Equal Emp. Opportunity Comm'n v. Vallarta Food Enters., Inc*., No. 2:25-MC-00058-MCS-SSC, 2025 WL 3490431, at *1 (C.D. Cal. Oct. 10, 2025), report and recommendation adopted, No. 2:25-MC-00058-MCS-SSC, 2025 WL 3490426 (C.D. Cal. Dec. 3, 2025) ("This investigation does not arise from a report of alleged discrimination by an employee or job applicant. Instead…it is a commission-led investigation the impetus for which was an examination of Respondents' own data produced as part of their regulatory obligations.").

Potential High-Violation Industries

EEO-1 data helps the Commission identify potentially high violation industries. The agency has periodically released reports that use data from the EEO-1 survey[52] and include analysis of workforce demographic trends coupled with charge and litigation data. These reports highlight disparities and potential discriminatory barriers for workers. For example, in September 2024, the agency released a report, "High Tech, Low Inclusion: Diversity in the High Tech Workforce and Sector 2014 - 2022."[53] Using EEO-1 data, the report identified trends in the high tech sector—for example, the report found Black and Hispanic workers and women workers were underrepresented in mid-level and senior positions.[54] By uncovering and raising awareness of these disparities, reports like this lay the groundwork for targeted outreach and enforcement to increase equal opportunities in these sectors.

v. The Proposed Rule Calls into Question the Commission's Commitment to Fulfilling its Core Mission to Combat Employment Discrimination

The Proposed Rule also raises serious questions about whether this EEOC is committed to upholding the agency's mission to "prevent and remedy unlawful employment discrimination and advance equal opportunity for all."[55] The Commission's attempt to halt race and sex data collection and argue that collection of such data is inherently discriminatory, as discussed below, is not only contrary to the position of any prior Commission, but points to an unwillingness to unearth disparities and investigate where the data suggests there may be discrimination. It ignores the context for the enactment of anti-discrimination laws, including the history of discrimination against women,[56] as well as decades of charge data showing that the bulk of charges are filed by women and people of color.[57] This Proposed Rule comes months after the current Chair actively solicited

[52] *Special Reports*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/data/special-reports (last visited Aug. 17, 2026).
[53] HIGH TECH, LOW INCLUSION: DIVERSITY IN THE HIGH TECH WORKFORCE AND SECTOR 2014 – 2022, U.S EQUAL EMP. OPPORTUNITY COMM'N (2024), available at https://web.archive.org/web/20240921160524/https:/www.eeoc.gov/special-report/high-tech-low-inclusion-diversity-high-tech-workforce-and-sector-2014-2022?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=.
[54] *Id*.
[55] U.S. Equal Emp. Opportunity Comm'n, *Overview*, https://www.eeoc.gov/overview (last visited Aug. 24, 2026).
[56] *See, e.g.*, Caroline Fredrickson, *How the Most Important U.S. Civil Rights Law Came to Include Women*, N.Y.U. REVIEW OF LAW & SOCIAL CHANGE (June 17, 2019), https://socialchangenyu.com/harbinger/how-the-most-important-u-s-civil-rights-law-came-to-include-women/; Robert S. Miller Jr., *Sex Discrimination and Title VII of the Civil Rights Act of 1964*, 51 MINN. L. REV. 877 (1967), https://doi.org/10.24926/265535.3113.
[57] Donald Tomaskovic-Devey & Carly McCann, *Who Files Discrimination CHARGES?* CTR FOR EMP. EQUITY: UMASS AMHERST, https://www.umass.edu/employmentequity/who-files-discrimination-charges (last visited Aug. 24,

charges from white men,[58] in line with the current Administration's false narrative that this group of workers is the main target of discrimination.[59] Coupled with this action, the Proposed Rule reveals the Commission's clear, unmistakable intent to selectively ignore data in favor of its leadership's own ideological agenda.

### b. The Commission Fails to Consider the Impact on State Enforcement Partners, Contrary to Statutory Requirements to Consult and Coordinate

#### i. The Commission Fails to Demonstrate Compliance with Title VII's State Consultation and Coordination Requirements

Fair Employment Practices Agencies (FEPAs), state and local agencies tasked with enforcing anti-discrimination laws in their respective jurisdictions, serve as invaluable partners in enforcing anti-discrimination laws. Congress anticipated that states would be important partners in enforcement and that there would be a need for alignment and data sharing with states. Title VII explicitly states that, when prescribing reporting requirements, the Commission "shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies." [60] The statute further requires the Commission to provide, without charge, state or local agencies with information the agency receives under recordkeeping requirements or required reporting.[61] This creates a clear statutory directive for the Commission to work with states in determining data collection rules due to the impact on state agency enforcement. However, the Proposed Rule offers no evidence that the agency has, before developing the Proposed Rule, conducted such a consultation or endeavored to coordinate its efforts with states that have adopted reporting requirements.

#### ii. Recession Would Strip States of Data Critical for Effective Enforcement

Statutory requirements that the Commission share data with FEPAs highlight their

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2026); *The Continuing Impact of Pay Discrimination in the United States*, U.S EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/data/continuing-impact-pay-discrimination-united-states (last visited Aug. 24, 2026).

[58] *EEOC Chair Andrea Lucas, @andrealucasEEOC*, https://x.com/andrealucasEEOC/status/2001439099907961012 (Dec. 17, 2025).

[59] Erica L. Green, *Trump Says Civil Rights Led to White People Being 'Very Badly Treated,'* THE NEW YORK TIMES (Jan. 11, 2026), https://www.nytimes.com/2026/01/11/us/politics/trump-interview-white-people-discrimination.html;
Strategic Enforcement Plan Fiscal Years 2024 – 2028, U.S EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/strategic-enforcement-plan-fiscal-years-2024-2028 (last visited Aug. 19, 2026).

