

[Billing Code 6570-01-P]

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Notice of Submission for OMB
Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission

ACTION: Final notice of submission for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995,
the Equal Employment Opportunity Commission gives notice that it has submitted the
information collection described below to the Office of Management and Budget.

DATES: Written comments on this notice must be submitted on or before
[Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments on this final notice must be submitted to Carolyn Lovett, Policy
Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725
17th Street, N.W., Washington, D.C. 20503, or e-mail at Carolyn_L._Lovett@omb.eop.gov.
Comments also should be submitted to Stephen Llewellyn, Acting Executive Officer, Executive
Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, N.W.,
Washington, D.C. 20507. The Acting Executive Officer will accept comments transmitted by
facsimile ("FAX") machine. The telephone number for the FAX receiver is (202) 663-4114.
(This is not a toll-free-number.) Only comments of six or fewer pages will be accepted via FAX
transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX
transmittals will not be acknowledged, except that the sender may request confirmation of receipt
by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TDD).
(These are not toll-free-telephone numbers.) Copies of comments submitted by the public will be
available for review at the Commission's library, room 6502, 1801 L Street, N.W., Washington,
D.C. 20507 between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research

and Surveys Division, 1801 L Street, N.W., Room 922, Washington, D.C. 20507; (202) 663-4958 (voice) or (202) 663-7063 (TDD); or Carol Miaskoff, Assistant Legal Counsel, 1801 L Street, N.W., Washington, D.C. 20507; (202) 663-4637 (voice) or (202) 663-7026 (TDD).

SUPPLEMENTARY INFORMATION:

Introduction

With this Notice, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it is submitting to the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995 (PRA), final revisions to the Employer Information Report (EEO-1), after consultation with the Department of Labor, Office of Federal Contract Compliance Programs (OFCCP). The EEOC published the initial PRA Notice on June 11, 2003. See Agency Information Collection Activities: Revision of the Employer Information Report (EEO-1), 68 FR 34965, June 11, 2003. In the initial notice, the EEOC proposed changes to the ethnic and racial categories on the EEO-1 report, and also to the job categories. Thirty-two interested parties submitted written comments, including employers, civil rights organizations, human resources and information technology professionals, and other individuals. Nine witnesses, representing some of the same parties, testified at the Commission's public hearing held on October 29, 2003, pursuant to section 709(c) of Title VII of the Civil Rights Act of 1964. The record was completed by several written comments submitted subsequent to the hearing.

History and Uses of the EEO-1

The EEOC and OFCCP, acting as the Joint Reporting Committee, adopted the EEO-1 report in 1966 to collect annual data from many private employers and federal contractors about their minority and female workforce. See 42 U.S.C. 2000e-8(c). The agencies planned to use these EEO-1 data to analyze patterns of employment discrimination and to support civil rights enforcement. See U.S. Equal Employment Opportunity Commission, "A History of the EEOC, 1965 - 1984." Both agencies have used the data for enforcement. OFCCP uses EEO-1 data to determine which employer facilities to select for compliance evaluations. The EEOC also uses EEO-1 data to analyze trends in female and minority employment within companies, industries, regions, and sectors of the economy. See, e.g., "Women of Color: Their Employment in the Private Sector" (July 2003) at www.eeoc.gov/stats/reports/womenofcolor.

The government's commitment to collecting and analyzing these workforce data is a concrete demonstration of its ongoing commitment to full enforcement of Title VII of the Civil Rights Act of 1964. The importance of EEO-1 data in describing the workforce in terms of the job placement of minorities and women was a constant factor in the consideration of these revisions. As explained in its June 11, 2003 Notice, the Commission initiated this revision in light of several developments, including the revised 1997 government-wide standards for reporting race

and ethnicity, see *infra* note 5.

Race and Ethnic Categories

In reaching final decisions on race and ethnic categories for the revised EEO-1 report, the EEOC was guided by the need to balance three competing interests: Obtaining data that will support the EEOC and OFCCP in enforcing Title VII and Executive Order 11246; modernizing the EEO 1 to accommodate changing demographics and the government wide Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity; and limiting the burden on employers. The goal of the Commission was, of course, to find the appropriate balance among these competing factors.

The race and ethnic categories proposed in the EEOC's June 11, 2003 Notice differ from the current EEO-1 in several respects. The revisions proposed in the June 11, 2003 Notice were as follows: (i) Add a new racial category titled "Two or more races"; (ii) separate "Asians" from "Pacific Islanders"; (iii) rename "Black" as "Black or African American"; (iv) rename "Hispanic" as "Hispanic or Latino"; and (v) strongly encourage employers to use self-reporting rather than visual identification. The public comments to the June 11, 2003 Notice primarily focused on the Commission's strong endorsement of employee self-identification; on its adoption of the new racial category, "Two or more races"; and on the guidance for counting and reporting the number of Hispanic or Latino employees.

Self-Identification

The June 11, 2003 Notice proposed that employers gather data needed to complete the revised EEO-1 report by asking employees to voluntarily report their ethnicity and race. In the past, employers usually determined ethnicity and race for the EEO-1 by visual observation. The

Commission's proposal meant that, for the first time, employers would be strongly encouraged to rely on employee self-identification to identify their ethnicity and race.

