

August 24, 2026

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

Submitted via regulations.gov

RE: Removal of Reporting Requirements, RIN 3046-AB37

Dear Mr. Windmiller:

The Legal Defense Fund, the Lawyers' Committee for Civil Rights Under Law, The Leadership Conference on Civil and Human Rights, and the undersigned organizations write to oppose the proposed rule rescinding longstanding regulations requiring employers and other entities to collect and report workforce demographic information. Occupational segregation and employment discrimination on the basis of race, ethnicity, and gender continues to limit opportunities for workers and harms the economy as a whole.¹ The U.S. Equal Employment Opportunity Commission's (EEOC) demographic data collection requirements have been a vital tool in assessing and responding to these barriers and are consistent with Title VII of the Civil Rights Act of 1964 and U.S. Constitution. Demographic data reports have been used for decades to inform the agency's investigations of employment discrimination, to focus the agency's limited resources on occupations where data suggests significant disparities, to help employers examine their own employment practices, and to provide researchers, press, and the public with important aggregate data to understand barriers to opportunity within our workforces. Without such data, the EEOC will be limited in its ability to fulfill its mission. Furthermore, eliminating the reporting requirements could cause confusion and regulatory uncertainty for employers, creating legal exposure and more burdens in the long run. The EEOC lacks a reasoned basis for the proposed change, in violation of the Administrative Procedure Act (APA). Given the significant impacts the proposal would have on the agency and the economy, the comment period of 30 days is wholly inadequate. While our comments below are focused primarily on the proposed elimination of the EEO-1 report, which covers large private employers and federal contractors, we equally oppose the proposed elimination of the EEO-2 (apprenticeship programs), EEO-3 (labor organizations), EEO-4 (state and local governments), EEO-5 (elementary and secondary school systems and districts), and EEO-6 (institutions of higher education) reports, which we refer to collectively as "EEO data reports."² We urge the EEOC to withdraw the proposed rule in its entirety.

¹ While our comments focus on the impact of the proposed rule on Black people and other people of color, it will also cause significant harm to women and other groups.

² 29 C.F.R. § 1602.15 (EEO-2); 29 C.F.R. § 1602.22 (EEO-3); 29 C.F.R. § 1602.32 (EEO-4); 29 C.F.R. § 1602.41 (EEO-5); 29 C.F.R. § 1602.49 (EEO-6).

I. Occupational Segregation and Employment Discrimination Limits Opportunities for Black Workers and Other Workers of Color, Harming the U.S. Economy.

The EEO-1 report is a unique employer-level government demographic data collection requiring employers to collect and report on an annual basis workforce data by race, ethnicity, gender, and 10 job categories from service workers to executive/senior level officials and managers. EEO-1 reports provide a picture over time of how workers in selected occupations are distributed across an employer's workforce and, when aggregated, across an industry and across a geographic area, thereby helping to identify job distribution patterns that may warrant further investigation by the EEOC, employers, workers, and worker advocates. For example, EEO-1 reports may demonstrate that people of color and women are consistently clustered in less senior roles, while white men are concentrated in executive and senior management roles—confirming studies using labor market data. The EEO-1 report is accordingly a powerful tool for identifying and addressing occupational segregation and discrimination, which continue to create barriers to equal opportunity and economic security for Black workers and other workers of color.

Occupational segregation by race and gender remains a persistent feature of the U.S. labor market. At the time the EEOC established the EEO reports in 1966, many workplaces, and occupations and sectors, were segregated by gender and race as a matter of policy.³ Unfortunately, similar barriers still exist today because of ongoing discrimination, a failure to enact new protections, and a lack of full enforcement of our current laws. Empirical research consistently finds that workers of different races and genders remain concentrated in different occupations, even after accounting for education, experience, and geographic location. Labor market data demonstrate that Black and Latino workers remain more likely than white workers to work in lower-wage jobs, which often have fewer benefits, less job security, and fewer opportunities for promotion.⁴ Even as Black workers have increased their educational attainment, they are underrepresented in higher-wage positions⁵ when compared to white people with a similar level of education.⁶ Similarly, despite historic gains in education, the

³ Donald Tomaskovic-Devey, Catherine Zimmer, Kevin Stainback, Corre Robinson, Tiffany Taylor & Tricia McTague, *Documenting Desegregation: EEO-1 Estimates of U.S. Gender and Ethnic Segregation 1966-2003*, Am. Soc. Rev. 71: 565 (2006) (using establishment data from using EEO-1 reports available from 1966 to 2003).