[60] 42 U.S.C. § 2000e-8(d).

[61] *Id.*

importance. FEPAs use EEO-1 data in much the same way the Commission uses the data: to identify and investigate potential discrimination by employers and set enforcement priorities in order to effectively allocate their limited resources. In a 2020 lawsuit brought by California, Maryland, and Minnesota challenging a Commission action that restricted FEPAs' access to EEO-1 data, the states noted that in the absence of EEO-1 data, FEPAs would need to find other sources of data to inform their enforcement efforts, resulting in additional costs to the agencies, and harmful employment practices and trends would likely go undetected.[62]

### c. The Proposed Rule Would Strip Workers of Data That Can Support Their Private Enforcement of Anti-Discrimination Laws

Most lawsuits under federal civil rights statutes are filed by private litigants.[63] Federal courts have routinely allowed plaintiffs to obtain EEO-1 data from their employers during discovery, recognizing the importance of this demographic information for workers bringing employment discrimination claims.[64] Because employers are already required to prepare EEO-1 reports, courts have determined that producing this statistical information imposes little to no burden on employers and are therefore more inclined to compel defendants to produce the information.[65] Federal courts have recognized that EEO-1 data can be "highly probative and relevant to drawing an inference of… discrimination"[66] and have relied on

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[62] *See* Compl. ¶¶ 60, 62, *California v. Dhillon*, 3:20-cv-07664 (filed Oct. 30, 2020), https://oag.ca.gov/sites/default/files/CA%20v.%20Dhillon%20Complaint.pdf.

[63] U.S. Equal Emp. Opportunity Comm'n, *Draft for Public Release: U.S. Equal Employment Opportunity Commission Strategic Enforcement Plan* (Sep. 4, 2012), https://www.eeoc.gov/draft-public-release-us-equal-employment-opportunity-commission-strategic-enforcement-plan.

[64] *See, e.g.*, *Witten v. A.H. Smith & Co.*, 100 F.R.D. 446, 454 (D. Md. 1984), *aff'd*, 785 F.2d 306 (4th Cir. 1986) (granting plaintiff's motion to compel production of EEO-1 reports from defendant in employment discrimination case); *Peterson v. Medtronic, Inc.*, No. 217CV02457JTFDKV, 2018 WL 11240431, at *12 (W.D. Tenn. May 10, 2018) (holding that "EEO-1 reports are generally subject to discovery," though in this case not until after the motion to dismiss was resolved); *Tharp v. Sivyer Steel Corp.*, 149 F.R.D. 177, 184 (S.D. Iowa 1993) (noting that "EEO–1 reports may be of particular importance in employment discrimination cases" and thus discoverable); *Moore v. Shaw Grp., Inc.*, 2015 WL 4939880, at *4 (M.D. La. Aug. 18, 2015) (ordering production of EEO-1 Reports between 2008 and 2014 and finding such reports "are relevant with regard to determining the racial makeup of Shaw's employees before and after the Plaintiffs were hired and fired.").

[65] *Compare Siskonen v. Stanadyne, Inc.*, 124 F.R.D. 610, 612 (W.D. Mich. 1989) (granting plaintiff's motion to compel production of EEO-1 reports from defendant in employment discrimination case, and noting that producing such reports did not burden defendant because they were already prepared), *and Canton v. U.S. Foods, Inc.*, No. 22CV04226TLTLJC, 2023 WL 4372699, at *4-5 (N.D. Cal. July 5, 2023) (same), *with Hicks v. Arthur*, 159 F.R.D. 468, 469 (E.D. Pa. 1995) (holding that, although statistical evidence was relevant to the individual disparate treatment case, requiring the employer to produce this data would be overly burdensome because employer did not have records of employees' race for the time period before it began filing EEO-1 reports).

[66] *Davis v. General Accident Ins. Co. of America*, 2000 WL 1780235 (E.D. Pa., Dec. 4, 2000) (denying defendants' motion to exclude evidence).

EEO-1 data as evidence in support of findings of discrimination.[67] In the absence of the reporting requirements, plaintiffs would have more difficulty accessing data that can provide important evidence in support of their claims. Workers seeking justice in the courts should not be deprived of a tool to help them seek redress, especially where workers are already less likely to prevail.[68]

### d. The Proposed Rule Ignores How Loss of EEO-1 Data Would Undermine Research and Public Understanding of Discrimination

The EEOC also publishes aggregated data associated with 56 million employees and 73,000 employers nationwide on its website.[69] Researchers, government agencies,[70] and the press[71] have used EEO-1 data to conduct extensive research and reporting on workforce composition and disparities. These analyses can help enforcement agencies, employers, advocates, and policymakers understand where progress has been made, where gaps remain, and where opportunities for intervention may exist.

## II. EEO-1 REPORTING REQUIREMENTS DO NOT RUN COUNTER TO EQUAL EMPLOYMENT OPPORTUNITY LAWS OR THE CONSTITUTION

The Proposed Rule erroneously argues that EEO-1 reporting requirements "are inconsistent with equal employment opportunity law and potentially unconstitutional."[72] As outlined below, these arguments lack factual support and are not grounded in the law.