A few public commenters were concerned about potential employee discomfort with racial and ethnic self-identification, and one public commenter questioned the legality of self-identification under Title VII of the Civil Rights Act of 1964, as amended, (Title VII) and Executive Order 11246, as amended. See Written Comments of Affirmative Action Consulting; Written Comments of Associated Industries of the Inland Northwest. On practical grounds, an employer group raised the question of whether self-identification would be required if it were not "feasible" for employers. The Equal Employment Advisory Council (EEAC) maintained that employers should be permitted to continue determining race and ethnicity by visual observation if an employee declined to self-identify or in other undefined situations in which it was "unduly burdensome or otherwise not practical or feasible" to extend an invitation to self-identify. See

Written Testimony for Hearing of Jeffrey A. Norris of EEAC.

The Commission reaffirms its position that self-identification is the preferred method for gathering ethnic and racial information for the EEO-1 report. Self-identification is key to the government's goal of understanding the increasing complexity of race in America. In the 1990s, OMB recognized that a new federal system for reporting racial and ethnic data would need to reflect the increasing diversity of the Nation's population due to growth in immigration and interracial marriage. See Standards for the Classification of Federal Data on Race and Ethnicity, 59 FR 29831, June 9, 1994. The Revised Standards issued by OMB in 1997 called for the enumeration of individuals with a multiracial background in federal reports and stated that self-identification was preferred. See Revised Standards, *supra* note 5. The Commission agrees that self-identification is necessary when federal reports enumerate the racial and ethnic backgrounds of individuals.

The Commission also is convinced that self-identification for the EEO-1 report will not undermine civil rights. Self-identification for EEO-1 purposes is subject to safeguards, as described below. Legally, self-identification does not alter any of the fundamental legal standards of Title VII and Executive Order 11246, which prohibit unlawful employment discrimination on the basis of race and ethnicity, among other bases. Employers are prohibited from using race or ethnic information to make any employment decisions that would violate Title VII and Executive Order 11246.

Employers may use employment records or visual observation to gather race and ethnic data for EEO-1 purposes only when employees decline to self-identify.

New Race Category: Two or More Races

In its June 11, 2003 proposal, the Commission said that the EEO-1 report would require reporting of data about the number of employees who identify with "Two or more races," but would not require reporting of the different races with which these employees identify. Some employers conditionally supported the "Two or more races" category on the EEO-1, while also expressing concern about burden and inaccurate data. The Chamber of Commerce conditionally supported the "Two or more races" category based on coordination with OFCCP's programs under Executive Order 11246. See Written Comments of the Chamber of Commerce. The Society for Human Resources Management (SHRM), however, argued that the Commission's proposal would yield misleading data, because the numbers for specific races would be reduced due to the subtraction of those who identified as "Two or more races," whereas the number of Hispanics or Latinos would not be reduced in this way. See Testimony of Cornelia Gamlem on behalf of SHRM; Written Comments of SHRM. Based on concerns about burden, some employer representatives proposed retaining the EEO-1's current format of single race reporting. See Written Comments of Bank One; Written Comments of Jackson and

Associates Consulting; Written Comments of Avista Corporation. Other employer groups simply argued against detailed reporting schemes for multiple races. See, e.g., Testimony of Jeffrey Norris of EEAC; Written Comments of EEAC; Testimony of H. Juanita M. Beecher of ORC Worldwide; Written Comments of ORC Worldwide. Finally, in light of the potential burden, one commenter questioned the utility of the category for "Two or more races," noting that only a small number of individuals who are currently in the workforce self-identify with multiple races, based on 2000 Census data. See Testimony of Christopher Northup. By contrast, civil rights groups urged the Commission to adopt more detailed racial reporting, in the interests of civil rights enforcement and full compliance with OMB's Revised Standards. The Rainbow/PUSH Coalition, concerned about the advancement of people of color, observed that the category of "Two or more races" would not be meaningful for affirmative action purposes under OFCCP's authority. See Written Testimony for Hearing of Rev. Jesse L. Jackson, Sr., of the Rainbow/PUSH Coalition (read into Hearing Record by Mark Long). The Mexican American Legal Defense and Educational Fund (MALDEF) emphasized the importance for EEO purposes of reporting full racial data about Hispanic or Latino employees and stated that the EEOC could use OMB guidance to allocate data about individuals with multiracial backgrounds into single groups as necessary. See Testimony of Marisa J. Demeo of MALDEF; Written Comments of MALDEF.

The Commission adopts the "Two or more races" category for the final EEO-1. Detailed reporting in separate racial combinations would, at the current time, result only in a marginal enhancement of the utility of EEO-1 data for EEOC enforcement purposes. In the 2000 Census, 2.4% of respondents reported that they were in a category that would qualify as "Two or more races." See Testimony of Christopher Northup. The 2.4%, itself, includes several unique racial combinations; separate reporting for each racial combination would result in even smaller numbers for each one, depending on region. This marginal enhancement of EEO-1 data does not justify, at the current time, the added burden for employers and for the government of detailed data collection and reporting. EEO-1 data about employees of "Two or more races" will be useful to the Commission to analyze national employment trends.

