U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

August 24, 2026

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

Submitted electronically via www.regulations.gov

Re: Notice of Proposed Rulemaking: Removal of Reporting Requirements; RIN 3046-AB37; 91 Fed. Reg. 46332 (July 23, 2026)

Dear Mr. Windmiller:

The U.S. Chamber of Commerce (the "Chamber") submits these comments in response to the Equal Employment Opportunity Commission's ("EEOC" or "Commission") Notice of Proposed Rulemaking ("NPRM"), "Removal of Reporting Requirements," RIN 3046-AB37, 91 Fed. Reg. 46332 (July 23, 2026).

The Chamber is the world's largest business organization, representing the interests of more than three million businesses and organizations of every size, sector, and region, with substantial membership in all fifty states. The Chamber's mission is to advance human progress through an economic, political, and social system based on individual freedom, incentive, initiative, opportunity, and responsibility. The Chamber itself (as an employer), as well as a substantial number of Chamber members, employs at least 100 employees and thus is directly impacted by the NPRM.

The NPRM proposes to rescind the filing requirements for each of the EEO-1, EEO-2, EEO-3, EEO-4, EEO-5, and EEO-6 reports, as well as the recordkeeping and preservation requirements associated with those reports. The Chamber's comments focus on the Employer Information Report ("EEO-1," "EEO-1 Report," or "Report"), and to an employer's continued collection of underlying workforce demographic data that has historically been contained in that Report, which is most relevant to the Chamber and its members.

While the Chamber supports the EEOC's rescission of the EEO-1 Report in light of the very limited usefulness of the Report, resulting burden, and the Report's related confidentiality risks, it urges the EEOC to accompany any rescission with technical assistance or guidance regarding employers continuing obligations and practices with respect to collection of workforce demographic data to ensure the benefits of such collection and analysis are not compromised or put those employers at risk of EEOC enforcement. The Chamber also urges the EEOC consult with interested state agencies and coordinate any changes to existing EEO-1 Report filing requirements with those adopted by state agencies, as required by Section 709(d) of Title VII, as amended, 42 U.S.C. § 2000e-8(d).

I. Introduction and Summary of Position

For the last 60 years, the EEOC has required employers to file the EEO-1 Report and adopt recordkeeping and record preservation requirements relating to data contained within the Reports.[1] Over this period, the EEOC has also requested clearance from the Office of Management and Budget ("OMB") to make various other changes to the data collected and reported in the EEO-1 Report.

The Chamber has a long and consistent history of engagement on the EEO-1 Report (including proposed revisions and expansions of the Report to add a salary data Component 2) and related equal employment opportunity matters, spanning more than two decades. That engagement includes testimony before the Commission on October 29, 2003[2] and March 16, 2016,[3] testimony before the U.S. House of Representatives Subcommittee on Workforce Protections on June 10, 2014,[4] and detailed written comments concerning the EEO-1 Report submitted in 2016,[5] 2017,[6] and 2019.[7]

Throughout that history, the Chamber has been a long-standing supporter of reasonable and necessary steps designed to achieve the goal of equal employment opportunity for all, including non-discriminatory compensation and other employment practices for all employees, regardless of their race, color, religion, sex, or national origin. At the same time, the Chamber has urged that any recordkeeping and reporting requirements the Commission prescribes, including information-collection instruments, be genuinely useful, minimally burdensome, and

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[1] The EEOC derives its authority from Section 709(c)(3) of Title VII, as amended, 42 U.S.C. § 2000e-8(c)(3).

[2] *See* Remarks of the United States Chamber of Commerce, EEOC Public Hearing of October 29, 2003 on Proposed Revised Employer Information Report (EEO-1), available at: https://www.eeoc.gov/meetings/public-hearing-october-29-2003-proposed-revised-employer-information-report-eeo-1/meade.

[3] *See* Testimony before the EEOC, "The Equal Employment Opportunity Commission's Proposed Revisions to the Employer Information Report (EEO-1)," March 16, 2016, available at: https://static.politico.com/a0/6b/524b4e8541d999642a56e0eb2a42/us-chamber-of-commerce-testimony-eeo-1-form.PDF.

[4] *See* Testimony before the US House of Representatives Committee on Education and the Workforce Subcommittee on Workforce Protections, "The Regulatory and Enforcement Priorities of the EEOC: Examining the Concerns of Stakeholders," June 10, 2014, available at: https://edworkforce.house.gov/uploadedfiles/testimony_olson.pdf.

[5] *See* US Chamber Comment Letter, "Equal Employment Opportunity Commission's Proposed Revisions to the Employer Information Report," April 1, 2016, available at: https://www.crowell.com/a/web/wHRuxpkYUNiEFVtbnpzaXm/4TtivW/20160401-USCC-EEO1-Comments.pdf.