### a. EEO-1 Reporting Requirements Support Anti-Discrimination Enforcement on Behalf of All Workers and Do Not Preference Any Categories of Workers

The Commission argues that the EEO reporting requirements have an impermissible focus

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[67] *Nation v. Winn-Dixie Stores, Inc.*, 570 F. Supp. 1473, 1475 n.3 (N.D. Ga. 1983) (relying on EEO-1 reports, along with other evidence, to find plaintiff experienced discrimination based on race).
[68] *See, e.g.*, Kevin M. Clermont & Stewart J. Schwab, *Employment Discrimination Plaintiffs in Federal Court: From Bad to Worse?*, 3 HARV. L & POL'Y REV. 103 (2009), https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1108&context=lsrp_papers.
[69] *EEO-1 (Employer Information Report) Statistics*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/data/eeo-1-employer-information-report-statistics (last visited Aug. 17, 2026).
[70] U.S. GOV'T ACCOUNTABILITY OFFICE, DIVERSITY IN THE TECHNOLOGY SECTOR: FEDERAL AGENCIES COULD IMPROVE OVERSIGHT OF EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS (Nov. 2017), https://www.gao.gov/assets/gao-18-69.pdf.
[71] *See, e.g.*, Sinduja Rangarajan & Will Evans, *How We Analyzed Silicon Valley Tech Companies' Diversity Data*, REVEAL (Oct. 19, 2017), https://revealnews.org/article/how-we-analyzed-silicon-valley-tech-companies-diversity-data/.
[72] 91 Fed. Reg. 46332.

on "'minorities and women" and may conflict with the Supreme Court's holding in *Ames v. Ohio Dep't of Youth Servs*.[73] The Commission provides no factual support for its claim that the EEO reporting requirements focus on "minorities" and women over other workers.[74] Instead, in a convoluted series of arguments, the Proposed Rule seems to suggest that the reporting requirements may conflict with the holding in *Ames* because "requiring regulated entities to force all employees into a small number of predetermined race/ethnic categories" may cause employers and the Commission itself to prioritize discrimination against members of those categories over other forms of discrimination.[75]

The Supreme Court held in *Ames* that the standard for unlawful discrimination under Title VII is the same for all plaintiffs bringing suits under Title VII, consistent with longstanding EEOC interpretations.[76] Nothing in the reporting regulations conflicts with this principle or causes employers to engage in disparate treatment based on a protected class. To the contrary, as the Proposed Rule recognizes, the Commission has required covered employers to collect data on all employees of all races, sexes, or ethnicities, since the 1970s.[77] The Commission has used EEO data to combat discrimination against workers of all races and ethnicities.[78] Federal courts have affirmed that the collection of demographic information itself is neutral and does not constitute evidence of disparate treatment.[79]

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[73] *Id.* at 46335-36.
[74] The agency also fails to explain how the existence of other agency guidance documents that help employers ensure equal employment opportunity for workers who have historically experienced higher rates of discrimination constitute evidence that the EEO reporting requirements themselves impermissibly preference women and people of color. *Id.*
[75] *Id.* at 46336. Notably, under this administration, the EEOC has prioritized combatting discrimination against members of certain categories of workers over others when it stopped processing certain charges brought by transgender workers, and when the Chair actively solicited charges from white men, with no apparent concern that such preferences would constitute discrimination. *EEOC Chair Andrea Lucas, @andrealucasEEOC*, https://x.com/andrealucasEEOC/status/2001439099907961012 (Dec. 17, 2025); Claire Savage, *EEOC Instructs Staff to Sideline All New Transgender Discrimination Cases, Employees Say*, AP NEWS (last updated Apr. 18, 2025), https://apnews.com/article/transgender-discrimination-gender-civil-rights-88def3b2a735f09cb79d37fc1125b095.
[76] *Ames v. Ohio Dep't of Youth Servs*, 605 U.S. 303, 309-10 (2025) (rejecting the "background circumstances" test, which required majority-group plaintiffs alleging employment discrimination under Title VII to be held to a higher evidentiary standard than minority-group plaintiffs); *see* U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC COMPL. MAN. § 15–II n.23 and accompanying text (2006), https://www.eeoc.gov/laws/guidance/section-15-race-and-color-discrimination.
[77] 91 Fed. Reg. 46335.
[78] *See, e.g.*, *U.S. Equal Emp. Opportunity Comm'n v. Vallarta Food Enters., Inc.*, No. 2:25-MC-00058-MCS-SSC, 2025 WL 3490431, at *1 (C.D. Cal. Oct. 10, 2025), *report and recommendation adopted*, No. 2:25-MC-00058-MCS-SSC, 2025 WL 3490426 (C.D. Cal. Dec. 3, 2025) (alleging in Commissioner's charge that "Respondents failed or refused to recruit, hire, or promote individuals based on their race (White, Black, and/or Asian) and national origin (non-Hispanic)" after EEO-1 data showed Respondents "'maintain a nearly homogenous Hispanic workforce in their stores."' ).
[79] *Ossman v. Meredith,* 82 F.4th 1007, 1015 (11th Cir. 2023) (finding that the use of an EEO Analysis form that included information about race in the process of terminating an employee was not direct evidence that the

There is no basis for the Commission's claim that the regulations unlawfully preference certain categories of workers over others, and this argument cannot justify rescinding the regulations.

**b. The Use of Race Categories Does Not Promote Stereotyping**

The Commission's assertions that the racial categories in the EEO reports are "not grounded in EEO law" and "may promote stereotyping"[80] are unsupported and misrepresent the reporting requirements.

The Proposed Rule points to examples of how the racial categories in the EEO reports have changed over time to argue that the racial categories are "largely arbitrary and not based on the EEOC's enforcement needs," and therefore inconsistent with EEO law.[81] But the fact that these categories have evolved since the Commission first began requiring this reporting, over six decades ago, does not make the categories arbitrary. The race and ethnicity categories used in the EEO data collection were adopted to follow federal government-wide standards,[82] and changes to these standards have reflected researchers' evolving understanding of race and ethnicity, as well as changes to the U.S. population over time.[83] As discussed above, information about the demographics of the workforce is critically important to the Commission's ability to enforce EEO laws efficiently and effectively, and the use of racial categories facilitates the collection of this information. If the current categories do not adequately support the Commission's enforcement needs, the appropriate solution is to update the categories through a separate rulemaking process, not to eliminate the entire reporting scheme.