Another central factor in the adoption of "Two or more races" is that it supports OFCCP's use of EEO-1 data. OFCCP's statistical model for selecting contractors for compliance reviews, which is designed to target employer facilities with the highest likelihood of systemic discrimination, uses aggregated "minority" and "nonminority" categories based on EEO-1 data. OFCCP's targeting system requires that EEO-1 data be reported in a format that can be easily folded into this analysis. Adoption of the "Two or more races" category will allow OFCCP to count this new category as "minority" and to continue using the current methodology with minor adjustments.

The Commission intends, however, to turn to its own database of Title VII charges to identify

and study those charges in which employment discrimination on the basis of more than one race is alleged. For example, the EEOC can determine the number of charges filed on the basis of more than one race, and also identify the most common racial combinations on which discrimination charges are filed, as well as the types of discrimination most often alleged by individuals with these multiracial backgrounds. When considered in conjunction with the revised EEO-1 data on "Two or More Races," such analysis of the EEOC's charge database will help the Commission determine whether future changes in the EEO-1 are needed.

Reporting Racial Data for Hispanics or Latinos

The Commission's June 11, 2003 proposal did not require employers to report racial data for Hispanic or Latino employees on the revised EEO-1. In written comments and in testimony, civil rights groups urged the EEOC to change its position and require employers to report the race of Hispanic or Latino employees. MALDEF asserted the importance of reporting full racial data about Hispanic or Latino employees. Rainbow/PUSH agreed, noting that persons of mixed heritage are more likely to face discrimination because of their African ancestry than because of the other racial or ethnic elements of their heritage. See Written Testimony for Hearing of Rev. Jesse L. Jackson, Sr., of the Rainbow/PUSH Coalition (read into Hearing Record by Mark Long). The National Asian Pacific American Legal Consortium (NAPALC) expressed concern that failing to report the racial breakdown of Hispanics or Latinos might artificially inflate data for Latino employees while deflating data for the racial groups. See Written Comments of NAPALC. An employer group, SHRM, expressed concern that failing to report the race of Hispanics or Latinos would result in skewed EEO-1 data. SHRM proposed that all employees, including Hispanics or Latinos, be asked to report the race or ethnicity with which they primarily identify, and also be given the option of choosing the "Two or more races" category." See Testimony of Cornelia Gamlem on behalf of SHRM; Written Comments of SHRM.

The majority of employers, however, focused on the burden to employers of collecting, maintaining, and reporting race data about Hispanic or Latino employees (as well as detailed race data about employees who selected the "Two or more races" category). Several companies pointed out that such detailed reporting would require a complete and burdensome overhaul of their Human Resources Information Systems. See Written Comments of Lozier Corporation; Written Comments of ORC Worldwide; Written Comments of TOC (objecting to a "mind-boggling" number of possible combinations of data to report); Written Comments of SHRM (expressing concern about the burden of overhauling Human Resources Information Systems, in addition to its concerns about skewed data). The Chamber of Commerce endorsed the Commission's proposal for reporting ethnicity and race as a reasonable balance between governmental and private interests, based on its understanding that employers would not be required to report and analyze all ethnic and racial combinations. See Testimony of Kris Meade

on behalf of the Chamber of Commerce. The EEAC concurred with this view. See Testimony of Jeffrey Norris of EEAC; Written Comments of EEAC.

The Commission reaffirms its decision not to require employers to report the race of employees who identify as Hispanic or Latino. For purposes of its own uses of EEO-1 data, the Commission notes that only a small percentage of the population 18 years of age and over chose to identify as both Hispanic and a racial minority group in Census 2000. This suggests that requiring employers to report the race of Hispanic or Latino employees would not significantly improve the utility of EEO-1 data for enforcement purposes. Moreover, such detailed data could not easily be folded into OFCCP's system for targeting contractors for compliance review. Finally, some employers have testified regarding the burden of collecting data about the race of Hispanic or Latino employees.

Ultimately, on the EEO-1 report itself, ethnic and racial data are reported in the same fashion as before the revision; that is, for Hispanic or Latino employees, race data are not reported.

The Two-Question Format

There were many public comments about the Commission's June 11, 2003 proposal to use the "two question format" to collect ethnic and racial data from employees for the EEO-1 report. The "two question format" means that employees are first asked to report their Hispanic or Latino status and second to report the race or races they consider themselves to be.

There were several objections to the "two question format" as proposed. Many commenters objected that the Commission had "singled out" Hispanics or Latinos for different treatment. Some commenters criticized this proposal as an effort to inflate the number of Hispanics or Latinos for political purposes. Other commenters, mostly representatives of the Human Resources field, expressed concern about how to explain the two-question format to employees. Finally, after the October 2003 public hearing, employer groups urged the Commission to keep a "combined" format for the EEO-1, so that employers would only need to ask one question of employees: With which race/ethnicity do you primarily identify? See Supplemental Submissions of National Industry Liaison Group, ORC Worldwide, and EEAC. See also Revised Standards, 62 FR 58782, 58789 (discussing "combined" format).