[6] *See* US Chamber Letter to OMB Requesting Review of the EEOC's Revisions to the EEO-1 Form, February 27, 2017, available at: https://www.uschamber.com/employment-law/https-www-uschamber-com-letter-letter-omb-requesting-review-the-eeocs-revisions-the-eeo-1-form.

[7] *See* US Chamber Comments to EEOC on EEO-1 Form, November 12, 2019, available at: https://www.uschamber.com/employment-law/comments-eeoc-eeo-1-form.

protective of sensitive employer and employee data as required under the Paperwork Reduction Act[8] ("PRA") and reasonable, necessary and appropriate as required by Section 709(c)(3) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-8(c)(3).

As the NPRM states: "The Commission is not required to impose these [the EEO-1 Report] reporting requirements on regulated entities, and it lies within the Commission's discretion to eliminate them, if they are inconsistent with the law, no longer useful to enforce anti-discrimination laws, or counter to the EEOC's enforcement priorities." NPRM at 46334.

Accordingly, the Chamber agrees that the Commission has the legal authority to rescind the longstanding EEO-1 reporting requirement. As the Chamber has explained in prior submissions, the EEO-1 Report has offered limited practical benefit relative to the recurring administrative burden it imposes on covered employers along with attendant confidentiality risks.[9] Rescission of the mandatory filing obligation is therefore consistent with the Chamber's longstanding concerns regarding the form's burden, limited utility and documented confidentiality risks.

The Chamber notes that the EEOC's decision to rescind the annual reporting requirement does not implicate in any manner a private employer's decision to compile and maintain such data for the reasons set forth herein. The NPRM is silent on this issue.

Although not noted in the NPRM, under Section 709(d) of Title VII, the EEOC is required to consult and coordinate with other interested State and Federal agencies in connection with its prescription of recordkeeping and reporting requirements on a federal level. Rescission without consultation and coordination with state agencies that separately require employers within their state to collect such data is not aligned with Title VII's direction to the EEOC to consult and coordinate with interested state agencies.

Rescission, without technical assistance or guidance regarding an employer's collection of workforce demographic data, or consultation and coordination with relevant state agencies, is also not consistent with Title VII's direction to the EEOC to provide technical assistance regarding an employer's obligations under Title VII. Employers need guidance specifically regarding how the proposed rescission of the obligation to file an EEO-1 Report interacts with an employer's obligations to compile and maintain such data under state and local laws, as well as under Sections 703(h), 703(k)(1)(B)(ii), and 709(c)(1) of Title VII. In 2025 and 2026, the EEOC issued multiple technical assistance documents for employers, including "What You Should

[8] 44 U.S.C. §§ 3501–3521.

[9] The Chamber's members have consistently reported that compiling, validating, reviewing, certifying, and submitting the annual EEO-1 requires labor blended across a wide spectrum of functions, from clerical and human resources information systems ("HRIS") staff to senior human resources professionals, information technology personnel, corporate counsel, and certifying officials, often supplemented by outside vendors and advisors. The empirical record the Chamber developed in prior EEO-1 actions demonstrated that the true burden of EEO-1 compliance was materially greater than the Commission's own estimates. Indeed, in the NPRM, the Commission itself estimates that the EEO-1 collection imposes an aggregate annual respondent burden of more than 5.2 million hours across 2.2 million reports, at a an aggregated respondent cost exceeding $273 million per reporting cycle.

Know About DEI-Related Discrimination at Work,"[10] a technical assistance document; "What To Do If You Experience Distrimination Related to DEI at Work," a one-page technical assistance document jointly released with the Department of Justice; and a one-page technical assistance document titled "Discrimination Against American Workers Is Against The Law."[11] Technical assistance is also needed here, where the NPRM not only proposes a major change to employer reporting obligations to the federal government that have been in place for 60 years, but also significantly and directly impacts an employer's understanding of its obligations and rights to continue to collect and use the data underlying the EEO-1 Report under various sections of Title VII, Section 1981 of the Civil Rights Act of 1866, and various state and local laws.

Title VII recognizes that while workforce demographic data must never be used for unlawful purposes, such as quotas, racial or gender balancing, or discriminatory employment decisions, employment records, including such data, are important for employers to collect and preserve to fulfill their obligations under Title VII, as well as certain state and local laws (as referenced below).

As described below, employers routinely collect and use workforce demographic data for wholly lawful, business-related, and quality-control purposes, including monitoring the fairness of hiring, retention, and evaluation practices; conducting equal pay reviews; auditing compliance with federal, state, and local law; validating selection procedures; and preparing to respond to government investigations and litigation. Employers' collection activities are, at a minimum, supported by multiple provisions of Title VII. The collection and aggregate analysis of workforce demographic data is a hallmark of responsible legal compliance, not evidence of wrongdoing.

