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August 24, 2026

Chairwoman Andrea Lucas
Equal Employment Opportunity Commission
131 M Street NE, Washington, DC 20507

Re: Comment in Support of Proposed Removal of Reporting Requirements
RIN: 3046-AB37

Dear Chairwoman Lucas,

Independent Women writes in support of the proposed removal of routine demographic reporting requirements. Currently, over two million employers covered by Title VII of the Civil Rights Act (CRA) must file annual reports with demographic, position, and salary information to the Equal Employment Opportunity Commission (EEOC), regardless of whether they are being or have ever been accused of a Title VII violation. To many, this mass preemptive data collection might seem relatively harmless, but the reality is that requiring it has very substantial downsides, not only in cost to taxpayers, but in terms of the incentives the collection creates.

Unfortunately, instead of supporting the purpose of the CRA and the EEOC—which is to ensure that American workers are judged fairly on the basis of merit, and not on protected characteristics like race, sex, or national origin—requiring employers to create spreadsheets of their employees by bean-counting characteristics has for decades resulted in a strong incentive to actually discriminate against real individuals on the basis of those characteristics in the pursuit of more "equitable" outcomes on a mass level.

In short, mass, preemptive data collection creates incentives for employers to do precisely what Title VII forbids: discriminate on the basis of race and sex. The proposed rule would eliminate those data collection requirements (forms EEO-1 through EEO-6, depending on the nature of the employer), and therefore lessen the incentive for employers to impermissibly and unjustly discriminate. For this reason, Independent Women's Law Center supports the rescission of required data collection in the case of employers who are not under investigation for specific violations of Title VII.

Forcing Companies to Bean Count Encourages Real Discrimination

Disparities Exist in Everything, Even Absent Any Discrimination

"Gap statistics" have been a huge part of American public discourse, and more unfortunately, to some extent the enforcement of the CRA, for decades. "Women make 77 cents on the dollar compared to men." "Hispanic students make up a disproportionately small percentage of university graduates." "Black women must work into the following **July** to catch up to what white men made the previous year." The implication of these statistics is usually to attribute them to some form of discrimination, but very often that simply is not the explanation.

For decades, Independent Women has pushed back against the use of wage gap statistics between the sexes as an example of discrimination. Instead, the difference between the median salaries of men and women is attributable to a whole **series of choices** made relating to college majors, professions, work histories, and salary-flexibility or family tradeoffs, among practically endless such factors. Once even the most obvious of these factors are accounted for, **the gap shrinks radically**, and in some cases, **reverses**.

The "pay gap" among the sexes is far from the only place in which disparities arise for non-discriminatory reasons. In fact, despite every attempted "remedy" deployed against them, disparities persist everywhere—in every profession, school, boardroom, prison, scientific award category, sports field, and socioeconomic tier for reasons that are cultural, political, family-based, genetic, religious, and natural.

Sometimes, even very large disparities among different groups arise from reasons that are completely historically specific. For example, **the vast majority of nail salon workers** in the United States have an ethnic Vietnamese background, despite Vietnamese making up just 0.75% of the total population. This is not because other ethnic groups are being discriminated against in the manicure business, but because of a single Hollywood actress, Tippi Hedren, who brought her nail technician to train women fleeing the Vietnam War in a Sacramento refugee camp. From there, those skills spread throughout the relatively small ethnic community, and as a result, a woman going to get a pedicure in the U.S. today is very likely to be going to someone Vietnamese. All without any discrimination of the type forbidden by the CRA.

Disparities are so common and exist so consistently in every sector of life that University of San Diego School of Law professor Gail Heriot has put a large cash reward up for anyone who can come up with a single plausible hiring criterion that does *not* create disparate outcomes. As far as this author knows, **Professor Heriot** has never yet had to part with her cash.