The Commission retains the two-question format because it has been shown to yield more accurate data about Hispanics or Latinos. This approach is part of a longstanding federal effort to obtain accurate ethnic data. In 1976, in response to an apparent under-count of Americans of Spanish origin or descent in the 1970 Census, Congress passed Public Law 94-311 calling for the collection, analysis, and publication of federal statistics on persons of Spanish origin or descent.

OMB issued the "Race and Ethnic Standards for Federal Statistics and Administrative Reporting" shortly thereafter, adding Hispanic ethnicity to federal reports and encouraging

separate reporting of race and ethnicity. In a further effort to enhance accuracy, OMB's 1997 Revised Standards recommended that federal forms ask two questions: the first about ethnicity; and the second about race. This decision stemmed, in part, from research sponsored by the Bureau of Labor Statistics showing that significantly more people appropriately identified as Hispanic or Latino when they were asked separately about Hispanic or Latino origin. The Commission's decision to adopt a two-question format is part of this ongoing effort to design federal reports that yield a more accurate count of Hispanics or Latinos.

Data Collection: Suggested Questionnaire

The EEOC's "Suggested Employee Questionnaire on Race and Ethnicity" generated extensive public comment. Several employer groups observed that the instructions for the questionnaire strongly encouraged employees to provide multiple race data in much more detail than the proposed EEO-1 required it to be reported. In the opinion of these groups, the lack of consistency between the suggested questionnaire and the revised EEO-1 race and ethnic categories could foster employee mistrust and prove to be administratively burdensome for employers. See, e.g., Written Comments of EEAC; Written Comments of ORC Worldwide. Specifically, employers focused on language in the Suggested Questionnaire that first provided two separate questions for workers to self-identify their ethnicity and their race, but then informed the employees who marked "Yes" to the Hispanic question that their race would not be reported to the government. Other commenters, however, made the point that employers may need to collect data about the race of Hispanic or Latino employees for research or statistical purposes or to defend against potential EEO claims. See, e.g., Written Comments of Chamber of Commerce (noting that many Chamber members commented that race information for Hispanic or Latino individuals would be beneficial for purposes of conducting voluntary internal analyses of their workforce and/or addressing potential allegations of discrimination).

Employer groups made several other suggestions about language, for example, urging the Commission to emphasize the voluntary nature of the questionnaire. However, one employer group urged the Commission to make the questionnaire a mandatory government form, like the I-9. See Supplemental Submission of ORC Worldwide.

In response to these comments, the Commission will not adopt the "Suggested Employee Questionnaire on Race and Ethnicity." Employers must, at a minimum, have the data that are necessary to complete the EEO-1 report, which lists employee ethnicity or race in a total of seven categories. The Commission notes that some employers may find it necessary for research or statistical purposes, or for self monitoring, to collect more detailed data than needed to complete the EEO 1 report. We commend such efforts.

As to the method for collecting data, the basic principles for ethnic and racial self identification for purposes of the EEO 1 report are:

1. Offer employees the opportunity to self-identify;
2. Provide a statement about the voluntary nature of this inquiry for employees. For example, language such as the following may be used (employers may adapt this language):

"The employer is subject to certain governmental recordkeeping and reporting requirements for the administration of civil rights laws and regulations. In order to comply with these laws, the employer invites employees to voluntarily self-identify their race and ethnicity. Submission of this information is voluntary and refusal to provide it will not subject you to any adverse treatment. The information will be kept confidential and will only be used in accordance with the provisions of applicable laws, executive orders, and regulations, including those that require the information to be summarized and reported to the federal government for civil rights enforcement. When reported, data will not identify any specific individual."

Job Categories

The public comments and testimony about the proposed job categories focused on three main issues: subdividing Officials and Managers into hierarchical subcategories; renumbering job categories so that Service Workers appeared earlier on the list; and adding minor, new language to the definitions of Professionals and Technicians.

Subdividing Officials and Managers

The Commission's June 11, 2003 proposal divided Officials and Managers into three hierarchical subcategories to gather data about the progress of women and minorities in management. The proposed subcategories, based on responsibility, general lines of reporting, and skill, were: Executive/Senior Level Officials and Managers (formulate policies and set strategies); Mid Level Officials and Managers (lead major business units in implementing Executives' strategies); and First Level Officials and Managers (implement policies in daily operations and report to the Mid Level Managers).

Some employer groups opposed the proposal as burdensome and unproductive. For example, the Chamber of Commerce wrote that organizations with more than three levels of management "will undoubtedly struggle with the appropriate placement for their 'mid-level' management," resulting in discrepant placement for managers who do the same functions for different companies. Although the Chamber favored keeping a single category for Officials and Managers, it urged the Commission to consider two levels of management (Senior and Other) as an alternative. The EEAC urged retention of the status quo, arguing that the new subcategories

would yield numbers that would be too small to support meaningful statistical analysis for each establishment.