The EEOC, therefore, should provide clarity regarding employers' continuing rights and obligations to collect, retain, and lawfully use such data. The Commission has expressly been granted the power to furnish technical assistance, as requested by employers, to further compliance with Title VII.[12]

Rescinding the EEO-1 Report without accompanying guidance regarding employers' obligations under Title VII and other laws risks creating confusion about whether employers must or should continue to collect workforce demographic data, and about how they may lawfully use it. Employers need to understand:

- Which workforce demographic data collection and retention obligations from Title VII remain in effect;

[10] *See* U.S. Equal Emp. Opportunity Comm'n, "What You Should Know About DEI-Related Discrimination at Work," Mar. 19, 2025, available at: https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work and "What To Do If You Experience Discrimination Related to DEI at Work," Mar. 19, 2025, available at: https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work.
[11] *See* U.S. Equal Emp. Opportunity Comm'n, "Discrimination Against American Workers Is Against the Law," Nov. 19, 2025, available at: https://www.eeoc.gov/discrimination-against-american-workers-against-law.
[12] *See* Title VII, Section 705(g)(3), 42 U.S.C. § 2000e-4(g)(3). Congress gave the Commission the power: "to furnish to persons subject to this subchapter [including employers] such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder."

- What are the legitimate benefits of continued workforce demographic data collection;
- How to decide whether and how to continue collecting and using that data;
- How to use the data consistent with an employer's obligations and lawful additional uses to combat unlawful employment discrimination; and
- How to comply consistently across a landscape that includes overlapping federal, state, and local requirements.

The employer community and relevant state agencies have a genuine and practical need for this clarity. Without it, employers face avoidable confusion, inconsistent compliance across jurisdictions, and unnecessary legal risk, precisely the kinds of harm that sound administration policy should seek to prevent.

II. Removing the Data From Federal Systems Eliminates Real Confidentiality, Security, and Misuse Risks, and This Benefits Employers and Employees.

EEO-1 data is extremely sensitive and its aggregation in federal systems creates real and ongoing risk.[13] Even aggregate EEO-1 data can, in certain circumstances, be reverse-engineered to identify individuals, particularly in smaller establishments, in job categories with few incumbents, or within small demographic groups.[14] The Chamber previously drew the Commission's attention to the documented and rising incidence of cyber incidents affecting federal agencies, and to authoritative findings that such incidents have increased dramatically over time.[15] Data-security breaches remain a serious and continuing threat, and the risk is only magnified as the volume and sensitivity of federally held data grows.

Title VII contains important confidentiality protections. Section 709(e) prohibits the EEOC from making public information contained in EEO reports prior to the institution of a proceeding and imposes criminal liability upon Commission officers and employees who make unlawful disclosures. These protections are meaningful, but they are incomplete. By their terms, they do not necessarily extend in the same manner to all downstream recipients of the data or to other agencies with which the data is shared. The Chamber has previously noted, for example, that the Office of Federal Contract Compliance Programs ("OFCCP") does not operate under the identical Section 709(e) restrictions, and that confidential EEO-1 data has been subject to disclosure risk through channels the submitting employer cannot control. The result is a structural gap between the protections that attach to the data at the point of collection and the protections that attach as the data moves through the federal enterprise.

The Chamber has consistently objected to the practice of granting access to EEO-1 data to outside academic researchers and other third parties for purposes tangential to the stated governmental basis for the collection.[16] Such access was acknowledged during prior EEOC

[13] *See* Chamber Apr. 1, 2016 Comments, *supra* note 4, at 42–44; Chamber Feb. 27, 2017 OMB Letter, *supra* note 5, at 6; Chamber. Nov. 12, 2019 Comments, *supra* note 6, at 7.
[14] *Id*.
[15] *See* Chamber Feb. 27, 2017 OMB Letter, *supra* note 5, at 6; *see also* Chamber Apr. 1, 2016 Comments, *supra* note 4, at 44.
[16] *See* Chamber Apr. 1, 2016 Comments, *supra* note 4, at 44–45; *see also* Chamber Feb. 27, 2017 OMB Letter, *supra* note 5, at 7.

proceedings. The fundamental problem is one of control: once sensitive workforce demographic data leaves the employer's own systems and enters federal or downstream systems, the employer can no longer meaningfully manage the confidentiality, security, or reputational risks associated with that data. Removing the federal collection is the most complete confidentiality safeguard. It is therefore a benefit to employers that, upon rescission, this sensitive workforce data will no longer reside in federal systems that are subject to breach, Freedom of Information Act exposure, downstream inter-agency transfer, or misuse.

III. Regardless of Removal of an Employer's Obligation to Report Workforce Demographic Data in the EEO-1 Form, Employers Have Continuing Obligations and Legitimate Reasons to Collect Such Data.