⁴ See Marina Zhavoronkova, Rose Khattar, & Mathew Brady, *Occupational Segregation in America*, Ctr. For Am. Progress (Mar. 2022), <https://www.americanprogress.org/article/occupational-segregation-in-america/>; U.S. Dep't of Labor, Bureau of Labor Statistics, *BLS Reports, Labor Force Characteristics by Race and Ethnicity, 2023* (Dec. 2024); Carmen Sanchez Cumming, *Latino Workers are Often Segregated into Bad Jobs, but a strong U.S. Labor Movement can Boost Job Quality and U.S. Economic Growth*, Wash. Ctr. for Equitable Growth (Oct. 2022), <https://equitablegrowth.org/latino-workers-are-often-segregated-into-bad-jobs-but-a-strong-u-s-labor-movement-can-boost-job-quality-and-u-s-economic-growth/>; EEOC, *Hispanic Women and Latinas in the Federal Sector* (2023) (finding Hispanic and Latina women's "employment outcomes in the civilian Federal sector are not equal to those of other groups, including women as a whole and Hispanic and Latino men").

⁵ Ashley Jardina, Peter Q. Blair, Justin Heck & Papia Debroy, *The Limits of Educational Attainment in Mitigating Occupational Segregation Between Black and White Workers*, Nat'l Bureau of Econ. Rsch. Working Paper No. 31641 (Aug. 2023), https://www.nber.org/system/files/working_papers/w31641/w31641.pdf (analysis of 40 years of decennial Census and ACS data, finding that "considerable racial occupation segregation in the labor market persists today regardless of educational attainment and that observed segregation is substantially higher than would be expected at random, conditional on educational attainment, gender, and geography. . . . Overall, our results show that racial occupational desegregation has stalled in the past two decades despite rising educational attainment amongst Black workers."). See Kate Bahn & Carmen Sanchez Cumming, *Factsheet: U.S. Occupational Segregation by Race, Ethnicity, and Gender*, Wash. Ctr. for Equitable Growth (July 2020), <https://equitablegrowth.org/factsheet-u-s-occupational-segregation-by-race-ethnicity-and-gender/> (citing Darrick Hamilton, Algernon Austin, & William Darity Jr., *Economic Policy Institute Briefing Paper: Whiter Jobs, Higher Wages: Occupational Segregation and the Lower Wages of Black Men* (Feb. 2011) https://www.epi.org/publication/whiter_jobs_higher_wages/).

⁶ Jardina et al., *supra* note 5.

median wage of Latinas with college degrees significantly trails the median wages of white men, Latino men, and white women.⁷ Black workers and other workers of color are also less likely to be in senior management roles, even as their representation in the workforce increases.⁸ These disparities translate into lower average earnings and reduced opportunities for wealth accumulation and career advancement.

Black people and other people of color are segregated in lower-paying jobs and less senior positions not because of personal preferences or a lack of qualifications, skills, or ambition,⁹ but because of ongoing discrimination:¹⁰

- Charges alleging race discrimination are consistently among the top categories of charges received by the EEOC.¹¹ For example, according to a study of EEOC charge data from FY 2012-2016 and American Community Survey data from 2011-2015, Black, Asian American, and Latino people filed racial discrimination charges more frequently than white people, and “sex discrimination charges filed by men . . . are rare.”¹²
- Social science data similarly shows Black people and other people of color experience high rates of discrimination at different stages of the employment process, from hiring to

⁷ UCLA Latino Pol’y & Pol. Inst., *Latinas Remain Lowest-Paid Group in U.S. Workforce, Despite Historic Gains in Education*, UCLA Newsroom (Oct. 6, 2025), <https://newsroom.ucla.edu/releases/latinas-lowest-paid-group-US-workforce> (“A Latina with a bachelor’s degree earns \$28 per hour, significantly less than Latino men (\$34), white women (\$33) and white men (\$43) with the same level of education.”). On average, Latinas remain the lowest paid among the major demographics represented in the U.S. workforce. *Id.*