Other employer groups supported this aspect of the proposal. SHRM noted that it would result in data "permit[ing] both the government and employers a better analysis of progress or lack thereof in glass ceiling initiatives." See Written Comments of SHRM. The National Industry Liaison Group (NILG) wrote that this proposal would enhance affirmative action and diversity planning and also allow "for a more precise analysis of EEO-1 trend data." See Written Comments of NILG. ORC Worldwide testified that "many ORC members already report their officials and managers in this manner so the subdivision [would] not [be] seen as an additional burden." (Referring to OFCCP's Corporate Management Reviews). See Written Testimony for Hearing of H. Juanita M. Beecher of ORC Worldwide.

Civil rights groups supported this change. The National Partnership for Women & Families and the Women Employed Institute observed that the proposed EEO-1 would report basic data reflecting major differences in job content, wage rates and opportunities without unfairly burdening employers. See Written Comments of National Partnership for Women & Families and Women Employed Institute. NAPALC agreed that more detailed management data were necessary to remedy employment discrimination affecting Asians, especially given studies showing that Asians and Pacific Islanders are not enjoying upward mobility in the workforce commensurate with their high levels of education. See Written Comments of NAPALC. Finally, the Leadership Conference on Civil Rights, joined by MALDEF, commended the proposal as an opportunity to correct the overly-broad categorization of "Officials and Managers" and to obtain data about racial and gender stratification occurring at or above the "glass ceiling." See Testimony of Wade Henderson of the Leadership Conference on Civil Rights; Testimony of Marisa J. Demeo of MALDEF.

The Commission continues to believe that a single category for all Officials and Managers is no longer acceptable. It conflates data about jobs of widely discrepant responsibility, compensation and skill, and thereby risks obscuring important trends in the employment of women and minorities. The proposal to subdivide this category is therefore consistent with increased interest in glass ceiling issues in recent years. The Commission recognizes, however, that employer groups raised legitimate concerns about the likelihood of inconsistent categorization of middle level managers who perform the same functions at different companies. We therefore adopt two subcategories of Officials and Managers: Executive/Senior Level Officials and Managers; and First/Mid Level Officials and Managers. The EEO-1 Instruction Booklet includes a "Description of Job Categories" which provides significantly more detailed descriptions of the two tiers of Officials and Managers. These descriptions, reproduced below, should be helpful to employers in assigning Official and Manager positions to the appropriate subcategory:

Executive/Senior Level Officials and Managers. Individuals who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products and services, within the parameters approved by boards of directors or other governing bodies. Residing in the highest levels of organizations, these executives plan, direct, or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the CEO, whose responsibilities require frequent interaction with the CEO. Examples of these kinds of managers are: chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

First/Mid Level Officials and Managers. Individuals who serve as officials and managers, other than those who serve as Executive/Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. These officials and managers receive directions from Executive/Senior Level management and typically lead major business units. They implement policies, programs and directives of Executive/Senior Level management through subordinate managers and within the parameters set by Executive/Senior Level management. Examples of these kinds of officials and managers are: vice presidents and directors; group, regional or divisional controllers; treasurers; and human resources, information systems, marketing, and operations managers. The First/Mid Level Officials and Managers subcategory also includes those who report directly to middle managers. These individuals serve at functional, line of business segment or branch levels and are responsible for directing and executing the day-to-day operational objectives of enterprises/organizations, conveying the directions of higher level officials and managers to subordinate personnel and, in some instances, directly supervising the activities of exempt and non-exempt personnel. Examples of these kinds of officials and managers are: First-line managers; team managers; unit managers; operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers.

As employers begin the process of assigning Official and Manager positions to the appropriate subcategories, the EEOC will remain available to provide guidance concerning any particular questions that arise.

Classifying Jobs as Executive/Senior Level or First/Mid Level Officials and Managers

The Commission also recognizes that commenters have valid objections to the use of the Occupational Classification Codes (OCC or Census codes) as a basis for subdividing Officials and Managers. See, e.g., Testimony of Cornelia B. Gamlem on behalf of SHRM; Testimony of H. Juanita M. Beecher of ORC Worldwide; Written Comments of EEAC. After revisiting this issue, the Commission agrees that Census codes should not be used to subdivide Officials and Managers. The Census codes emphasize skill and training, regardless of level of responsibility, whereas the EEO-1 job categories – especially the management subcategories – emphasize differences in responsibility and influence. For example, in categorizing a computer and information systems manager, the Census codes would place the Chief Technology Officer at a headquarters of a large corporation (who has regular interaction with the CEO) in the same category as an IT manager at a regional office (who has little if any interaction with the CEO). Instead of using Census codes, the Commission will categorize Officials and Managers based on their level of responsibility and influence in the organizational hierarchy, as described above. The intention is for each subcategory of Officials and Managers to include individuals with equivalent levels of influence and responsibility at different organizations, even though their titles may not always be the same. Executive/Senior Level Officials and Managers are defined as those who plan, direct and formulate policy, set strategy and provide the overall direction of enterprises/organizations. They include, in larger organizations, those individuals within two reporting levels of the CEO, whose responsibilities require frequent interaction with the CEO. First/Mid Level Managers are defined as those who direct implementation or operations within the specific parameters established by Executive/Senior Level management, as well as those who oversee implementation of day-to-day goals. Moreover, in the past, the Officials and Managers category contained non-managerial officials with expertise in business and financial occupations. EEAC opposed the placement of these occupations within the Officials and Managers category, expressing doubt that their inclusion would improve the ability to assess the utilization of minorities and women in these activities. See Written Comments of EEAC. After further deliberation, EEOC concludes that in the revised ten category system, individuals in business and financial occupations should be assigned to the Professional category. Including these individuals within the Officials and Managers category makes the data on management officials less useful to EEOC in analyzing trends in mobility of minorities and women within the upper reaches of organizations.