A. Rescinding the Form does not eliminate underlying legal duties and obligations.

The final rule must make clear that rescission removes only the federal EEO-1 report filing obligation contained in Section 709(c)(3) of Title VII. Rescission does not, and cannot, eliminate the underlying record-collection, preservation, recordkeeping, compliance, and litigation-related obligations that may arise independently under federal and/or state law, as summarized below.

Sections 709(c)(1) and (2) of Title VII states:

> **Every employer … shall** (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, [and] (2) preserve such records for such periods [Emphasis added].

While 709(c)(1) does not specify which records are "relevant to the determinations of whether unlawful employment practices have been or are being committed," no doubt some employers have determined that workforce demographic records are among those records associated with submitting the EEO-1 form. Under Section 709(c)(3), Congress gave the EEOC the authority to require that an employer "make such reports *there from* [referring back to Section 709(c)(1) and (2)] as the Commission shall prescribe by regulation or order …" [emphasis added]. For 60 years the EEO-1 Report required employers to compile that demographic data on its employees into the EEO-1 Report by occupational category and demographic group. There can be no doubt that Title VII permits, suggests, and/or requires employers to collect and preserve such workforce demographic data.

Disparate Impact Analyses. Section 703(h) of Title VII states, in relevant part:

> Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer … to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, or national origin.

For an employer to show that any professionally developed ability tests are not designed, intended or used to discriminate, under the Supreme Court case *Griggs v. Duke*

Power Co., 401 U.S. 424 (1971), the tests must be proven job-related and consistent with business necessity if they cause a disparate impact on one group versus another. Thus, as part of an employer's burden of proof, under *Griggs*, even absent discriminatory intent, an employer measures the validity of the test in relation to job performance, as well as its functional impact on members of a protected class. Professional bodies such as the Society for Industrial and Organizational Psychology and the American Psychological Association define test bias as a systemic error in a test score that distorts performance for a specific group. For example, if a test accurately predicts job success for all protected groups, it is considered statistically unbiased, even if one protected group averages higher scores than another.[17] To evaluate test results in accordance with professional standards, among other information, an employer must collect and maintain demographic data.

In relevant part, Section 703(k), Burden of proof in disparate impact cases, of Title VII states:

> (1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if:
>
> > (i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or
> >
> > (ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.
> >
> > * * *
> >
> > (B)(ii) If the respondent [employer] demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

Under the framework of this section, maintaining demographic data allows employers to build defenses against a potential disparate impact claim by a showing that a specific employment practice did not cause the disparity identified by an opposing party.

Federal Regulations. The rescission of the EEO-1 filing requirement does not change the general record preservation duties that 29 C.F.R. Part 1602 independently imposes on employers. The NPRM retains those duties, for example, 29 C.F.R. §§ 1602.14 (proposed to be redesignated as § 1602.2), 1602.21 (proposed to be redesignated as § 1602.4), 1602.28 (proposed to be redesignated as § 1602.5), 1602.31 (proposed to be redesignated as § 1602.6), 1602.40 (proposed to be redesignated as § 1602.8), 1602.49 (proposed to be redesignated as §

[17] *See*, e.g., Principles for the Validation and Use of Personnel Selection Procedures, 11 Indus. & Org. Psych. (Supp. 1) 1, 22–24 (5th ed. 2018). Available at: https://www.apa.org/ed/accreditation/personnel-selection-procedures.pdf

1602.9), and 1602.56 (proposed to be redesignated as § 1602.11). The fact that the Commission preserves these obligations, rather than rescinding them alongside the reporting requirement, confirms that Title VII's recordkeeping mandate remains fully in force notwithstanding the elimination of the EEO-1 report.[18]

Separate from Part 1602, 29 C.F.R. § 1607.4 independently requires employers to maintain records disclosing the impact of their tests and other selection procedures on identifiable race, sex, and ethnic groups. That obligation is not affected by the NPRM and, by its terms, calls for the collection and retention of the same categories of workforce demographic data that the EEO-1 has historically captured. In short, multiple federal regulatory provisions, surviving untouched or merely renumbered by this very rulemaking, continue to require or presuppose employer collection and preservation of workforce demographic data. Because these duties persist employers need the Commission's confirmation, addressed in Section IV below, that rescission of the EEO-1 does not curtail lawful collection and retention of that data.

State Data Obligations. Employers must continue to comply with the growing number of state and local laws that require workforce demographic data collection, reporting, or pay data filings. Those obligations are independent of the federal EEO-1 Report and will persist after its rescission. This is one of the most practical challenges our members face, following the revocation of Executive Order 11246 and the proposed rescission of the EEO-1 Report. Employer obligations to collect and report, or disclose workforce demographic data can be found in many state data reporting, pay transparency, and automated decision-making obligations.