Group-level disparities, in other words, are not the exception, but the norm. As Thomas Sowell wrote in "**Discriminations and Disparities**" back in 2018, "Neither in nature nor among human beings are either equal or randomly distributed outcomes automatic. On the contrary, grossly unequal distributions of outcomes are common, both in nature and among people."

Disparities, then, inevitably exist in every field, and in the data reported by virtually every employer to the EEOC. The real focus of the EEOC, therefore, should not be to concern itself with these disparities in the abstract, but instead to police actual instances of illegal and unjust discrimination. Requiring every employer to report these statistics, in circumstances where no one has even alleged discrimination, is an invitation instead to try to cook the books in a way that is often *actually* discriminatory to employees.

Data Collection Fuels Lawsuits and Fear, and in Turn, Illegal Discrimination in Hiring

The EEOC remains perfectly entitled to collect this kind of demographic information from companies in order to investigate specific allegations of discrimination. The purpose of broad-based data collection, however, is not to help individual complainants find justice, but to enable the EEOC, in the past, and activist groups, today, to continue engaging in sweeping disparate impact lawsuits. The threat of these kinds of lawsuits combined with the collection of bean-counting data is enough to create a real incentive for employers to discriminate against individuals for the sake of aggregate numbers. A typical example of what companies submitting these reports fear is **the lawsuit launched by the EEOC under the Biden administration against the convenience store chain Sheetz**.

Sheetz used a hiring process that screened out certain types of felons. Because black and Native American applicants were more likely to have those felonies on their records, they were hired less often statistically, although many individuals of these backgrounds were hired. The EEOC claimed that under disparate impact liability, the company was violating Title VII, even though at no point did the agency ever even allege that Sheetz was trying to discriminate against applicants with particular racial backgrounds. The fact that more applicants of certain races were screened out was enough for the lawsuit. It is this type of investigation and enforcement that preemptive, broad data collection on race, sex, and national origin enables and encourages. And in turn, this collection encourages employers to *actually* discriminate on the basis of race in a way explicitly forbidden by Title VII and the Constitution in order to make submitted data sets look more "equitable."

This was never how Title VII was intended to be used. The CRA's Senate co-managers clearly disclaimed anything like this when they **argued for its passage**: "There is no requirement in [T]itle VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better ... than members of other groups."

And using the law in this way, when it results in discrimination against individuals from "disfavored" protected groups for the sake of aggregate statistics, runs up against the Constitution's fundamental guarantee of Equal Protection. As the Supreme Court has affirmed with increasing emphasis since ***Students for Fair Admissions*** and ***Allen v. Milligan***, if these types of DEI schemes to "balance" the population books result in real discrimination, no matter which race or sex is on the short side of the wheel, they are incompatible with our colorblind Constitution.

The predictable results of wanting to balance the ledger for the kind of reporting the EEOC now proposes to rescind were sweeping. In previous decades, that rebalancing could be analogized more to a (still absolutely illegal) "thumb" on the scale between reasonably qualified applicants for those of "underrepresented" backgrounds. But for younger Millennial and Generation Z employees, especially after 2020 and the Black Lives Matter protests, the preference for minority, or at least female, job-seekers to match population-level statistics became an overwhelming barrier to advancement and success.

Company after company in industry after industry announced publicly—and then followed through on—explicit racial quotas of the sort that have been illegal under Title VII since 1964. Unlike purely statistical insinuations about disparities, there is ample evidence—both public and private—in this instance, of overt discrimination in hiring and promotion. "For a typical job we'd get a couple hundred applications, probably at least 80 from white guys," one hiring editor in a prominent newsroom recounted to **Compact Magazine**. "It was a given that we weren't gonna hire the best person ... it was jarring how we would talk about excluding white guys." Talent agencies in Hollywood made explicit spreadsheets for television writers' rooms **based on race and sex**, with shorthand for "diverse," "female," and "women and diverse only." Dozens of chief executives in banking, technology, and consulting **declared publicly** that they intended to hire a hard quota of 100,000 black, Latino, and Asian workers over the next decade.