The Proposed Rule also argues that "[v]iewing individuals as having inherent qualities

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employee was discriminated against based on his race); *Moncada v. Peters*, 579 F.Supp.2d 46, 55 (D.D.C. 2008) (finding that federal agency's collection of applicants' demographic information during the application process was not evidence of discrimination).

[80] 91 Fed. Reg. 46336.

[81] *Id*. at 46337.

[82] 68 Fed. Reg. 34965 (proposed June 11, 2026) (explaining that the proposed revisions to the racial categories in the EEO-1 form were made to reflect updated OMB standards); Press Release, U.S. Equal Employment Opportunity Comm'n, *EEOC Implements Final Revisions to EEO-1 Report* (Jan. 1, 2006), https://www.eeoc.gov/newsroom/eeoc-implements-final-revisions-eeo-1-report.

[83] Farah Z. Ahmad & Jamal Hagler, *The Evolution of Race and Ethnicity Classifications in the Decennial Census,* CTR. FOR AM. PROGRESS (Feb. 6, 2015), https://www.americanprogress.org/article/the-evolution-of-race-and-ethnicity-classifications-in-the-decennial-census/ (explaining, in the context of the U.S. census, that "[a]s concepts of race and ethnicity have evolved and the population has shifted, the methods and language used to record race and ethnicity in the census have changed as well.).

based on racial stereotypes" violates Title VII.[84] However, the Commission fails to articulate how the use of racial categories to collect data involves such racial stereotyping. Instead, it offers a lengthy discussion of cases in which workplace trainings were alleged to perpetuate racial stereotypes—examples that are irrelevant to the context of data collection.[85] Title VII prohibits employers from engaging in disparate treatment based on assumptions that employees' conduct or traits will conform with certain class-based stereotypes.[86] The use of racial categories for EEO reporting, however, does not involve the use of such stereotypes, nor does it involve any disparate treatment. The EEOC has offered no examples or evidence to the contrary.

### c. Workforce Demographic Data Collection and Reporting Do Not Encourage Discrimination

The Commission also argues that the EEO reporting requirements should be rescinded because "demographic data may be subject to misuse," and specifically that employers may use the data to make employment decisions based on race and sex, in violation of EEO laws.[87] This argument is entirely speculative and not grounded in evidence.

The Commission asserts that employers "may mistakenly believe that the EEOC will target them for enforcement actions based on statistical imbalances and therefore take discriminatory actions to correct those imbalances in violation of EEO law."[88] The EEOC provides no support for its assumption that employers will engage in unlawful race- or sex-based discrimination to remedy any potential disparities identified through the reporting of EEO data. In fact, the Proposed Rule does not include a single example of this happening in the over 60 years of the Commission collecting EEO-1 data. It instead ignores that safeguards exist to prevent misuse of demographic data: for example, employers are directed to keep demographic data separate from other personnel information and ensure that individuals making employment decisions do not have access to individualized data.[89]

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[84] 91 Fed. Reg. 43667.
[85] *Id*.
[86] *See, e.g.*, *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-51 (1989); *Back v. Hastings On Hudson Union Free School. Dist.*, 365 F.3d 107, 119-21 (2nd Cir. 2004).
[87] 91 Fed. Reg. 46338.
[88] *Id*.
[89] *See, e.g.*, 29 C.F.R. § 1602.13 (explaining that "the Commission recommends the maintenance of a permanent record as to the racial or ethnic identity of an individual for purpose of completing the report form only where the employer keeps such records separately from the employee's basic personnel form or other records available to those responsible for personnel decisions"); U.S. Equal Emp. Opportunity Comm'n, EEOC Informal Discussion Letter: Title VII: Pre-employment Inquiries (Aug. 14, 2003), https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-100 (explaining that "self-identification forms should be kept separately from the application and should not be a basis for employment decisions;

Further, if employers do engage in unlawful race- or sex-based discrimination in response to disparities identified by EEO data, they can already be held liable under federal and state anti-discrimination law. At least one federal circuit court has rejected the argument that the EEO-4 data collection should be struck down because the data might be used in ways that violate Title VII, explaining that "possible and purely hypothetical misuse of data does not require the banning of reasonable procedures to acquire such data."[90]

### d. EEO Reporting Requirements Do Not Trigger Strict Scrutiny

The Commission argues that the EEO reporting requirements should be rescinded because they "potentially conflict with the constitutional guarantee of equal protection."[91] This argument rests on the erroneous assumption that these regulations are subject to strict scrutiny because they force regulated entities to "adopt race-based classifications."[92]

Classification alone does not violate the Equal Protection Clause.[93] Strict scrutiny applies only where the government "distributes benefits or burdens" based on racial classifications.[94] As the Supreme Court has explained, the strict scrutiny standard "is reserved for cases involving laws that operate *to the disadvantage* of suspect classes...".[95] The very cases the Proposed Rule relies upon to cast doubt on the constitutionality of the reporting requirements recognize that strict scrutiny is the appropriate standard only where the government *discriminates* against individuals based on race.[96] The EEO reporting regulations require covered employers to collect and report information about the race and sex of all employees; they do not require employers to make any employment decisions based on race, and they do not distribute any benefit or burden based on racial classifications.[97] The Commission's assertion that the regulations are subject to strict

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applicants should be so advised.").

[90] *U.S. v. State of New Hampshire*, 539 F.2 277, 280 (1st Cir. 1976).