⁸ See As You Sow, *Capturing The Diversity Benefit: Workforce Diversity Linked To Financial Performance* at 6 (July 2026), <https://www.asyousow.org/reports/2026-capturing-the-diversity-benefit> (analysis of data, including EEO-1 data across 1,482 publicly traded U.S. companies between 2016 and 2024 finding “[b]etween 2016 and 2024, BIPOC workforce representation rose from 30% to 40%. BIPOC management representation also rose, from 19.5% to 28.8%, a gain of more than nine percentage points. However, the gap between BIPOC workforce representation and BIPOC management representation remained nearly unchanged.”); McKinsey & Co., *Race in the Workplace: The Black Experience in the US Private Sector* at 9 (Feb. 2021), <https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Diversity%20and%20Inclusion/Race%20in%20the%20workplace%20The%20Black%20experience%20in%20the%20US%20private%20sector/Race-in-the-workplace-The-Black-experience-in-the-US-private-sector-v3.pdf> (“Companies have successfully hired Black employees into frontline and entry-level jobs, but there is a significant drop-off in representation at management levels. In the report’s participating companies, Black employees make up 14 percent of all, compared with 12 percent for the US private sector overall. At the managerial level, the Black share of the workforce declines to 7 percent. Across the senior manager, VP, and SVP levels, Black representation holds steady at 4 to 5 percent.”); Lean In, *The State of Latinas in Corporate America* at 6-7 (2024) (finding “[b]etween the entry level and the C-suite, white men’s representation increases by 64 percent while Latinas’ decreases by 78 percent” and “[a]longside Black women, [Latinas] experience the most significant ‘broken rung’ at the critical initial step up to management” (emphasis added)).

⁹ Lean In, *supra* note 8, at 7 (“Entry-level Latinas ask for promotions as often as men do. They are also no more likely to leave their companies: in 2023, 16% of entry-level Latinas chose to leave, compared to 17% of men at the same level.”).

¹⁰ Steve Lohr, *Occupational Segregation Drives Persistent Inequality, Study Says*, N.Y. Times (Sept. 4, 2023), <https://www.nytimes.com/2023/09/04/business/black-workers-education-segregation.html>; Jardina et al., *supra* note 5.

¹¹ EEOC, *Enforcement and Litigation Statistics, Table E1a: Charge Receipts by Basis or Statute (All Statutes) Fiscal Years 1997–2025*, https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.eeoc.gov%2Fsites%2Fdefault%2Ffiles%2F2026-04%2FTable_E1a_Charge_Receipts_by_Basis_or_Statute_%2528All_Statutes%2529_FY_1997_-_FY_2025_o.xlsx&wdOrigin=BROWSELINK (last visited Aug. 21, 2026).

¹² Don Tomaskovic-Devey & Carly McCann, *Employment Discrimination Charge Rates: Variation and Sources*, Socius: Soc. Rsch. for a Dynamic World, 7:1,8 and Fig. 2 (2021), <https://journals.sagepub.com/doi/epub/10.1177/23780231211064389>.

promotions.¹³ Multiple studies have shown employers are more likely to interview applicants with white-sounding names than applicants with the same qualifications but Black-sounding names.¹⁴ Meta-analysis of similar field experiments have not found statistically significant differences in discrimination against Black and Latino individuals since 1989.¹⁵

- Reports produced by EEOC itself, relying on charge data, EEO-1 data, and litigation, demonstrate people of color and women face persistent discriminatory barriers to hiring, retention, and advancement in particular sectors, such as construction and the high-tech sector.¹⁶

Workplace discrimination creates long-term economic harm, artificially limiting the ability of talented and qualified Black employees and other employees of color to grow their careers, achieve success and build wealth.¹⁷

II. The EEOC Does Not Offer a Reasoned Basis for Rescinding Its EEO Demographic Data Collection Requirements, Which Are Lawful and Necessary to Identify, Prevent, and Address Discriminatory Practices.

