



August 24, 2026

Via Federal eRulemaking Portal (Regulations.gov)

Raymond Windmiller
Executive Officer
Executive Secretariat
U.S. Equal Employment Opportunity Commission
131 M St. N.E.
Washington, D.C., 20507

**RE: Removing Equal Employment Opportunity Data Reporting
Requirements, Docket No. EEOC-2026-0034, RIN 3046-AB37, Document No.
2026-14937, 91 Fed. Reg. 46332 (July 23, 2026)**

Dear Executive Officer Windmiller:

The City of New York, along with the City of Beaverton, Oregon; the City of Chicago, Illinois; the City of Evanston, Illinois; the Office of the City Attorney of Oakland, California; the City of Portland, Oregon; the City of San Diego, California; the County of Santa Clara, California; and the City of Seattle, Washington (collectively, the “Signatories”), submits this comment in opposition to the above-referenced Notice of Proposed Rulemaking (hereinafter, the “Proposed Rule”). The Proposed Rule would rescind equal employment opportunity (“EEO”) reporting and recordkeeping requirements at 29 C.F.R. part 1602. The Equal Employment Opportunity Commission (“EEOC” or “Commission”) has required this reporting and recordkeeping in some form since 1966 to give effect to the reporting and recordkeeping provisions in Section 709(c) of title VII of the Civil Rights Act of 1964. Now, sixty years later, the EEOC asserts that these regulatory requirements should be rescinded because of a *preliminary* determination that they are inconsistent with EEO law and *potentially* unconstitutional. The EEOC’s newfound statutory interpretation is unreasonable, and its constitutional analysis is wrong. The EEOC further asserts that any benefits of EEO data reporting for the enforcement of antidiscrimination laws are outweighed by the burdens on employers and the Commission. However, the EEOC drastically underestimates the extent to which the Proposed Rule would undermine efforts to combat employment discrimination and impede efforts to dismantle barriers to opportunity in workplaces across the United States. Moreover, the EEOC significantly overstates the burden of EEO data collection. For these reasons, as further explained below, the Signatories urge the EEOC to withdraw the Proposed Rule in full.

I. BACKGROUND ON THE PROPOSED RULE

Title VII of the Civil Rights Act of 1964 (“Title VII”), 42 U.S.C. § 2000e *et seq.*, is a “broad remedial measure, designed to ‘assure equality of employment opportunities.’”¹ Title VII prohibits employers from discriminating against employees on the basis of race, color, religion, sex, or national origin.² The United States Supreme Court has long held that Title VII prohibits not only intentional discrimination, but also “practices that are not intended to discriminate but in fact have a disproportionately adverse effect on minorities.”³

Section 709(c) of Title VII requires employers, labor organizations, and employment agencies to: “(1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of [Title VII] or the regulations or orders thereunder.”⁴

In 1966, in accordance with Section 709(c), the EEOC adopted an annual EEO-1 reporting requirement for private employers and public contractors.⁵ Within the next ten years, the EEOC expanded the annual reporting requirements to cover apprenticeship programs (EEO-2), local referral unions (EEO-3), state and local government employers (EEO-4), public school district employers (EEO-5), and higher education employers (EEO-6).⁶ These reporting requirements, codified at 29 C.F.R. part 1602, are collectively referred to here as the “EEO Reports.”

For the EEO-1 report, private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, provide workforce data by job category and sex and race or ethnicity.⁷ The job categories include executives/senior level officials

¹ *Pullman-Standard, Div. of Pullman v. Swint*, 456 U.S. 273, 276 (1982) (quoting *McDonnell Douglas Corp. v. Swing*, 411 U.S. 792, 800 (1973)). *Lenzi v. Systemax, Inc.*, 944 F.3d 97, 110 (2d Cir. 2019).

² *Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 305 (2025).

³ *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009). The EEOC’s reliance on a June 9, 2026 DOJ Opinion in the Proposed Rule is misplaced because the Opinion is inconsistent with Title VII and judicial precedent. Indeed, Title VII prohibits employment practices that “limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.” 42 U.S.C. §2000e–2(a)(2). And the statute was amended to codify a burden shifting framework in 1991. *See* 42 U.S.C. § 2000e–2(k).

⁴ 42 U.S.C. § 2000e-8(c).

⁵ Proposed Rule at 46,333 (discussing 31 Fed. Reg. 2832 (Feb.17, 1966)).

⁶ Proposed Rule at 46,333-334.