Operative data reporting requirements for private employers will now be found primarily in state statutes, state administrative codes, and municipal ordinances, not federal law. A representative sampling of currently effective state requirements includes:

- California requires state contractors with contracts over $5,000 and 50 or more employees to maintain a written nondiscrimination program, conduct utilization analyses, and submit periodic compliance reports (Cal. Gov. Code §§ 12990, 12999; 2 CCR §§ 11100–11139). Separately, private employers with 100 or more employees *nationwide* must annually submit pay and demographic data to the California Civil Rights Department by job category, race, ethnicity, and sex, and courts are directed to impose civil penalties of up to $100 per employee (or $200 per employee for repeat violations) upon the Department's application (Cal. Gov. Code § 12999(f)). A revised version of § 12999 enacted by SB 464 (2025) took effect January 1, 2026, with a successor version scheduled to operate beginning January 1, 2027.

- Colorado enacted HB 26-1207 on June 4, 2026, requiring private employers with 100 or more workers to file EEO-1-format demographic data with the Secretary of State

[18] The NPRM also restates the Commission's proposal, first advanced in its November 21, 2024, NPRM, to incorporate references to the PWFA into Part 1602, including 1602.14, 1602.21(b), 1602.28(a), and 1602.31. further underscoring that these recordkeeping and preservation provisions are being retained and updated, not eliminated.

beginning July 1, 2027, and expressly providing that the obligation applies even if the federal EEO-1 is rescinded.

- Illinois maintains two overlapping requirements. First, private employers with 100 or more Illinois employees must obtain an Equal Pay Registration Certificate from the Illinois Department of Labor on a biennial basis (820 ILCS 112/11), which requires submission of employee-level demographic and pay data, separated by the gender, race, and ethnicity categories reported on the employer's most recently filed EEO-1, along with a signed compliance certification attesting to Title VII and Illinois Equal Pay Act compliance; individually identifiable data is confidential to IDOL. Second, and separately, Illinois-chartered and Illinois-registered corporations that are required to file a federal EEO-1 must include EEO-1 Section D workforce demographic data in their annual reports to the Illinois Secretary of State, which the Secretary is statutorily obligated to publish on its official website within 90 days (805 ILCS 5/14.05(m)).

- Massachusetts requires employers with 100 or more Massachusetts employees to annually file their federal EEO-1 reports with the Secretary of the Commonwealth (Mass. Gen. Laws ch. 149, § 105E).

- Minnesota requires state contractors with contracts over $100,000 and 40 or more employees to obtain a Workforce Certificate of Compliance (Minn. Stat. § 363A.36) and uniquely imposes monetary fines of $5,000 per contract for noncompliance.

- Connecticut, Kentucky, Maine, New Jersey, New York, Pennsylvania, Rhode Island, and Wisconsin each maintain contractor Affirmative Action Plan or workforce reporting requirements.

- New York City enacted (over a mayoral veto in December 2025) a new pay data reporting law applying to employers with 200 or more NYC employees, expressly modeled on the former EEO-1 Component 2 pay data collection. Separately, New York City's Local Law 144 requires that the mandatory annual bias audit of automated employment decision tools calculate selection rates and impact ratios across sex and across race and ethnicity categories drawn from the EEO-1 reporting framework, an exercise that cannot be performed without the same demographic data the EEO-1 has long standardized.

As these examples illustrate, many of these state and local obligations mimic or rely on the EEO-1, using its job categories and its race, ethnicity, and sex classifications, or are triggered by the existence of the federal filing obligation itself. These are operative mandates, yet the NPRM is silent on how employers should reconcile the removal of the federal instrument and its standardized categories with state and local requirements that still speak in EEO-1 terms.

In relevant part, Section 709(d) of Title VII requires:

> In prescribing requirements pursuant to subsection (c) of this section, the Commission **shall** consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. (Emphasis added.)

EEOC's rescission of the EEO-1 form is clearly a situation in which Section 709(d)'s consultation-and-coordination directive and the Commission's technical-assistance function should operate: the final rule and preamble should confirm that rescission removes only the federal EEO-1 filing obligation, that continued collection and classification of workforce demographic data to satisfy state and local law remains lawful, and that the Commission will consult and coordinate with affected state agencies and address category standards, including through modernization of OMB Statistical Policy Directive No. 15.

The concrete effect on individual employers is significant. For example, a federal contractor headquartered in Illinois with operations in California, Minnesota, and New Jersey faces a genuine tension and uncertainty: full compliance with the President's Executive Orders, consistent with the EEOC's proposed rescission of the EEO-1 Report, could place that contractor in default of obligations imposed directly by state or local law. Employers want to comply with both, and we believe a collaborative path forward is necessary between the EEOC and state agencies as well as employers.

Section 709(d) of Title VII requires that the Commission consult and coordinate with State agencies and other federal agencies regarding data collection and submission of reports and records otherwise required by section 709 (c). Yet, the NPRM does not address this obligation.