For decades, the EEOC has required covered employers and other entities to report demographic data regarding the composition of their workforce to the agency.¹⁸ These requirements are grounded in the text of Title VII, which compels covered employers and other entities to maintain and provide records to the EEOC in order to facilitate employment discrimination investigations and enforcement.¹⁹ The EEOC has revised and expanded these

¹³ Patrick Kline, Evan K. Rose & Christopher R. Walters, *Systemic Discrimination Among Large U.S. Employers*, 137 Q. J. Econ., 1963 (2022) (study of hiring discrimination sent over 83,000 fictitious job applications with randomized characteristics to 11,000 entry level job openings at 108 of the largest US employers; “distinctively Black names reduce the probability of employer contact by 2.1 percentage points relative to distinctively white names”); Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable Than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 Am. Econ. Rev. at 991–1013 (2004) (study of racial discrimination in the labor market sent fictitious resumes to ads in Boston and Chicago newspapers; equivalent resumes with distinctively white names like Emily and Greg received 50% more callbacks for interviews than those with distinctively Black names like Lakisha and Jamal).

¹⁴ See *supra* note 13.

¹⁵ Lincoln Quillian et al., *Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time*, 114 Proc. Nat’l Acad. Sci., pp. 10870–10875 (Sept. 12, 2017), <https://doi.org/10.1073/pnas.1706255114>.

¹⁶ See EEOC, *High Tech, Low Inclusion: Diversity in the High Tech Workforce and Sector, 2014–2022* (2024), https://web.archive.org/web/20240921160524/https://www.eeoc.gov/special-report/high-tech-low-inclusion-diversity-high-tech-workforce-and-sector-2014-2022?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=; EEOC, *Building for the Future: Advancing Equal Employment Opportunity In the Construction Industry* (2023), <https://web.archive.org/web/20250122102716/https://www.eeoc.gov/building-future-advancing-equal-employment-opportunity-construction-industry>.

¹⁷ Carmen Sanchez Cumming, *The Importance of Anti-Discrimination Enforcement for a Fair and Equitable U.S. Labor Market and Broadly Shared Economic Growth*, Wash. Ctr. for Equitable Growth (Dec. 2021), <https://equitablegrowth.org/the-importance-of-anti-discrimination-enforcement-for-a-fair-and-equitable-u-s-labor-market-and-broadly-shared-economic-growth/>; As You Sow, *Capturing The Diversity Benefit - Workforce Diversity Linked To Financial Performance* (July 2026) (analysis of data, including EEO-1 data across 1,482 publicly traded U.S. companies between 2016 and 2024 finding that “[h]igher Black, Indigenous, and people of color (BIPOC) management representation was positively and significantly associated with income after tax, five- and 10-year revenue compound annual growth rate (CAGR), return on equity, return on invested capital (ROIC), long-term growth mean, free cash flow per share, and five- and 10-year share price appreciation.”).

¹⁸ 31 Fed. Reg. 2,832, 2,833 (Feb. 17, 1966) (codified at 29 C.F.R. § 1602.7).

¹⁹ 42 U.S.C. § 2000e-8(c).

requirements over the last sixty years,²⁰ and Congress has granted the EEOC additional authorities to access additional data.²¹ Now, the EEOC proposes to end its EEO demographic data collection requirements, claiming those requirements are unconstitutional and costly. To support these arguments, the EEOC relies on inaccurate legal claims, ignores statutory and case law, and makes assumptions about how employers use data that are unsupported by facts. The EEOC's analysis of the costs of the EEO data reports ignores the benefits to agency enforcement and burdens caused by the lack of clear guidance. The EEOC's weak arguments and refusal to consider alternatives demonstrate that its goal is not to advance even-handed enforcement of Title VII, but to obscure data that would undermine the agency's current divisive ideological priorities.