[91] 91 Fed. Reg. 46335.

[92] *Id*. at 46335, 46339.

[93] *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992).

[94] *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 720 (2007).

[95] *San Antonio Independent School Dist. V. Rodriguez*, 411 U.S. 1, 2 (1978) (emphasis added).

[96] *See, e.g.*, *Louisiana v. Callais*, 146 S.Ct.1131, 1146 (2026) (recognizing the "general rule that the Constitution almost never permits the Federal Government or a State to *discriminate* on the basis of race. Such discrimination triggers strict scrutiny...") (emphasis added); *Students for Fair Admissions Inc. v. President and Fellows of Harvard College,* 600 U.S. 181, 206 (2023) (explaining that the "core purpose" of the Equal Protection Clause is "do[ing] away with all governmentally imposed discrimination based on race.") (quoting *Palmore v. Sidoti*, 466 U.S. 429, 432 (1984)).

[97] In fact, federal courts have affirmed that an employer's collection of demographic data does not constitute evidence of race-based discrimination. *Ossman v. Meredith,* 82 F.4th 1007, 1015 (11th Cir. 2023) (finding that the use of an EEO Analysis form that included information about race in the process of terminating an employee was not direct evidence that the employee was discriminated against based on his race); *Moncada*

scrutiny is therefore without any merit.

Because the reporting requirements are not subject to strict scrutiny, the remainder of the agency's equal protection analysis is irrelevant. Even if strict scrutiny were the appropriate standard, however, the agency has failed to show that the government has no compelling interest in collecting data to facilitate anti-discrimination enforcement,[98] nor has the agency adequately assessed whether the regulations are narrowly tailored to advance that interest.[99]

While the bulk of the Commission's analysis focuses on the collection of racial data, the Proposed Rule asserts in a single footnote, without any meaningful analysis or legal authority in support, that the requirement to collect sex data "may also violate the Constitution."[100] The Commission erroneously assumes that the collection of sex data triggers intermediate scrutiny, once again ignoring that the data collection does not distribute benefits or burdens based on a protected class.[101] The Commission goes on to conclude that the collection of sex data "suffers from many of the same kinds of problems as the collection of race data" and therefore may be unconstitutional, without making any attempt to even analyze the data collection under the standard it claims applies.[102] This cursory analysis does not constitute a reasoned justification for eliminating the requirement to report sex data.

The EEOC's analysis ignores that federal courts have upheld the constitutionality of demographic data collection.[103] It also ignores that other agencies, including the Department of Education, have expanded race- and sex-based data collection under this administration without raising any concerns about the constitutionality of demographic data collection.[104] The Commission's argument that the EEO reporting requirements may

*v. Peters*, 579 F.Supp.2d 46, 55 (D.D.C. 2008) (finding that federal agency's collection of applicants' demographic information during the application process was not evidence of discrimination).

[98] The government assumes that "the bulk of the EEO Reports data is not relevant to determining whether unlawful employment practices have occurred" and therefore the government has no compelling interest in collecting this data. But as explained in Section I *infra*, this data directly supports anti-discrimination enforcement, and the Proposed Rule fails to explain why the government has no compelling interest in such enforcement.

[99] 91 Fed. Reg. 46339.

[100] *Id*. at 46335, n.9.

[101] *Id*.

[102] *Id*.

[103] *Morales v. Daley*, 116 F. Supp. 2d 801, 611 (S.D. Tex. 2000) (upholding the constitutionality of census questions requiring racial and ethnic classifications); *Caulfield v. Bd. of Ed. of City of New York*, 583 F.2d 605 (2d Cir. 1978) (holding that "the Constitution itself does not condemn the collection of [racial] data" collected by a local department of education).

[104] *See* Agency Information Collection Activities, Comment Request, Integrated Postsecondary Education

violate the constitution is inconsistent with the law and the administration's own positions, and it cannot support the rescission of the regulations.

## III. THE PROPOSED RULE OMITS A FULL ANALYSIS OF ITS COST AND REGULATORY ALTERNATIVES, RENDERING THE AGENCY UNABLE TO ASSESS THE RULE'S IMPACT

The Proposed Rule fails to include estimates and analysis required for rulemaking. Executive Orders 12866 and 13563 require agencies to propose or adopt a rule "only upon a reasoned determination" that its benefits justify its costs.[105] Executive Order 12866 requires that, for significant rules, such as this one,[106] agencies must assess costs and benefits and submit this assessment to the Office of Information and Regulatory Affairs at the Office of Management and Budget.[107] Executive Order 13563 expressly requires agencies to "quantify anticipated present and future benefits and costs as accurately as possible" and states agencies "may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts."[108]

The Commission states that because the Proposed Rule only eliminates data collection and reporting requirements, it is "not expected to result in any increased costs to private employers . . . or any other sector of the economy."[109] The Commission provides no economic analysis, quantitative or qualitative, for costs to workers or the economy, and its analysis for costs for employers and the Commission is limited. As described below, the Commission could have assessed these costs but did not. Without this analysis, the Commission cannot come to any reasoned determination that the rule's benefits justify its costs.[110]

### a. The Proposed Rule Fails to Consider Potential Costs to Workers

The Proposed Rule fails to assess the costs of rescinding reporting requirements for

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Data System (IPEDS) 2024-25 Through 2026-27, 90 Fed. Reg. 39384 (Aug. 15, 2025), https://www.federalregister.gov/documents/2025/08/15/2025-15536/agency-information-collection-activities-comment-request-integrated-postsecondary-education-data.

[105] Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Oct. 4, 1993); Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011).

[106] OIRA has deemed this proposed rule "economically significant." 91 Fed. Reg. 46342.