Aggregate, non-decisional uses, such as auditing, compliance reporting, validation of selection procedures, and litigation readiness, are lawful and minimal risk. Legal risk arises only when workforce demographic data is tied to individual employment decisions in an unlawful manner. Employers would benefit from clear guidance distinguishing lawful aggregate analysis from unlawful individualized decision-making. Because these obligations will survive rescission, the Commission must recognize that ending the EEO-1 filing does not end certain employer duties to preserve records or, where applicable, to collect and analyze workforce demographic data in connection with those duties.

B. There are real, legitimate benefits to continued workforce demographic data collection and use.

For 60 years, private U.S. employers with 100 or more employees have been required to file an EEO-1 report. As a result, these employers collected and preserved workforce demographic data "as a matter of course" each year to enable them to furnish a completed EEO-1 report accurately and completely to the EEOC.

The rescission of the EEO-1 Report eliminates an employer's requirement to "report" workforce demographic data to the EEOC. Consequently, employers rightly are unclear as to whether going forward they should still collect and preserve this information, in particular in those states that do not have a separate local reporting requirement for this data.

Workforce demographic data collection and aggregate demographic data analysis are important and entirely lawful tools for compliance, risk management, analyses of workforce trends, and business quality control purposes. Employers use the data to analyze and detect potential discrimination by revealing broader patterns in hiring, pay, promotion, and termination decisions, as well as specific testing and evaluation processes used to evaluate applicants and employees. It also allows employers to spot accidental and hidden barriers or adverse impacts in neutral hiring, testing and other employment rules, and should be encouraged by the EEOC. Employers also use aggregate demographic data to evaluate pipelines to employment and refine recruitment outreach.

The EEOC needs to provide the critical technical assistance to employers as to its collection and preservation obligations, as well as guidance regarding appropriate practices related thereto, and appropriate uses of such data, such as those set forth above. Without this assistance and guidance, employers are without specific guidance to follow in connection with their obligations under Section 709(c)(1) and (2) as to whether workforce demographic data is among the types of records it should collect and maintain "to ensure compliance with federal anti-discrimination laws."

Summarized below are specific legitimate uses of aggregate demographic data that should be encouraged to continue regardless of whether submission of the EEO-1 Report is retained:

Equal pay audits. Employers may use workforce demographic and compensation data to identify and, where appropriate, correct pay outliers based on neutral, job-related factors. Such self-directed equal pay reviews are a responsible compliance best practice that furthers the goals of the Equal Pay Act and Title VII.

Validation of selection procedures. Employers may analyze workforce demographic data to confirm that their tests and selection procedures are professionally developed, job-related, validated, and free from bias, consistent with Title VII, including Section 703(h). Such analysis is expressly contemplated by the recordkeeping obligations of 29 C.F.R. § 1607.4. Currently, the Uniform Guidelines on Employee Selection Procedures ("UGESP") provides that employers subject to Title VII must collect information on the race, ethnicity and sex of applicants and periodically analyze that data to ascertain whether potential adverse impacts exist. While courts have disagreed over whether UGESP is a mandatory rule or mere guidance, employers who have previously collected demographic data and used it to analyze potential adverse impact of certain employee selection procedures are left wondering whether they should continue to do so, in light of the EEOC's proposed rescission of the EEO-1 report. And regardless of the status of the UGESP, Title VII itself requires that tests or selection procedures be "professionally developed." Reference to the professional criteria promulgated by the relevant professional sections of the American Psychological Association and professional literature suggests that test developers and employer users should consider the impact of such instruments on each demographic group and avoid improper bias.[19] Regardless of whether the EEO-1 report is rescinded, statistical evidence remains relevant in private litigation under Title VII and 42 U.S.C. § 1981, and will continue to have a significant role in the largest discrimination cases.

Statistical and Comparative Analysis. Even under the EEOC's current proposal to rescind the EEO-1 Report, the Commission has stated explicitly that it would continue to have authority to request workforce demographic information during particular charge investigations and enforcement matters. The NPRM further states that the EEOC would continue to obtain demographic data through charge investigations, requests for information, and subpoenas tailored to particular charges.[20]

And, in fact, in 2025 and 2026, the EEOC has continued to request such data from employers in its efforts to evaluate whether the employers are in compliance with Title VII. For example, in the EEOC's March 17, 2025 letter to 20 law firms, the Chair of the EEOC expressly requested substantial individual-level race and sex data linked to employment outcomes to assist it in its review of whether the employers engaged in unlawful employment practices under Title VII.[21] For example, these letters requested searchable spreadsheets containing name, sex, and race, together with outcome and employment information for: applicants to diversity internships and fellowships, Sponsors for Educational Opportunity law fellows placed at firms, all law students and attorneys who applied to the firm, candidates considered for certain programs, lawyers considered for partnership, and potential lateral partners. The data requested included disaggregated, person-specific demographic and employment-decision data sufficient to allow the EEOC to compare selection rates and other employment outcomes by race and sex. In 2025, the EEOC itself found value in collecting and analyzing race- and sex-coded employment data to evaluate possible Title VII violations, including specifically individualized hiring, compensation, promotion, partnership, program-access, staffing, and termination decisions.