A. The EEOC Must Offer a Reasoned Basis for Rescinding Its EEO Demographic Data Collection Regulations.

In order for an agency action to be valid under the APA, it must be the product of “reasoned decisionmaking.”^{90F}²² Agency actions, including regulations, are arbitrary and capricious in violation of the APA when, among other things, the agency has “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.”^{91F}²³ These same requirements apply when an agency revises its regulations.^{92F}²⁴ When an agency substantially alters an existing regulation, it must provide a “more detailed justification” for a change in policy when the “new policy rests upon factual findings that contradict those which underlay its prior policy” or where the previous policy has “engendered serious reliance interests that must be taken into account.”²⁵ The EEOC has failed to do so here.

B. The EEOC's Current Demographic Data Collection Regulations Are Grounded in Title VII.

While the proposed rule claims the EEO demographic data collection requirements conflict with EEO law, they are grounded in the text of Title VII itself.²⁶ When Congress passed and subsequently amended Title VII, it not only created the right to be free from employment discrimination but empowered the EEOC with tools to identify and address violations of law. Among these tools are the mandate, codified in Section 709(c), requiring employers, labor organizations, and employment agencies to:

²⁰ 32 Fed. Reg. 2,852, 2,853 (Feb. 14, 1967) (proposed rule); 32 Fed. Reg. 10,650 (July 20, 1967) (final rule); 32 Fed. Reg. 2,852, 2,853 (Feb. 14, 1967) (proposed rule); 32 Fed. Reg. 10,650 (July 20, 1967) (final rule); 38 Fed. Reg. 5,659 (Mar. 2, 1973) (proposed rule); 38 Fed. Reg. 12,604 (May 14, 1973) (final rule); 38 Fed. Reg. 15,461 (June 12, 1973) (proposed rule); 38 Fed. Reg. 26,719 (Sept. 25, 1973) (final rule); 39 Fed. Reg. 16,157 (May 7, 1974) (proposed rule); 40 Fed. Reg. 25,188 (June 12, 1975) (final rule); 70 Fed. Reg. 71,294, 71,296, 71,299 (Nov. 28, 2005); 81 Fed. Reg. 5,113 (Feb. 1, 2016).

²¹ See 42 U.S.C. § 12117(a) (incorporating “powers, remedies, and procedures” in section 709 of Title VII, among others, in the Americans with Disabilities Act); 42 U.S.C. § 2000ff-6(a)(1) (incorporating “powers, remedies, and procedures” in section 709 of Title VII, among others, in the Genetic Information Nondiscrimination Act); 42 U.S.C. § 2000gg-2(a)(1) (incorporating “powers, remedies, and procedures” in section 709 of Title VII, among others, in the Pregnant Workers Fairness Act).

²² *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 53 (1983).

²³ *Id.* at 43.

²⁴ *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (explaining while “agencies are free to change their existing policies,” they must “provide a reasoned explanation for the change”).

²⁵ *FCC v. Fox Television Stations*, 556 U.S. 502, 515–16 (2009).

²⁶ Proposed Rule at 46334-35.

(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.²⁷

Congress thus empowered the agency to not only request information as part of particular investigations but to require regular reporting in order to guide agency actions more broadly. Regulated entities who fail to make and keep relevant records put themselves at risk of later enforcement actions.²⁸

The EEO demographic data collection requirements are a reasonable and limited exercise of the agency's power to require employers and other covered entities to "make . . . reports." While Congress did not specify which records are "relevant" for the purpose of employers' obligation to "make and keep . . . records" under Section 709, the Supreme Court has interpreted this standard broadly to include "virtually any material that might cast light on the allegations against the employer."²⁹ The proposed rule does not dispute the utility of EEO data reports for this purpose or that it is outside of the EEOC's authority to require employers to "make . . . reports there from" to the agency. Current regulations require covered entities to report aggregate demographic data rather than provide voluminous personnel records,³⁰ providing the agency with key information without overburdening either covered entities or agency staff. The U.S. Court of Appeals for the First Circuit has previously held EEO demographic data collection requirements are a valid exercise of the EEOC's authority under Section 709.³¹