[107] Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51741 (Oct. 4, 1993).

[108] Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011).

[109] 91 Fed. Reg. 46342.

[110] *See* Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Oct. 4, 1993); Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011).

workers who experience discrimination. As discussed above, rescinding EEO-1 reporting requirements will reduce the Commission's ability to efficiently identify and redress discrimination, including by undermining the agency's ability to bring high-impact systemic cases that can help more workers and prevent future discrimination. As discussed above, rescinding reporting requirements may result in longer investigations, extending wait times for case resolution. Loss of reporting requirements may also contribute to more frequent and persistent discrimination due to the Commission's inability to efficiently identify, investigate, and address discriminatory practices. As a consequence, a larger share of workers could experience discrimination, and many of them will experience discrimination for longer periods of time.

Experiencing discrimination has severe economic consequences for workers and their families, directly impacting their lives in the short- and long-term.[111] A large body of research documents that workers are routinely denied jobs or promotions or offered lower wages based on motherhood status,[112] race (with particularly high rates for Black workers),[113] sex,[114] disability,[115] or other factors. Research also shows that workers who

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[111] Though this section explicitly focuses on employment and wage impacts, discrimination has also been shown to have significant health impacts as well. *See* David R. Williams, Jourdyn A. Lawrence, Brigette A. Davis & Cecilia Vu, *Understanding How Discrimination Can Affect Health*, HEALTH SERV. RES. (Dec. 2019), https://pmc.ncbi.nlm.nih.gov/articles/PMC6864381/.

[112] Shelley J. Correll, Stephen Bernard, In Paik*, Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. OF SOCIO. 1297 (Mar. 2007), https://doi.org/10.1086/511799; Morien El Haj, Stijn Baert, Luc Van Ootegem, Elsy Verhofstadt & Louis Lippens, *Fertility, Pregnancy, and Parenthood Discrimination in the Labour Market: A Systematic Review*, IZA INST. OF LAB. ECON. (Nov. 2024), http://www.jstor.org/stable/resrep69700.

[113] Dominique Sylvers, Robert Joseph Taylor, Lisa Barnes, Mosi Adesina Ifatunji & Linda M. Chatter, *Racial and Ethnic Differences in Major and Everyday Discrimination Among Older Adults: African Americans, Black Caribbeans, and Non-Latino Whites*, 34 J. AGING HEALTH 460 (Jun. 2022), https://pmc.ncbi.nlm.nih.gov/articles/PMC9165708/#T3; Devah Pager, Bruce Western & Bart Bonikowski, *Discrimination in a Low-Wage Labor Market: A Field Experiment*, 74 AM. SOCIO. REV. 777 (Oct. 2009), https://pmc.ncbi.nlm.nih.gov/articles/PMC2915472/; Patrick M. Kline, Evan K. Rose & Christopher R. Walters, *Systemic Discrimination Among Large U.S. Employers*, Working Paper 29053, NAT. BUR. OF ECON. RES. (rev. May 2022), https://doi.org/10.3386/w29053; Lincoln Quillian, Devah Pager, Ole Hexel & Arnfinn H. Midtbøen, *Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time*, 114 PROC. NAT'L ACAD. SCI. U.S.A. 10870 (Oct. 2017), https://doi.org/10.1073/pnas.1706255114; David S. Pedulla, Felipe Dias, Katherine E. Wullert & John Muñoz, *Racial Discrimination in Context: The Role of Organizational Policies and Practices in Hiring Discrimination*, 131 AM. J. OF SOCIO. 918 (Jan. 2026), https://www.journals.uchicago.edu/doi/abs/10.1086/73929.

[114] Goldin & Rouse, *supra* note 7; Diana Roxana Galos & Alexander Coppock, *Gender Composition Predicts Gender Bias: A Meta-Reanalysis of Hiring Discrimination Audit Experiments*, SCI. ADVANCES (May 2023), https://doi.org/10.1126/sciadv.ade7979; Alan Benson, Danielle Li & Kelly Shue, *"Potential" and the Gender Promotion Gap,* 116 AM. ECON. REV. 375 (2026), https://danielle.li/assets/docs/PotentialAndTheGenderPromotionGap.pdf.

[115] Nicole Schwitter, Stella Chatzitheochari & Ulf Liebe, *Disability Discrimination in Hiring: A Systematic Review*, 98 RES. IN SOC. STRAT. & MOB. 101069 (2025), https://doi.org/10.1016/j.rssm.2025.101069.

experience sex discrimination reduce the amount of labor they supply, resulting in lower levels of work and lower wages.[116] Workers face significant consequences when they are unable to find a job, get a promotion, or be paid fair wages. In the immediate term, these workers and their families may struggle to pay for basic necessities, such as groceries, gas, health care, and childcare, or face increased economic precarity. [117] These experiences may also reduce their access to, or the amount of, work-related benefits based on time worked and earnings records, such as paid leave or unemployment insurance. In the longer-term, workplace discrimination reduces workers' ability to save for retirement and shrink their Social Security benefits.

These costs will be disproportionately borne by workers most likely to experience discrimination in the workplace. While all workers can experience discrimination, research shows that women experience discrimination at higher rates, especially Black women[118] and women working in male-dominated workplaces.[119] Often, as noted above, these workers are already more likely to be experiencing larger wage gaps and lower rates of employment and are therefore least able to financially sustain periods of unemployment or reduced earnings.