Similarly, in recent EEOC subpoena enforcement actions against both Nike and Northwestern Mutual, the EEOC sought workforce race and ethnicity data in connection with its evaluation of a wide variety of employment decisions from hiring, promotion, demotion, and layoff decisions to selection for enrollment in internship, mentorship, and other career development programs and opportunities.[22]

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[19] *See*, e.g., Soc'y for Indus. & Org. Psych., Principles for the Validation and Use of Personnel Selection Procedures, *supra* note 17, at 22–24.

[20] NPRM at 46339.

[21] *See* Press Release, U.S. Equal Emp. Opportunity Comm'n, "EEOC Acting Chair Andrea Lucas Sends Letters to 20 Law Firms Requesting Information About DEI-Related Employment Practices," March 17, 2025, available at: https://www.eeoc.gov/newsroom/eeoc-acting-chair-andrea-lucas-sends-letters-20-law-firms-requesting-information-about-dei.

[22] Press Releases, U.S. Equal Emp. Opportunity Comm'n, "EEOC Files Subpoena Enforcement Action Against NIKE," February 4, 2026, available at https://www.eeoc.gov/newsroom/eeoc-files-subpoena-enforcement-action-against-nike, and "EEOC Files Subpoena Enforcement Action Against Financial Services Giant Northwestern Mutual Over

Therefore, while not dispositive, workplace demographic data can be useful in highlighting variances and outliers in macro workforce decision-making for further analysis, and thus workforce demographic data serves a useful quality control measurement in auditing workplace and other selection practices.

Accessibility and reasonable accommodation. Employers use workforce demographic data and related information to administer their obligations under the Americans with Disabilities Act and the Pregnant Workers Fairness Act ("PWFA"), including tracking the timeliness and consistency of the interactive process, evaluating whether accommodation requests are handled equitably, and identifying opportunities to improve accessibility for the workforce as a whole. These uses serve employees directly and are inseparable from the employer's compliance duties.

Benefits and workforce-support design. Employers use aggregate workforce demographic insights to design benefits and support programs that reflect the actual needs of their workforce, such as leave, caregiving, health, and retirement offerings, thereby improving the employee experience through voluntary, aggregate analysis that involves no individualized decision-making.

Litigation defense and investigation readiness. Employers need workforce demographic data to respond to EEOC requests for information and administrative subpoenas, to defend against discrimination claims, including majority-group discrimination claims following the Supreme Court's decision in *Ames v. Ohio Department of Youth Services*, 605 U.S. __ (2025), and to meet discovery obligations. During active charge investigations, EEOC field investigators often issue requests for workforce breakdowns, applicant flow data, and specific job-group statistics. These litigation and investigation obligations will continue regardless of whether the EEO-1 Report exists. The Commission itself observes in the NPRM that its investigative authority, including requests for information and subpoenas tailored to a particular charge, remains its primary and narrowly tailored enforcement tool; employers correspondingly require workforce demographic data to respond to those requests and for due diligence, quality control review and audit of its supervisors' and managers' employment decisions.

Workforce and succession planning. Employers use aggregate workforce demographic data, including tenure and job-level information, to anticipate retirement-driven knowledge loss, plan neutral knowledge-transfer and reskilling efforts, and ensure continuity in critical roles. This is a quintessentially operational, non-decisional use: it informs planning at the level of the organization and its processes, not employment decisions concerning any individual.

IV. The Chamber Requests Practical Clarifications.

Allegations of DEI-Related Discrimination," Nov. 20, 2025, available at: https://www.eeoc.gov/newsroom/eeoc-files-subpoena-enforcement-action-against-financial-services-giant-northwestern.

The Chamber seeks only confirmations of existing law and practical technical assistance, the kind of guidance that falls within the Commission's ordinary function when it amends its own regulations. The Chamber respectfully requests the following clarifications:

Affirmatively Confirm the continuing force of Title VII recordkeeping duties. The Chamber requests that the Commission reaffirm that Title VII's recordkeeping mandate requires employers, in their judgment, to make, keep, and preserve records relevant to determining whether unlawful employment practices have been or are being committed. It further requests confirmation that an employer’s decision to make, keep, and preserve workforce demographic records in satisfaction of that mandate is lawful.