Congress has approved the EEOC's data collection requirements. Six years after the EEOC began collecting EEO data reports, in 1972, Congress recognized that these requirements gave the EEOC "access to the most current statistical computations and analyses regarding employment patterns," putting it in the best position "to determine where 'pattern or practice' litigation is warranted" and to pursue it.³² As a result, Congress passed the Equal Employment Opportunity Act of 1972 to give the EEOC direct authority to act on the evidence of discrimination contained in the EEO data reports its possession.³³ Congress has never restricted or rescinded the EEO demographic data collection requirements in subsequent amendments to Title VII or other laws.³⁴

C. EEO Demographic Data Collection Promotes Effective Title VII Enforcement and Guidance.

The EEOC has used EEO data reports for decades to identify harmful workplace trends and address discrimination by hundreds of thousands of employers and other covered entities. As the EEOC itself explained on its 35th anniversary, "The EEO-1 reports and studies, other labor

²⁷ 42 U.S.C. § 2000e-8(c).

²⁸ *EEOC v. Target Corp.*, 460 F.3d 946 (7th Cir. 2006) (finding the district court erred in granting summary judgment on the EEOC's claim that Target violated 42 U.S.C. § 2000e-8(c)).

²⁹ *EEOC v. Shell Oil Co.*, 466 U.S. 54 (1984) (discussing which records are "relevant" in the context of agency subpoenas).

³⁰ 29 C.F.R. § 1602 (2026).

³¹ *United States v. State of New Hampshire*, 539 F.2d 277, 280 (1st Cir. 1976) (upholding EEO-4 data collection).

³² H.R. Rep. No. 92-238, p. 14 (1971), reprinted in 1972 U.S.C.C.A.N. 2137, 2150.

³³ Pub. L. No. 92-261, 86 Stat. 103 (1972).

³⁴ Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991).

force data, and charge information [are] an invaluable tool to pinpoint possible zones of employment discrimination, and to identify major patterns of exclusion and discriminatory practices in select industries, job categories, and geographic areas.”³⁵ For example, in 1967, after just one year of reporting, the EEOC used EEO data reports to identify multiple employment areas in which discriminatory practices were particularly egregious.³² The EEOC then sponsored a series of hearings to draw public attention to their findings.³⁶ In the decades since, the EEOC has continued to use this data to guide its enforcement actions, issue reports, draft guidance,³⁷ and set its strategic priorities.³⁸

EEO data reports play a critical role in investigating and proving intentional discrimination against individual workers. As Congress itself recognized when it passed Title VII, data reporting requirements are “particularly essential in [T]itle VII because whether or not a certain action is discriminatory will turn on the motives of the respondent, which will usually be best evidenced by this pattern of conduct on similar occasions.”³⁹ Statistical information regarding the composition of an employers’ workforce, together with other data and information, can help the EEOC identify whether the treatment of a particular employee follows a general pattern of discrimination.⁴⁰ Information showing an employer discriminated against other people of the same race or gender may shed light on whether an individual person suffered discrimination⁴¹ and whether any non-discriminatory reason for the employers’ disparate treatment is pretextual.⁴²

Importantly, EEO-1 data helps the EEOC identify and address patterns and practices of intentional discrimination.⁴³ For example, in 2011, the EEOC used EEO-1 data to identify patterns of underrepresentation of Black and Latino workers at Bass Pro Shops throughout the country⁴⁴ and filed a commissioner’s charge.⁴⁵ As the EEOC pursued its investigation of potential hiring discrimination, it found managers had made remarks showing bias against Black and Latino workers.⁴⁶ Similarly, after a supermarket chain’s EEO-1 disclosure showed a California supermarket chain had a nearly homogeneous Latino workforce, the EEOC opened an

³⁵ EEOC, *The Story of the U.S. Equal Employment Opportunity Commission: Ensuring the Promise of Opportunity for 35 Years*, at 9 (2000).

³⁶ *Id.* at 9-10.

³⁷ See, e.g. EEOC, *Combating Employment Discrimination in Construction*, <https://www.eeoc.gov/combating-employment-discrimination-construction> (discussing reports, promising practices, and hearings on discrimination in the construction industry).

