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OF THE
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February 8, 2016

Jenny R. Yang
Chair
Equal Employment Opportunity Commission
131 M. Street NE
Washington, DC 20507

**RE: Revision of the Employer Information Report; Request for an Extension
of Time to File Comments**

Dear Chair Yang:

On behalf of the U.S. Chamber of Commerce (Chamber), the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region, we are writing to request a 90 day extension of the deadline for filing comments on the Equal Employment Opportunity Commission's ("EEOC" or "Commission") proposal to revise the Employer Information Report (EEO-1) as published in the *Federal Register* on February 1, 2016 (hereinafter, "proposal").¹

A significant portion of the Chamber's members are responsible for complying with recordkeeping and reporting requirements established by federal anti-discrimination laws and policies, including Title VII of the Civil Rights Act of 1964 and Executive Order 11246. Chamber members file thousands of EEO-1 reports each year in compliance with these laws, policies, and their implementing regulations. Changing EEO-1 reporting would therefore have a considerable impact on Chamber members.

We have begun vetting the proposal with Chamber members and will be able to offer some feedback by the current deadline to submit comments, April 1, 2016. However, an extension of time to file comments would greatly assist us in our ability to provide more robust commentary and to collect additional information that will be

¹ 81 Fed. Reg. 5113.

critical for calculating the full potential cost burden of the proposed changes and for comparing the costs (and benefits) of the proposed strategy to the costs and benefits of alternative strategies that we may suggest for the Commission to consider.

In particular, the proposed revisions to the EEO-1 form raise significant legal and cost considerations. This proposal is far outside the norm of information collection requests for form revisions: (1) it adds two major new categories of information collection, earnings and hours worked, which significantly expand the size, content and structure of the EEO-1 reporting requirement; (2) to comply, many employers will be required to construct new time tracking and accounting systems that they do not currently have for their executive, managerial, administrative, professional and other employees who are exempt from the Fair Labor Standards Act; (3) to comply with the earnings data element of the proposal, most employers will have to integrate information from currently separate information systems that maintain employee gender, race and ethnicity data and that maintain employee compensation data.

EEOC has not adequately investigated and documented the economic costs and other impacts of the proposed new requirements. For example, EEOC estimates that the expanded form (3,600 potential data items) will take the average employer only 6.6 hours to compile the data, enter the data in the specified form, verify accuracy and submit to EEOC. EEOC estimates the cost for this as \$160 per employer but presents no empirical evidence to substantiate the estimated time burden, which amounts to 6.6 seconds per data cell on the form. Furthermore, EEOC's estimate of the one-time "start-up" burden of developing information systems and queries as only 8 hours of labor time at \$47.22 per hour or \$378 per employer. Again, EEOC presents no empirical evidence to substantiate this estimate. Both the onetime cost of \$378 per employer and the on-going annual cost of \$160 per employer are not credible and reflect EEOC's woeful misunderstanding of the speed and ease by which complex and customized data can be compiled from computer information systems. If EEOC had made the effort to interview experienced information system and human resource management professionals in affected establishments about the feasibility and cost of compiling the proposed data, EEOC could have arrived at a more realistic estimate. This is but one example of areas that need further examination.

Before employers can comment cogently on the proposals, it will be necessary for employers and their representative organizations to conduct extensive empirical data surveys and analyses. Accordingly, we are now in the process of pilot testing our own survey instrument with a small number of firms. We plan to seek data regarding companies' current procedures and costs of complying with the EEO-1 report requirement as a basis for better understanding of the potential difficulties and costs

that companies may encounter in complying with the proposed new report. We will seek survey responses from a variety of firms in terms of both size and industry. In addition to surveying firms that will be required to directly report, we will also survey companies that provide human resource management and payroll software and services to companies. We estimate that it will require up to 90 days beyond the current April 1, 2015, comment deadline to complete, tabulate and analyze the survey results from a fully representative sample of firms.

In addition to the need for empirical field research and pilot tests to estimate the costs and time requirements for adjusting information system to accommodate such a drastic shift in reporting requirements, employers contemplating comment on the proposal need time to conduct research regarding the utility of the proposed information collection: Will the proposed information items yield meaningful and actionable data? To answer the important questions about the statistical implications, reliability and potential misleading conclusions that may result from the proposed information collection, potential commenters need time to conduct appropriate tests and experiments.

The ordinary 60 day comment period is wholly inadequate to deal with and respond to the significant changes set forth in the proposal. It is critical that modifications to EEO-1 reporting only be made through a deliberate and thorough process taking into account the views and comments of all interested stakeholders. Therefore, we respectfully request that the EEOC extend the deadline for receiving comments on the proposal for 90 days until June 30, 2016.

Thank you for your consideration of this request. Please do not hesitate to contact us if the Chamber may be of further assistance in this matter.

Sincerely,



Randel K. Johnson
Senior Vice President
Labor, Immigration & Employee Benefits



James Plunkett
Director
Labor Law Policy

cc: Bernadette B. Wilson, Acting Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission

Howard Shelanski, Administrator, Office of Information and Regulatory Affairs

Sen. Lamar Alexander, Chairman, Senate Committee on Health Education, Labor and Pensions

Rep. John Kline, Chairman, House Committee on Education and the Workforce

Sen. Roy Blunt, Chairman, Senate Committee on Appropriations' Subcommittee on Labor, Health and Human Services, Educations and Related Agencies

Rep. Tom Cole, Chairman, House Committee on Appropriations' Subcommittee on Labor, Health and Human Services, Educations and Related Agencies

Janis Reyes, Assistant Chief Counsel, U.S. Small Business Administration, Office of Advocacy