⁷ Equal Emp. Opportunity Comm’n, *EEO Data Collections*, available at <https://www.eeoc.gov/data/eo-data-collections> (last accessed August 19, 2026).

and managers, first/mid-level officials and managers, professionals, administrative support workers, and laborers.⁸ The race or ethnicity categories include American Indian or Alaska Native, Asian, Black or African American, Hispanic, Native Hawaiian or Other Pacific Islanders, White, and “Two or more races.”⁹

Section 709(c) of Title VII authorizes a court to order an entity to comply with these regulatory reporting requirements. Indeed, within the past two years, EEOC has sued employers to obtain such relief because the employers failed to provide the mandated EEO-1 Reports.¹⁰ In announcing these lawsuits, EEOC stated that the “data help the agency focus its resources, identify potential discrimination, and refine its investigations.”

The Proposed Rule would, among other things, remove regulatory requirements regarding the EEO Reports and amend recordkeeping sections to remove references to the EEO Reports and associated recordkeeping requirements. The EEOC asserts that these actions are necessary because the reporting requirements are potentially unconstitutional, inconsistent with governing statute, no longer useful to enforce anti-discrimination priorities, and burdensome.¹¹

II. THE PROPOSED RULE VIOLATES THE ADMINISTRATIVE PROCEDURE ACT BECAUSE IT IS ARBITRARY AND CAPRICIOUS AND INCONSISTENT WITH LAW.

The Proposed Rule, if finalized, would violate the Administrative Procedure Act (“APA”) because it is “arbitrary, capricious,” and “otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). The APA and controlling case law require the EEOC to examine relevant data and articulate a satisfactory explanation for its action, including a “rational connection between the facts found and the choice made,” based upon relevant factors.¹² An agency rule is arbitrary and capricious if the agency has: relied on factors that Congress did not intend it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.¹³ When an agency engages in a significant reversal of prior policy through rulemaking or rule rescission, “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.” Finally, agency action is “not in accordance with law” where it “ignores the plain language of the statute,” renders statutory language “superfluous,” or “frustrate[s] the policy Congress sought to

⁸ Equal Emp. Opportunity Comm’n, *EEO-1 (Employer Information Report) Statistics*, available at <https://www.eeoc.gov/data/eo-1-employer-information-report-statistics> (last accessed August 19, 2026).

⁹ *Id.*

¹⁰ EEOC Sues 15 Employers for Failing to File Required Workforce Demographic Reports (May 29, 2024), available at <https://www.eeoc.gov/newsroom/eeoc-sues-15-employers-failing-file-required-workforce-demographic-reports>.

¹¹ Proposed Rule at 46,334.

¹² See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

¹³ See *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43-44.

implement” in the statute.¹⁴ Applying these standards demonstrates that, if finalized, the Proposed Rule would violate the APA.

a. The EEOC’s legal reasoning is flawed, ignoring relevant cases and improperly citing others.

The EEOC asserts that the reporting requirements are potentially inconsistent with the constitutional guarantee of equal protection and EEO laws. The EEOC acknowledges that “courts have rejected some constitutional challenges to government data collections,” but attempts to distinguish the EEO reports as something more than “mere data collection.”¹⁵ Courts, however, have addressed constitutional and statutory arguments regarding EEO data collection and made clear that such data collection is appropriate and vital to fulfill the promise of civil rights statutes.

In *United States v. New Hampshire*, 539 F.2d 277, 280 (1st Cir. 1976), *cert. denied*, 429 U.S. 1023 (1976), the First Circuit held that the reporting and recordkeeping provision in Section 709(c) of Title VII is a “reasonable and proper means of assuring equality in employment” and thus authorized by the Fourteenth Amendment of the U.S. Constitution.¹⁶ The First Circuit further held that the information sought on the EEO-4 form – namely, race, national origin, and sex of employees – is both “reasonable and fully consistent with the overall purpose of Title VII, viz. ‘to achieve equality of employment opportunities and remove barriers that have operated in the past.’”¹⁷ Notably, regarding claims that the EEO data might be misused, the First Circuit stated:

[P]ossible and purely hypothetical misuse of data does not require the banning of reasonable procedures to acquire such data. Statistical information as such is a rather neutral entity which only becomes meaningful when it is interpreted. And any positive steps which the United States might subsequently take as a result of its interpretation of the data in question remain subject to law and judicial scrutiny.¹⁸

The EEOC’s position that the EEO Reports are inconsistent with Title VII is undermined not only by *New Hampshire* and other case law,¹⁹ but also by the decades of congressional action

¹⁴ *Pacific Northwest Generating Coop v. Department of Energy*, 580 F.3d 792, 806 (9th Cir. 2009).

¹⁵ Proposed Rule at 46,339, fn. 14.

¹⁶ *Id.*

¹⁷ *Id.* at 280.