### b. The Proposed Rule Omits Potential Costs to Employers

The Proposed Rule's analysis of costs to employers is limited. In estimating costs to employers, the Proposed Rule only includes costs savings associated with no longer filing reports to the Commission.[120] The Proposed Rule fails to analyze the costs employers will incur from the recission of EEO-1 data collection. For example, employers may incur costs if they fail to identify and address discrimination because they lack data. While employers may still collect demographic data voluntarily,[121] and counsels may advise employers to do so to mitigate risk and ensure compliance with state laws,[122] it is likely that not all

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[116] Nickolas Gagnon, Kristof Bosmans & Arno Riedl, *The Effect of Gender Discrimination on Labor Supply*, 133 J. OF POL. ECON. (Mar. 2025), https://www.journals.uchicago.edu/doi/10.1086/733419.

[117] *See, e.g.*, NAT'L WOMEN'S LAW CTR., A WINDOW INTO THE WAGE GAP, *supra* note 11.

[118] Parker & Funk, *supra* note 6.

[119] Kim Parker, *Women in Majority-Male Workplaces Report Higher Rates of Gender Discrimination*, PEW RES. CTR. (Mar. 2018), https://www.pewresearch.org/short-reads/2018/03/07/women-in-majority-male-workplaces-report-higher-rates-of-gender-discrimination/.

[120] 91 Fed. Reg. 46343.

[121] Title VII requires covered employers to "make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed." 42 U.S. Code § 2000e-8(c).

[122] *See, e.g.*, T. Scott Kelly et al., *EEOC Hearing on EEO-1 Rescission: Most Speakers Urge Retention or Reform*, OGLETREE DEAKINS (Aug. 14, 2026), https://ogletree.com/insights-resources/blog-posts/eeoc-hearing-on-eeo-1-rescission-most-speakers-urge-retention-or-reform/; Jim Paretti et al., *EEOC Proposes to Rescind All EEO Reporting and Recordkeeping Requirements*, LITTLER (July 22, 2026), https://www.littler.com/news-

employers will follow this advice in the absence of a clear federal reporting requirement. The Proposed Rule's specious and misleading arguments about the legality of collecting data may also increase the likelihood that some employers will abandon demographic data collection due to confusion about the legality of such practices.

Failure to collect and analyze workforce demographic data could limit employers' ability to detect and prevent discrimination. This puts employers at increased risk of noncompliance with anti-discrimination laws, opening employers up to investigations and litigation, and the associated legal fees. If employers have not been collecting demographic data, they may also need to incur costs to collect relevant data if the EEOC requests it in the course of investigating a specific charge, or they may be unable to produce the requested information, particularly where transient workforces leave employers without relevant data. The Commission fails to take these costs into account in concluding that the Proposed Rule is unlikely to result in increased costs to employers.[123]

The Commission also fails to consider how the Proposed Rule could lead to increased operating costs for employers who abandon data collection as a tool for identifying and remedying potential discrimination in the absence of a clear federal reporting requirement. Discrimination is correlated with worker burnout, withdrawal, lateness, absenteeism and the intention to quit, and turnover,[124] all of which creates costs for employers. A lack of engagement or high turnover costs can be extremely costly for businesses. Absenteeism overall is estimated to cost U.S. employers more than $200 billion annually,[125] and some estimates of employee replacement range up to double the employee's annual salary.[126]

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analysis/asap/eeoc-proposes-rescind-all-eeo-reporting-and-recordkeeping-requirements.

[123] 91 Fed. Reg. 46332.

[124] "Using three national samples, we found that [perceived discrimination] PD based on race, sex, age, family obligation, and sexual orientation related to physical withdrawal (i.e., lateness, absenteeism, and intent to quit) indirectly through psychological withdrawal (i.e., burnout and engagement) such that PD corresponded in less engagement and more burnout, which related to increased lateness, absenteeism, and intent to quit." Sabrina D. Volpone & Derek R. Avery, *It's Self Defense: How Perceived Discrimination Promotes Employee Withdrawal*, 18 J. OCCUP. HEALTH PSYCHOL. 430 (Oct. 2013), https://pubmed.ncbi.nlm.nih.gov/24099162/; Katharine R. O'Brien, Samuel T. McAbee, Michelle R. Hebi & John R. Rodgers, *The Impact of Interpersonal Discrimination and Stress on Health and Performance for Early Career STEM Academicians*, 7 FRONT. IN PSYCHOL. 615 (Apr. 2016), https://doi.org/10.3389/fpsyg.2016.00615; Jeremiah Teh Yein Sheng, Yuan Hui Ko, Lianna Ooi Pei Wen & Cheong Jia Qi, *Effects of Discrimination in the Workplace on Turnover Rate*, 8 J. OF BIMP-EAGA REG. DEV. 12 (June 2022), https://www.researchgate.net/publication/366407552_EFFECTS_OF_DISCRIMINATION_IN_THE_WORKPLACE_ON_TURNOVER_RATE.

[125] The CDC Foundation, *Worker Illness and Injury Costs U.S. Employers $225.8 Billion Annually* (Jan. 25, 2015), https://www.cdcfoundation.org/pr/2015/worker-illness-and-injury-costs-us-employers-225-billion-annually.

[126] Shane McFeely & Ben Wigert, *This Fixable Problem Costs U.S. Businesses $1 Trillion*, GALLUP (Mar. 13, 2019), https://www.gallup.com/workplace/247391/fixable-problem-costs-businesses-trillion.aspx.

Continued or increased discrimination may also impact the ability to recruit workers, as research shows that women preference employers who can demonstrate a smaller gender wage gap.[127] The Commission should be helping employers avoid these costs by ensuring compliance with anti-discrimination laws, but instead the Commission is exposing employers to increased costs and liability by allowing them to abandon a tool for self-assessment.