Census Occupational Codes for Job Categories other than Officials and Managers

Some commenters and witnesses generalized their arguments against using Census occupational codes to subdivide Officials and Managers to make the broader point that Census codes should not be used to classify any jobs for the EEO-1. See, e.g., Testimony of H. Juanita

M. Beecher of ORC Worldwide; Written Comments of ORC Worldwide; Written Comments of Bank One.

Employer groups who opposed requiring the use of OCC codes to classify jobs, however, noted that this information was "welcome as guidance" from the Commission. See Written Testimony for Hearing of H. Juanita M. Beecher of ORC Worldwide; see also Written Comments of SHRM (recommending that the suggested Census occupational classification codes be a recommendation, but not a requirement). Consultant Christopher Northup, recognizing that the Census occupational codes had been provided to guide employers, said that the codes can be "helpful and useful to employers" to classify jobs in the EEO-1 job categories other than Officials and Managers. See Written Testimony for Hearing of Christopher Northup.

The Commission believes that the Census codes may provide useful guidance for purposes of classifying jobs for the EEO-1. The Commission will offer, as an Internet reference and resource for employers, the EEO-1 "Job Classification Guide," providing guidance about the range of Census Occupational Codes for each broad EEO-1 job category.

Other Job Category Issues

Commenters uniformly agreed that the proposal to renumber the EEO-1 job categories, to move Service Workers from the ninth category up to the sixth category, would not improve the quality of EEO-1 data and would only impose a burden on employers. The Commission finds the arguments persuasive and will return to the same order for EEO-1 job categories as in the previous EEO-1 reports. Additionally, although MALDEF argued in favor of formally subdividing the EEO-1 category for Service Workers into sub-groups, the Commission will retain the current structure at this time. The four subcategories mentioned in the narrative description of the Service Workers in the "Description of Job Categories" – food, cleaning, personal, and protective – were introduced to provide clarity and not to alter the reporting category itself.

Some commenters inquired whether the changes to the descriptions for the Professionals and Technicians categories, as proposed in the initial June 11, 2003 notice, should change the way these jobs are reported on the EEO-1. These revisions reflect changing workforce dynamics as to the composition and number of occupations being measured but do not change reporting. For example, new jobs have been created (such as emergency medical technician) and other jobs have changed drastically (such as computer programmer). Similarly, many jobs with qualifications which, three decades ago, could be obtained through experience, now require specific educational attainment, especially those with scientific and technical components. Because the Commission is cognizant that the qualifications of certain jobs within the Professionals and Technicians categories can still be met through experience, however, that possibility is maintained in the revised descriptions.

There is one alteration to the reporting requirements that affects the Professional category. Individuals in business and financial occupations, previously reported in the Officials and Managers category, are assigned to the Professional category in the revised ten category system.

Establishments in the State of Hawaii

In response to the June 11, 2003 proposal, one commenter requested that EEOC clarify EEO-1 reporting requirements for establishments in Hawaii. See Written Comments of Automatic Data Processing, Inc (ADP). Under the prior EEO-1 report, establishments located in Hawaii were not required to report the race/ethnicity of employees, but were instead permitted to report employment data by gender alone. This exemption was spelled out in Section D of the prior EEO-1 Instruction Booklet. The proposed revised EEO-1 Instruction Booklet, issued in conjunction with the June 11, 2003 proposal and available on the Commission's website at <http://www.eeoc.gov/eeo1/newinstructionbooklet.html>, removes this exemption. The final revised Instruction Booklet, as adopted by the Commission, does not exempt establishments located in Hawaii. Therefore, employers will need to complete the revised EEO-1, reporting the gender, race and ethnicity of employees in each of the new job categories, for establishments located in Hawaii.

Effective Date of the Revised Form

The revised form will become effective with the 2007 EEO-1 reporting deadline. At the hearing, employer representatives made persuasive arguments about the need for lead time in terms of budgeting, implementing and training personnel in order to submit the revised EEO-1 Report. See Response of Jeffrey Norris of EEAC to Question from Commissioner Miller. Additionally, the EEOC is now processing EEO-1 data internally and itself needs time to transition to the new format.

Resurveying the Workforce

In an effort to minimize burden for employers during this transitional period, the Commission will not mandate that employers resurvey their workforce before submitting the first EEO-1 form in the new format. Employers should keep in mind, however, that opportunities to further resurvey without additional burden should be utilized as much and as soon as possible, for example, using routine updates of employees' personal information to obtain updated EEO-1 data. Employers also should seek self-identification of new employees under the new ethnic and

racial categories as soon as possible. When covered employers start to report race and ethnic information using this new format for establishments in Hawaii, they will report "Asians" separately from "Native Hawaiians or Other Pacific Islanders"

PRA Burden Discussion

Burden hours are made up of two components. First is the aggregate number of hours required to report the annual EEO-1 data. Second is a one-time estimate of total hours required for employers to implement the revised EEO-1.