Reporting demographic data to the EEOC was obviously not the only cause of the racial mania that swept through American employment in 2020. But as cases like *Sheetz* demonstrate, data collection absolutely became a basis for implicit threats against companies if they refused to go along with the cultural zeitgeist and discriminate illegally against white men. Preemptive data reporting and the reality of disparities made every employer a potential target, not just of the activist mob, but for an EEOC lawsuit.

The current Office of Legal Counsel, to its credit, recognizes that these types of disparate impact analyses are inconsistent with the purpose of Title VII and the Civil

Rights Act as a whole. They have declared the poisonous doctrine of disparate impact not only reversed for the purposes of this presidency, but unconstitutional. **According to the OLC**, disparate impact liability "fosters the very discrimination its guidelines seek to address." Just so, and preemptively forcing employers to collect bean-counting spreadsheets is the fuel for real discrimination, not a preventative against it.

Outside Group Use

The information collected on EEO-1s has long been used by forces outside the government or the EEOC to put pressure on companies to discriminate in hiring and promotion. For example, activist investors have made **demands for public disclosure** to improve "effective DEI management." Indeed, both inside and outside the walls of the EEOC, activists are quite open about the fact that collecting this data is key to their advocacy for DEI discrimination. "We cannot change what we cannot measure," said the **Policy Director of Equal Rights Advocates**, a group that aggressively pushes DEI and gender quotas.

While left-wing activist groups are perfectly entitled to advocate for DEI, the EEOC is absolutely not required to help them with their missions, especially if by doing so they contribute to the incentive for employers to discriminate against individuals in a way Title VII forbids. As the **NPRM convincingly argues**, the purpose of Title VII—and therefore the EEOC's job—is to ensure and enforce equal treatment and opportunity, not to achieve some particular magical balance of aggregate demographic outcomes. (As the NPRM points out, these racial categories are not even a very accurate match to real and complex ethnic backgrounds, and practically require employers to engage in some quite offensive stereotyping just to report the required data by eyeballing or grilling their employees.)

Other Benefits to Proposed Rule

While the primary problem with data collection as it currently stands is the malincentives it creates to violate anti-discrimination law, eliminating mandatory mass reporting has other benefits. Data collection is expensive, for both employers and taxpayers. The **EEOC estimates** that it spends about $4 million annually to administer the data collection program, and a vastly larger sum of $275 million is spent by private companies themselves in service of collecting and reporting demographic data. If spending these millions, both public and private, was resulting in better enforcement of Title VII's guarantees of equal opportunity in the workplace, it would be money well spent. But at best, this data collection has been unnecessary for enforcement, and as IWLC has argued in this comment, at worst it has amounted to a real incentive to actually violate anti-discrimination law. Surely there are ample better uses of taxpayer money and private compliance costs.

Data Collection Has Created Bad Incentives and Should Be Rescinded

The only purpose of preemptively mass-collecting data on race, sex, and national origin from private employers, governments and their contractors, educational institutions, and unions is to provide the fodder for lawsuits or activist campaigns that take statistical disparities as evidence of impermissible discrimination. To stop collecting this data *en masse* does not preclude its use in any actual, individual discrimination claim; it just removes the implied threat from the EEOC to employers in the past: Make your topline race quotas, or you might be liable based on statistics alone.

The proposed rule, in rescinding these data collection requirements, does not encourage illegal and unjust discrimination in employment; it does the opposite. It removes an enormous incentive for companies to discriminate in a way that is actually illegal, in pursuit of data quota goals, and it moves us closer to the real goal of the CRA and the EEOC: to ensure that in the workplace, Americans are judged not by their race, sex, or national origin, but by their merit and qualifications for the job.

In advancing this proposed rule, the EEOC is siding with the **vast majority of the American people**, even Democrats and moderates, in moving us towards a colorblind, meritocratic future.

Respectfully,

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