



*The State Chamber of  
Commerce*

April 1, 2016

Bernadette Wilson  
Acting Executive Director, Executive Secretariat  
Equal Employment Opportunity Commission  
131 M Street NE  
Washington, DC, 20507

VIA ELECTRONIC SUBMISSION: <http://www.regulations.gov>

Re: **Comments on “Revision of the Employer Information Report (EEO-1)” Federal Register Docket #2016-01544, February 1, 2016**

Dear Ms. Wilson:

On the behalf of the Colorado Association of Commerce & Industry (CACI) and our members, I am writing to comment on the Equal Employment Opportunity Commission’s (“EEOC” or “the Commission”) request (“Request”) to revise the reporting requirements of the Employer Information Report (“EEO-1”) published in the *Federal Register* on February 1, 2016. Starting in 2017, employers with 100 or more employees would be required to collect data on employees’ pay and hours worked and report the number of employees within 12 pay bands by gender, race and ethnicity and by location for each of the EEO-1 job categories.

CACI works with and represents companies across virtually every sector of Colorado’s economy, and these employers represent tens of thousands of employees. As the Colorado State Chamber of Commerce, we have serious concerns about the burden of proposed revisions of EEO-1s in our state; it sends a message that businesses aren’t trusted, as well as raising concerns about potential uses of this data by the EEOC in the future.

CACI supports pay equity and compliance with federal and state laws prohibiting sex-based wage discrimination. However, as explained below, the Request, if adopted, would impose a significant and unjustified burden on our members, result in the collection of unreliable information by the EEOC and would fail to safeguard the confidentiality of our companies’ information.

While proposing this costly and unwarranted change, the EEOC has also failed to establish a solid foundation for the collection of the data. Conducting a meaningful and valid pilot study to identify the most efficient means of pay data collection would have been a start. Had the EEOC conducted a meaningful and valid pilot study, the fallacy of its burden estimates would have immediately become apparent.

In addition to being based on flawed premises, the EEOC woefully underestimates the time and cost of the new reporting requirement. For example: The current EEO-1 form requires employers to enter information into 140 boxes. The revised EEO-1 report would require employers to enter information in 3360 boxes, a 2400 percent increase. By the EEOC’s estimates, compliance with filling out the new EEO-1 form will take only 6.6 hours per organization, per year, and that there will be a one-time cost for developing queries in an existing Human Resources Information System (HRIS) system - of “only” eight hours per filer. However, contrary to the EEOC’s estimation, our existing HRIS cannot be simply or easily modified for this purpose. Moreover, employers do not currently produce W-2 wage information during the time frame for producing and filing EEO-1 reports. Our member businesses would have to completely reconfigure the way W-2 reports are generated. The EEO-1 form also unnecessarily duplicates W-2 information we already provide to the Internal Revenue Service and Social Security Association at the beginning of each calendar year.

Even hypothesizing that the collection process were not overly burdensome, the results will not provide reliable data for identifying compensation disparities based on discriminatory intent. W-2 income does not accurately reflect the compensation of employees in modern workplaces. Many of CACI's member companies have adopted compensation systems that include non-taxable components, such as 401k contributions, deferred stock and options that are not reported as W-2 income in the year they are received. Some even offer charitable contributions to non-profits and projects of an employee's choice – and these are highly popular benefits to give back to communities, but they are not income.

Additionally, company-specific compensation decisions are based on compensation practices that are not accurately captured in W-2 wage information. Simply put: using overly broad job category bands means that the EEOC will not be comparing apples to oranges, it will be comparing lemons to watermelons. Pay within a job title, to say nothing of a job category, can vary wildly based on a host of factors (education, years of experience, expertise, company size, etc.). The proposed one-size-fits-all approach to pay bands and job titles ensures that whatever data is collected will be useless, or at the very least inaccurate, for the EEOC's intended analysis.

CACI and our member companies also have serious concerns about the security of the data that would be collected. Since the EEOC shares data with the Office of Federal Contract Compliance Programs and the Department of Justice, that shared information could be subject to a Freedom of Information Act (FOIA) request. The information contained in these reports would be taken out of context, could be misleading, and could be very damaging to our public reputation. This information in the hands of competitors creates an unfair advantage when it comes to major transactions such as contract bids, and opens the door for employees to be identified (particularly at smaller sites or smaller markets).

### **Conclusion**

In imposing this collection mandate on employers across our state, the EEOC fails to abide by the requirements of information collection under the Paperwork Reduction Act as well as those of the Administrative Procedure Act applicable to formal rulemaking, which, in substance, is EEOC's proposal. The Request relies on employers to collect information in a format that will not be useful in the Commission's efforts to identify potential pay discrimination, it drastically underestimates the burden associated with such collection efforts and fails to safeguard the data our employees have entrusted to us. For all of the previous reasons, CACI and our members respectfully urge the EEOC to rescind its proposed revisions to the EEO-1 report.

Yours truly,

Chuck Berry  
President and CEO  
Colorado Association of Commerce and Industry  
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