¹⁸ *Id.*

¹⁹ *Caulfield v. Bd. of Ed.*, 583 F.2d 605, 611 (2d Cir. 1978) (“[T]he Constitution itself does not condemn the collection of [racial and ethnic] data.”); *Hamm v. Virginia State Board of Elections*, 230 F. Supp. 156, 158 (E.D. Va. 1964), *aff’d*, 379 U.S. 19 (1964) (“[T]he securing and chronicling of racial data for identification or statistical use violates no constitutional privilege.”). *See also* *Spurlock v. Fox*, 716 F.3d 383, 394 (6th Cir. 2013) (“Racial classification requires more than the consideration of racial data.”); *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665

that followed the EEOC's adoption of the reporting requirements. Indeed, by expanding the EEOC's authority to adopt reporting requirements consistent with Section 709 of Title VII in the Americans with Disabilities Act of 1990, the Genetic Information Act of 2008, and the Pregnant Workers Fairness Act of 2022,²⁰ Congress ratified the EEOC's construction of Title VII.²¹

The EEOC's reliance on *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303 (2025) and *Students for Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181 (2023) ("*SFFA*") is also misguided.²² In *Ames*, the Supreme Court held that Title VII does not impose more onerous requirements on a white plaintiff to make out a *prima facie* case of discrimination because Title VII establishes the same protections for every person, regardless of membership in a particular group.²³ The EEO Reports do not conflict with this holding. While majority and minority plaintiffs may use statistical information contained in the EEO Reports or elsewhere to make out a *prima facie* case of discrimination, these plaintiffs must meet the same evidentiary standard.

In *SFFA*, the Supreme Court found that race-based admissions programs at Harvard and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment. Specifically, the Court found that the admissions programs used race to advantage some applicants at the expense of others and involved racial stereotyping by treating alike all members of the same racial group because of their race.²⁴ By contrast, the information in the EEO Reports is a "rather neutral entity" that does not confer any benefit on one racial group to the detriment of others. In this way, the racial categories represented in the EEO Reports do not amount to the EEOC choosing "winners."²⁵ Moreover, there is nothing about the EEO Reports that suggest

F.3d 524, 547-48 (3d Cir. 2011) ("The consideration or awareness of race while developing or selecting a policy, however, is not in and of itself a racial classification.").

²⁰ Proposed Rule at 46,334.

²¹ *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 846 (1986) (stating that ratification of administrative action may occur when "Congress has not just kept its silence by refusing to overturn the administrative construction, but has ratified it with positive legislation."); *Earthworks v. United States DOI*, 105 F.4th 449, 467 (D.C. Cir. 2024) (looking to "congressional practice after the law was ratified" to interpret a statute)

²² Proposed Rule at 46,335-336.

²³ 605 U.S. at 310.

²⁴ 600 U.S. at 230.

²⁵ Proposed Rule at 46,336. The EEOC likens EEO data collection to census data collection and refers to an article about an organization lobbying for new racial category in the census to increase political influence. *Id.* at 46,336-337 (citing Alex Nowrasteh, *The Consequences of a Middle Eastern or North African (MENA) Survey Question*, CATO Institute (Sept. 28, 2023), <https://www.cato.org/briefing-paper/consequences-middle-eastern-or-north-african-mena-survey-question#conclusion>). The EEOC apparently believes the article lends support to its position that data collection by racial category amounts to the government choosing "winners and losers." Yet, the article concludes that the new category would be harmful to that race, which begs the question whether the races reflected in the EEO Reports are winners or losers. If anything, the article lends support to the reasoning in *New Hampshire* that the EEO data only becomes meaningful when interpreted and that that interpretation remains subject to law and judicial scrutiny.

that all persons tallied in a racial category “think alike.”²⁶ That is, on their face, the EEO Reports do not amount to racial stereotyping.²⁷ Finally, the EEOC’s reliance on *SFFA* highlights another shortcoming of the Proposed Rule: the EEOC fails to provide any explanation, let alone a reasoned one, why race and sex data collection should both be regarded in the same way, despite the difference in constitutional standards for race- and sex-based classifications.

b. The EEOC otherwise fails to provide a reasoned basis for the Proposed Rule.

In addition to flawed legal rationales, the EEOC otherwise fails to provide a reasoned basis for the Proposed Rule. Importantly, the Commission incorrectly evaluates the benefits and costs associated with EEO data collection.

The Proposed Rule drastically understates the value of EEO data collection to the EEOC’s own Title VII enforcement efforts,²⁸ as well as efforts by individuals and state and local agencies to enforce federal, state, and local antidiscrimination law. The absence of EEO data sets will likely make it more difficult for plaintiffs to prove discrimination in court in individual cases. It will also hinder enforcement and policy efforts to address persistent barriers to hiring and retention, or to tackle occupational segregation.