The Chamber also requests that the final rule state expressly that only the EEO-1 reporting obligation is removed, and that the general record preservation and recordkeeping duties in Part 1602 remain in full force, including, for example, 29 C.F.R. §§ 1602.14 (proposed to be redesignated as § 1602.2), 1602.21 (proposed to be redesignated as § 1602.4), 1602.28 (proposed to be redesignated as § 1602.5), 1602.31 (proposed to be redesignated as § 1602.6), 1602.40 (proposed to be redesignated as § 1602.8), 1602.49 (proposed to be redesignated as § 1602.9), and 1602.56 (proposed to be redesignated as § 1602.11). The Chamber further requests that the Commission clarify whether and how workforce demographic data is encompassed within those continuing obligations, so that employers do not wrongly assume that rescission of the EEO-1 ends all collection or preservation obligations, including those contained in Title VII and applicable state and local laws.

Confirm that lawful voluntary collection is unaffected. The Chamber requests that the preamble state that rescinding the EEO-1 filing requirement does not prohibit, restrict, or disfavor an employer's lawful, voluntary collection, maintenance, analysis, or use of workforce demographic data for legitimate business and compliance purposes, including equal pay audits, validation of selection procedures, self-audits, litigation defense, investigation readiness, and compliance with state and local law.

Confirm the treatment of PWFA references. The Chamber requests that the Commission provide clarity regarding any recordkeeping expectations associated with the Pregnant Workers Fairness Act references that the NPRM proposes to incorporate into Part 1602 (including at §§ 1602.14, 1602.21(b), 1602.28(a), and 1602.31), so that employers understand how those references interact with the amended regulatory framework following rescission.

Provide Safe Harbor confirmation regarding lawful workforce demographic data practices. The Chamber requests guidance confirming that recordkeeping, retention, and analysis that is required or permitted under Title VII Section 709(c) and its implementing regulations, remains lawful compliance with federal statutory and regulatory duties, and does not, standing alone, constitute unlawful or "racially discriminatory" activity under applicable

Executive Orders addressing diversity, equity, and inclusion practices.[23] Employers should be able to satisfy their long-standing federal recordkeeping obligations without concern that doing so exposes them to a contrary federal-policy interpretation. The Chamber further requests that the EEOC provide guidance that because there are legitimate, nondiscriminatory reasons for collecting race and sex information (as described above), an employer's mere collection of such information is not circumstantial evidence of discrimination.

Address federal-state coordination and the demographic-reporting patchwork. The Chamber requests that the Commission address the growing tension between federal rescission and the numerous state and local demographic-reporting laws that will continue to require employers to collect and report similar or identical data. As noted above, section 709(d) requires that the Commission consult with state agencies which currently require the collection and submission of demographic data.

Consistent with the Chamber's longstanding preference for regulatory uniformity and inter-agency alignment, this coordination should include guidance where state and local laws directly conflict with federal policy. Employers should not be left to reconcile, without guidance, a federal rescission of one form of demographic data collection on the one hand and a proliferating patchwork of state and local mandates on the other.

Address category standards for continued collection through OMB Statistical Policy Directive No. 15. Because federal demographic data collection continues under other federal programs, such as the Integrated Postsecondary Education Data System ("IPEDS), employers that continue collecting workforce demographic data to satisfy state-law, litigation, and self-audit obligations require classification standards that remain current and consistent across federal agencies. The Chamber requests that the federal government address the applicable classification standards through the modernization of OMB Statistical Policy Directive No. 15. Employers need consistent, current, and authoritative federal category standards, rather than an abandoned or uncertain framework, to collect and analyze workforce demographic data reliably and in a manner that remains comparable across jurisdictions and over time.

V. Conclusion

The Chamber agrees that the Commission has the authority to rescind the EEO-1 filing requirement, and it agrees that the mandatory EEO-1 filing has offered limited practical benefit relative to its recurring burden while creating significant confidentiality and data-security risks. The Chamber's support for rescission rests on considerations of burden, confidentiality, administrability, and practical compliance.

The Chamber emphasizes that such data continues to serve important and lawful compliance and business purposes, including pay audits, selection-procedure validation, self-audits, litigation readiness, investigation response, and compliance with state and local law.

[23] See, for example, Executive Order 14398, "Addressing DEI Discrimination by Federal Contractors," signed March 26, 2026.

For these reasons, the Chamber respectfully urges the Commission to include, within the final rule text and preamble, confirmatory statements of existing law and practical technical assistance, so that employers clearly understand what obligations remain in force and how they may continue lawful workforce demographic data practices following rescission of the EEO-1 form. Doing so falls within the Commission's statutory guidance function and assists employers in resolving their expressed concerns regarding their obligations and best practices, concerns shared across the regulated community, and will materially reduce confusion, inconsistent compliance, and unnecessary legal risk.

The Chamber would be happy to provide any additional information that may assist the Commission.

Respectfully submitted,

Marc Freedman
Vice President, Workplace Policy
Employment Policy Division
U.S. Chamber of Commerce

Outside Counsel:

Camille A. Olson
Lawrence Z. Lorber
Richard B. Lapp
Seyfarth Shaw LLP