³⁸ EEOC, *Strategic Enforcement Plan Fiscal Years 2024-2028* (Sept. 18, 2023), <https://www.eeoc.gov/strategic-enforcement-plan-fiscal-years-2024-2028> (“Collecting and analyzing data is central to the EEOC’s enforcement and educational efforts. The EEOC recognizes the importance of data-driven decision-making and the transformative role data can have to make the EEOC more effective in advancing its priorities and serving the public.”). In limited circumstances, EEO data can also help workers who have been victims of discrimination prove their claims. Plaintiffs can get access to EEO data if it is in their EEOC file and they FOIA their file.

³⁹ 110 Cong. Rec. (April 8, 1964), <https://www.congress.gov/88/crecb/1964/04/08/GPO-CRECB-1964-pt6-2-1.pdf#page=57>.

⁴⁰ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 805 (1973). See also *New Hampshire*, 539 F.2d at 280 (discussing how EEO-4 data can be used to determine whether “illegal discrimination is or is not present in a particular factual context,” including both individual complaints and class complaints).

⁴¹ *EEOC v. Konica Minolta Bus. Sols. U.S.A., Inc.*, 639 F.3d 366 (7th Cir. 2011).

⁴² *McDonnell Douglas Corp.*, 411 U.S. at 805.

⁴³ *Shell Oil*, 466 U.S. at 70-71.

⁴⁴ Andrea Hsu, *EEOC Wants to Stop Collecting Data Used to Fight Discrimination*, NPR (Mar. 20, 2026), <https://www.npr.org/2026/05/20/nx-s1-5758092/eeoc-wants-to-stop-collecting-data-used-to-fight-discrimination>; see also *EEOC v. Bass Pro Outdoor World, LLC*, No. 4:11-CV-3425 (S.D. Tex. filed Sept. 21, 2011).

⁴⁵ First Am. Compl., *EEOC v. Bass Pro Outdoor World, LLC*, No. 11-CV-3425 (S.D. Tex. Jan. 26, 2012), available at 2012 WL 1499740.

⁴⁶ Hsu, *supra* 44.

investigation into the chain's failure to hire non-Latino workers.⁴⁷ Most recently, earlier this year, the EEOC settled a lawsuit alleging a trucking company discriminated against women workers.⁴⁸ In pursuing its investigation of the charges, the EEOC relied on EEO-1 data,⁴⁹ as well as applicant data and other information, to show that the company disfavored hiring women applicants compared to the pool of job applications it had received to corroborate the claims of two women who experienced discrimination.⁵⁰

Without EEO data reports, the EEOC will have a more limited ability to identify employers who may be systemically discriminating or to identify potential broader patterns stemming from the accounts of individual workers who have experienced discrimination. The EEOC will also not be able to effectively identify which sectors or industries would benefit from additional guidance or to set enforcement priorities. In its recently published National Enforcement Plan (NEP) for Fiscal Years 2025-2029, the EEOC stated it would continue to focus on certain disparate treatment pattern-or-practice cases.⁵¹ Finalizing the proposed rule would undermine this EEOC priority. The EEOC should thus withdraw the proposed rule and maintain its current EEO data collection requirements.

D. Rescinding the EEO Demographic Data Collection Requirements Reduces Public Transparency and Accountability.

Ending EEO demographic data collection would reduce transparency and accountability at the EEOC. The EEOC is charged with the mission to “prevent and remedy unlawful employment discrimination and advance equal employment opportunity for all.”⁵² While EEO data reports from individual covered entities is treated as confidential, the EEOC discloses anonymized aggregate data regarding employment trends by race, sex, industry, and state, among other factors.⁵³ This data allows both Congress and the public to see high-level trends in employment opportunities and compare those trends to the EEOC's strategic priorities and enforcement actions. Transparency and accountability are particularly important now, as the agency has relinquished its historic role as an independent, bipartisan civil rights enforcement agency to follow divisive ideological priorities.

The EEOC's new NEP reverses longstanding agency priorities, discouraging disparate impact discrimination claims and prioritizing “DEI-related race and sex discrimination” over other forms of discrimination based on race, gender, and national origin.⁵⁴ EEOC Chair Andrea Lucas has also actively solicited white men—a group that does not experience employment discrimination because of their race or gender at the same rates as Black people, other people of

⁴⁷ Rebecca Klar, *EEOC Plan to Cut Race, Sex Reports Carries Downsides for Agency*, Bloomberg Law (May 19, 2026, 12:59 PM EDT), <https://news.bloomberglaw.com/daily-labor-report/eec-plan-to-cut-race-sex-reports-carries-downsides-for-agency>.