The Commission received several comments on its original estimate of respondent burden. Almost all the comments pertained to the estimate of the one-time burden associated with the proposed changes. Commenters believed that the Commission's estimates were too low.

Annual burden calculation

The Commission's estimate of the annual reporting hours for the proposed form used as a baseline the long-established burden hours for the current EEO-1 report, or 402,700 hours. See *infra*. The revised estimate of burden for the new EEO-1 form was calculated based on the increase in the size of the new form over the old one. In terms of matrix cells, the revised form has 1.5 times as many cells as the old one. Thus, as a first step in the calculation, the new annual burden was estimated to be about 50% higher than the current burden, or 599,000 hours. The EEOC introduced on-line filing with the 2003 EEO-1 submission. Preliminary reporting statistics show that more than 80% of reporting employers are filing on-line. An EEO-1 form filed on-line is estimated to take no more than one hour to complete, as compared to five hours for a paper form. Taking the proportion of on-line filers into account, it could be argued that the annual burden of the revised form is actually less than the estimated 599,000 hours.

One-Time Implementation Burden

The EEOC estimated that this one-time implementation nationwide would collectively take 572,000 hours. The Commission is estimating 3.4 hours per EEO-1 report, based on historical EEO-1 processing statistics and the Commission's own in-house estimate of the time needed to implement these revisions. The Commission recognizes that larger employers would have a larger time investment. For instance, the largest employer in the EEO-1 file has almost 4,000 establishments, and thus files the equivalent of over 4,000 EEO-1 forms. At 3.4 hours per form, the estimate for this employer to implement the new EEO-1 is over 13,000 staff hours. By contrast, for the over 14,000 employers who file one EEO-1 form each year, it would only take

3.4 hours each to implement the changes.

Overview of This Information Collection

Collection Title: Employer Information Report (EEO 1).

OMB Number: OMB Number 3046 0007.

Frequency of Report: Annual.

Type of Respondent: Private industry employers with 100 or more employees and certain federal government contractors and first tier subcontractors with 50 or more employees.

Description of Affected Public: Private industry employers with 100 or more employees and certain federal government contractors and first tier subcontractors with 50 or more employees.

The burden hours are translated into cost by multiplying the burden hours by the estimated average salary of a human resources, training, or labor relations specialist, the type of person who would most likely complete the annual EEO-1 form.

Current Revised

Annual Reporting Hours:	402,700	599,000
Annual Respondent Cost:	\$7.7 million	\$11.4 million
Federal Cost:	\$1.3 million	\$2.1 million
Number of Forms:	1	1

Abstract: Section 709 (c) of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e 8(c)), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations set forth in the Code of Federal Regulations, Title 29, Chapter XIV, Subpart B, § 1602.7. Employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees have been required to submit EEO 1 reports annually since 1966. The individual reports are confidential. The EEO 1 data are used by the EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP), Department of Labor, and several other federal agencies. Pursuant to Section 709 (d) of Title VII of the Civil Rights Act of 1964, as amended, EEO-1 data are also shared with eighty-six State and local Fair Employment Practices Agencies (FEPAs).

Burden Statement:

The estimated number of respondents included in the annual EEO 1 report survey is 45,000 private employers. The estimated average number of establishment-based responses per reporting company is between 3 and 4 EEO 1 reports annually. The annual number of responses is approximately 170,000. The revised form is estimated to impose 599,000 burden hours annually. It is also estimated that the total one time implementation burden for the revision for all reporters will be about 572,000 hours or about \$10.9 million. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

EEO-1 Data on Race and Ethnicity

Revised Race and Ethnic Category Definitions

Table 1 below compares the current EEO-1 race/ethnic categories in the first column, as they have appeared on the EEO-1 since 1977, with the revised EEO-1 categories in the second column. Definitions of the revised EEO-1 ethnicity and race categories are in accordance with the 1997 revised standards and are as follows:

Ethnicity

Hispanic or Latino A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

Race

White A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Black or African American A person having origins in any of the Black racial groups of Africa.

Native Hawaiian or Other Pacific Islander A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Asian - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

American Indian or Alaska Native A person having origins in any of the original peoples of

North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Two or More Races - All persons who identify with more than one of the above five races.

Description of Revised EEO-1 Job Categories

The revised EEO-1 job categories are listed below, including a brief description of the skills and training required for occupations in that category and examples of the jobs that fit each category. These job categories are primarily based on average skill levels, knowledge, and responsibility involved in each occupation within the job category. They are not industry based. The examples presented below are illustrative and not intended to be exhaustive of all job titles in a job category.