The EEOC's calculation of cost savings for employers is also flawed because it fails to take into account that some employers will still need to report this data under applicable state laws. As discussed further below, in the absence of EEO-1 data, more states may adopt their own demographic data collection requirements to fill the gap,[128] creating additional reporting requirements for employers operating in multiple states. By sowing confusion about the legality of employers collecting race and sex data, the Proposed Rule also sows confusion that may lead to some employers abandoning this practice in violation of their own state laws, potentially exposing them to penalties.

#### c. The Proposed Rule Omits Costs to the Commission

The Proposed Rule's discussion of costs or benefits for the Commission omits any analysis of costs to the agency associated with lack of EEO-1 data. Instead, it only estimates rescinding reporting requirements will save the Commission about $3.9 million a year in costs for administering the data collection.[129] As discussed above, the lack of EEO-1 data will mean the agency conducts less efficient and effective investigations. The Proposed Rule does not include analysis of any costs associated with decreased efficiency due to the loss of EEO-1 data.

#### d. The Proposed Rule Omits Costs to State Agencies

As discussed above, state agencies rely on EEO-1 data they receive free of charge from the Commission. If states can no longer receive this information from the federal government, more states will likely adopt their own laws or regulations requiring data reporting to support investigations and enforcements under their state anti-discrimination laws. For

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[127] Jack Blundell, *Wage Responses to Gender Pay Gap Reporting Requirements*, Discussion Paper No. 1750, CTR. FOR ECON. PERFORMANCE (Mar. 2021), https://cep.lse.ac.uk/pubs/download/dp1750.pdf.
[128] Victoria Ungvary, *Colorado's New EEO-1 Law and the Rise of State Data Reporting*, DCI CONSULTING (June 2026), https://blog.dciconsult.com/colorado-new-eeo-1-law-rise-of-state-data-reporting (noting that following EEOC's proposal to eliminate EEO-1 data collection, a "complex and growing patchwork of state [demographic data collection] obligations shows no signs of slowing down".).
[129] 91 Fed. Reg. 46339.

example, in 2026, Colorado passed a law requiring employers to submit EEO-1 data "even if the federal government repeals or discontinues the federal requirement to submit the EEO-1 data."[130] As the Proposed Rule notes, administration of these data collections comes with costs. Rescinding EEO-1 reporting requirements merely pushes costs from the Commission to states. The Proposed Rule discusses none of these potential transfers.

#### e. The Proposed Rule Fails to Consider Costs to the Economy

The economic consequences for workers, employers, and state governments, as discussed above, may result in consequences for the economy overall.[131] The Commission failed to include an economic impact analysis that considers whether there are direct and indirect economic impacts, as well as induced impacts, such as worker spending on goods and services. Such an analysis could have assessed how policy changes would result in lost tax revenue or reduced contribution to GDP.[132] For example, tax revenue for localities, states, and the federal government is based on both the number of workers in the labor market and their wages. As described above, loss of reporting requirements may result in discrimination going unchecked, which could keep some workers out of the labor market or earning lower wages, driving down tax revenue overall. GDP and consumer spending would similarly be impacted by workers spending more time out of the labor market, working less or working for lower wages.

#### f. The Proposed Rule does not Include Analysis of Alternative Regulatory Approaches

The Commission failed to identify and consider the cost of alternatives to its regulation. Executive Order 12866 states that "[i]n deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating."[133] Executive Order 13563 requires agencies to "select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits."[134] The Proposed Rule fails to include any analysis of alternatives to complete recission of reporting requirements. This is especially troubling given the costs discussed

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[130] Ungvary*, supra* note 128.; H.B. 26-1207 (Colo. 2026).
[131] José Taveres & Tiago Cavalcanti, Gender Discrimination Lowers Output Per Capita (A Lot), VOX EU (Oct. 2007), https://cepr.org/voxeu/columns/gender-discrimination-lowers-output-capita-lot.
[132] *See* IMPLAN, *What Is An Economic Impact Analysis (EIA)?*, https://implan.com/why/economic-impact-analysis/ (last visited Aug. 24, 2026).
[133] Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Oct. 4, 1993).
[134] Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011).

above and the Commission's failure to comply with statutory requirements to consult and coordinate with states.

## IV. CONCLUSION

For 60 years, EEO-1 reporting requirements have helped combat workplace discrimination. The Proposed Rule relies on specious legal reasoning to conclude reporting requirements are improper and ignores considerable evidence that requirements promote effective and efficient enforcement of the law. The Proposed Rule also violates statutory requirements to consult and coordinate with states and rulemaking requirements to consider costs. For the reasons discussed above, we strongly urge the agency to withdraw its proposal.

Please contact Udochi Onwubiko at the National Partnership for Women & Families (uonwubiko@nationalpartnership.org), Katie Sandson at the National Women's Law Center (ksandson@nwlc.org), and Seher Khawaja at Equal Rights Advocates (skhawaja@equalrights.org) with any questions.

Sincerely,

National Partnership for Women & Families
National Women's Law Center
Equal Rights Advocates
Actors' Equity Association
American Association of People with Disabilities
American Pride Rises
Center for Law and Social Policy (CLASP)
Chicago Women in Trades
Child Care Law Center
Clearinghouse on Women's Issues
Coalition on Human Needs
Equal Pay Today
Equality California
Feminist Majority Foundation
Institute for Women's Policy Research
International Native Women in Trades
Justice for Migrant Women
League of United Latin American Citizens (LULAC)
Legal Aid at Work

Legal Aid at Work
MANA, A National Latina Organization
MomsRising
National Coalition on Black Civic Participation and Black Women's Roundtable
National Employment Law Project
National Organization for Women
National Urban League
Parent Voices CA
PowHer New York
Reproductive Freedom for All
The Leadership Conference for Civil and Human Rights
Women Employed
WorkLife Law