The federal government plays an important role in setting the best practices and standards for this data collection, upon which state and local jurisdictions model their own data collection practices. As such, the removal of this data collection will lead to de-centralized and less standardized data collection, which will dilute the quality and comparability of data across employers and jurisdictions. Prospective plaintiffs and enforcement agencies would have access to less reliable and informative data when seeking to identify and eliminate race and sex discrimination in the workplace.

In addition to the value of EEO data to maximizing the EEOC’s own enforcement efforts, both individual litigants and state and local enforcement agencies also rely on the data. Individuals may cite the publicly available, aggregated EEO-1 data when seeking to state a claim against an employer and proceed to discovery. Ceasing EEO data collection would also undercut the efforts of local enforcement agencies, which are granted greater access to EEO data for the purposes of

²⁶ 600 U.S. at 221 (citing *Miller v. Johnson*, 515 U.S. 900, 911-912 (1995)).

²⁷ Compare Proposed Rule at 46,337-338 (discussing examples of racial stereotypes at issue in recent employment discrimination cases, including one case where persons in one racial group were described as “cannibals”).

²⁸ As recent as March 2026, the EEOC was initiating Title VII enforcement actions against employers citing EEO-1 reports. See *EEOC v. Central Transport, LLC*, 26-cv-2201 (D. Ariz.), Dkt. No. 1. See also Equal Emp. Opportunity Comm’n, *EEOC Reaches Early \$5.5 Million Resolution with Central Transport Over Nationwide Sex Discrimination in Hiring* (May 15, 2026), available at: <https://www.eeoc.gov/newsroom/eeoc-reaches-early-55-million-resolution-central-transport-over-nationwide-sex> (noting that the case settled with employer agreeing to institute “training on its anti-discrimination policies, including on its recordkeeping obligations and the filing of EEO-1 reports[.]”

identifying investigative and enforcement priorities as well as “employment patterns within companies, industries, or regions within their jurisdictions.”²⁹

The EEOC posits that this information should not be widely collected on an annual basis (as is current practice), but from a particular employer during a charge investigation. The EEOC’s position defies credulity. If employers are not already asking this information of their employees *ex ante*, they would not be able to produce such information later for an investigation. To the extent such information can be produced in an investigation, it would not be as complete and robust as data that is methodically collected in a neutral context year after year.

The Proposed Rule also discounts the value of EEO data to employers as a part of their self-governance and overstates the burden of EEO data reporting. Employers, including local governments, use EEO data to improve their own employment practices to identify and prevent discrimination, which can reduce the burden on enforcement agencies.³⁰ Stronger, more equitable workplaces make our communities better and more prosperous places to live. The Proposed Rule also assumes, without support, that EEO data collection places an unreasonable burden on individual employers. Local governments, like the City of New York, have collected and reported EEO-4 data for decades without the “substantial burden[]” asserted in the Proposed Rule. Indeed, for the City of New York, with nearly 300,000 employees, these reports are automatically generated and undergo data validation within 2 to 3 days in preparation for submission.

Finally, the Proposed Rule does not explain why abandoning race and sex data collection is the only way to address the EEOC’s concerns. As one example, the Proposed Rule mentions the lack of more granular data on particular racial and ethnic groups.³¹ Yet, there are many ways to address any information gaps, such as expanding categories for self-identification that could provide better disaggregated data on racial groups. Indeed, the reporting requirements and categories of data have changed over time. But rather than seeking an approach that would address the stated concern, the Proposed Rule offers the most draconian action: ceasing the reporting and retention requirements in total. The EEOC could have considered alternatives to the current rules that do not require completely ending race and sex data collection across EEOC reports. Contrary to the requirements of the APA, the Proposed Rule fails to explain why anything short of completely ceasing the data collection would be inadequate.

For all of the reasons above, the Signatories urge the EEOC not to finalize the Proposed Rule.

²⁹ Equal Emp. Opportunity Comm’n, *Fact Sheet: The EEOC and FEPA Data-Sharing* (2021), <https://www.eeoc.gov/fact-sheet-eeoc-and-fepa-data-sharing>.

³⁰ See Federal News Network, *Researchers, Advocates Rail Against Government’s Efforts to End Workforce Data Collection* (Aug. 2026), <https://federalnewsnetwork.com/workforce/2026/08/researchers-advocates-rail-against-governments-efforts-to-end-workforce-data-collection/>.

³¹ Proposed Rule at 46,336.

Sincerely,

The City of New York

The City of Beaverton, Oregon

The City of Chicago, Illinois

The City of Evanston, Illinois

Office of the City Attorney of Oakland, California

The City of Portland, Oregon

The City of San Diego, California

The County of Santa Clara, California

The City of Seattle, Washington