The Officials and Managers category as a whole is to be divided into the following two subcategories: Executive/Senior Level Officials and Managers and First/Mid Level Officials and Managers. These subcategories are intended to mirror the employer's own well-established hierarchy of management positions. The subcategories will allow assessment of the extent to which minorities and women have access to power and decision making jobs in the employer's workforce. Small employers who may not have two well-defined hierarchical steps of management should report their management employees in the appropriate category.

Executive/Senior Level Officials and Managers. Individuals who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products and services, within the parameters approved by boards of directors or other governing bodies. Residing in the highest levels of organizations, these executives plan, direct, or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the CEO, whose responsibilities require frequent interaction with the CEO. Examples of these kinds of managers are: chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

First/Mid Level Officials and Managers. Individuals who serve as managers, other than those who serve as Executive/Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. These managers receive directions from Executive/Senior Level management and

typically lead major business units. They implement policies, programs and directives of Executive/Senior Level management through subordinate managers and within the parameters set by Executive/Senior Level management. Examples of these kinds of managers are: vice presidents and directors; group, regional or divisional controllers; treasurers; and human resources, information systems, marketing, and operations managers. The First/Mid Level Officials and Managers subcategory also includes those who report directly to middle managers. These individuals serve at functional, line of business segment or branch levels and are responsible for directing and executing the day-to-day operational objectives of enterprises/organizations, conveying the directions of higher level officials and managers to subordinate personnel and, in some instances, directly supervising the activities of exempt and non-exempt personnel. Examples of these kinds of managers are: first-line managers; team managers; unit managers; operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers.

Professionals. Most jobs in this category require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications. Examples of these kinds of positions include: accountants and auditors; airplane pilots and flight engineers; architects; artists; chemists; computer programmers; designers; dietitians; editors; engineers; lawyers; librarians; mathematical scientists; natural scientists; registered nurses; physical scientists; physicians and surgeons; social scientists; teachers; and surveyors.

Technicians. Jobs in this category include activities that require applied scientific skills, usually obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required. Examples of these types of positions include: drafters; emergency medical technicians; chemical technicians; and broadcast and sound engineering technicians.

Sales Workers. These jobs include non-managerial activities that wholly and primarily involve direct sales. Examples of these types of positions include: advertising sales agents; insurance sales agents; real estate brokers and sales agents; wholesale sales representatives; securities, commodities, and financial services sales agents; telemarketers; demonstrators; retail salespersons; counter and rental clerks; and cashiers.

Administrative Support Workers (formerly Office and Clerical). These jobs involve

non-managerial tasks providing administrative and support assistance, primarily in office settings. Examples of these types of positions include: office and administrative support workers; bookkeeping, accounting and auditing clerks; cargo and freight agents; dispatchers; couriers; data entry keyers; computer operators; shipping, receiving and traffic clerks; word processors and typists; proofreaders; desktop publishers; and general office clerks.

Craft Workers (formerly Craft Workers (Skilled)). Most jobs in this category include higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples of these types of positions include: boilermakers; brick and stone masons; carpenters; electricians; painters (both construction and maintenance); glaziers; pipelayers, plumbers, pipefitters and steamfitters; plasterers; roofers; elevator installers; earth drillers; derrick operators; oil and gas rotary drill operators; and blasters and explosive workers. This category includes occupations related to the installation, maintenance and part replacement of equipment, machines and tools, such as: automotive mechanics; aircraft mechanics; and electric and electronic equipment repairers. This category also includes some production occupations that are distinguished by the high degree of skill and precision required to perform them, based on clearly defined task specifications, such as: millwrights; etchers and engravers; tool and die makers; and pattern makers.

Operatives (formerly Operatives (Semi-skilled)). Most jobs in this category include intermediate skilled occupations and include workers who operate machines or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: textile machine operators; laundry and dry cleaning workers; photographic process workers; weaving machine operators; electrical and electronic equipment assemblers; semiconductor processors; testers, graders and sorters; bakers; and butchers and other meat, poultry and fish processing workers. This category also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: bridge and lock tenders; truck, bus or taxi drivers; industrial truck and tractor (forklift) operators; parking lot attendants; sailors; conveyor operators; and hand packers and packagers.

Laborers and Helpers (formerly Laborers (Unskilled)). Jobs in this category include workers with more limited skills who require only brief training to perform tasks that require little or no independent judgment. Examples include: production and construction worker helpers; vehicle and equipment cleaners; laborers; freight, stock and material movers; service station attendants; construction laborers; refuse and recyclable materials collectors; septic tank servicers; and sewer pipe cleaners.

Service Workers. Jobs in this category include food service, cleaning service, personal service, and protective service activities. Skill may be acquired through formal training, job-related training or direct experience. Examples of food service positions include: cooks; bartenders; and other food service workers. Examples of personal service positions include: medical assistants and other healthcare support occupations; hairdressers; ushers; and transportation attendants. Examples of cleaning service positions include: cleaners; janitors; and porters. Examples of protective service positions include: transit and railroad police and fire fighters; guards; private detectives and investigators.

As employers begin the process of assigning their employees to the revised ten category system, the EEOC will remain available to provide guidance concerning questions that arise.

Dated:

For the Commission

Signed

Cari M. Dominguez

Chair