⁴⁸ Press Release, EEOC, *EEOC Reaches Early \$5.5 Million Resolution With Central Transport Over Nationwide Sex Discrimination in Hiring* (May 15, 2026), <https://www.eec.gov/newsroom/eec-reaches-early-55-million-resolution-central-transport-over-nationwide-sex>.

⁴⁹ Compl., *EEOC, v. Central Transport, LLC*, No. 2:26-cv-02201-JJT (D. Ariz. Mar. 31, 2026), https://nefi.com/NEON/NEON_issues/040726/EEOC_v._Central_Tranport_Complaint.pdf.

⁵⁰ Klar, *supra* note 47.

⁵¹ EEOC, *National Enforcement Plan (FY 2025–2029)*, at 2, 4 (June 4, 2026), https://www.eec.gov/sites/default/files/2026-06/NEP_-_signed.pdf (hereinafter “EEOC National Enforcement Plan”).

⁵² EEOC, *Strategic Plan 2026-2030: Draft*, at 4 (Jun. 30, 2026), available at <https://www.regulations.gov/document/EEOC-2026-0001-0001>.

⁵³ EEOC, *Data Tools and Products*, <https://www.eec.gov/data/data-tools-and-products> (last visited Aug. 3, 2026).

⁵⁴ EEOC National Enforcement Plan, *supra* note 51.

color, and women⁵⁵—to file discrimination claims.⁵⁶ These priorities are inconsistent with data on workplace discrimination discussed in Part I above. Rescinding the EEOC’s demographic data collection requirements will limit the ability of Congress and the public to understand how the EEOC is prioritizing limited resources for ideological objectives over evidence-based enforcement of workers’ rights, as well as the impact those actions have on the prevalence of workplace discrimination as a whole.

E. The EEOC’s Claim That EEO Demographic Data Collection is Unconstitutional is Inaccurate and Inconsistent with the Positions of Other Federal Agencies.

While the rationale in the proposed rule is confusing and unclear, the EEOC appears to make several novel and equally flawed arguments for why its EEO demographic data collection is unconstitutional. First, the EEOC appears to claim demographic data collection itself triggers strict scrutiny.⁵⁷ Second, the EEOC claims demographic data collection could encourage employers to take race-based actions. Finally, the EEOC claims the requirements encourage impermissible stereotyping. As a result, the EEOC argues its EEO demographic data collection requirements are subject to, and fail, strict scrutiny because the requirements are not narrowly tailored. The EEOC is wrong on the law and fails to present facts to support its arguments. The EEOC’s position is also inconsistent with the position other federal agencies have recently taken on demographic data collection.

1. Demographic Data Collection is Not a Racial Classification That Triggers Strict Scrutiny.

Where a covered entity does not treat people differently based on a race or sex, the collection of demographic data alone does not implicate civil rights laws or the Equal Protection Clause. Yet the EEOC assumes, without elaborating, that collecting demographic data is a racial classification that triggers strict scrutiny.⁵⁸ The EEOC’s arguments are poorly reasoned and contrary to law. They cannot support the proposed rule.

The collection of demographic data, on its own, is not a racial classification that triggers strict scrutiny. The Equal Protection Clause does not prohibit the awareness that race exists and impacts individuals’ lives,⁵⁹ but rather actions by the government because of race.⁶⁰ The Supreme Court has repeatedly held strict scrutiny only applies “when the government distributes burdens or benefits on the basis of individual racial classifications.”⁶¹ Awareness of

⁵⁵ See, e.g., Desta Fekedulegn et al., *Prevalence of Workplace Discrimination and Mistreatment in a National Sample of Older U.S. Workers: The REGARDS Cohort Study*, 8 SSM-Population Health (Jul. 2019), <https://www.sciencedirect.com/science/article/pii/S2352827319300588?via%3Dihub>.

⁵⁶ EEOC Chair Andrea Lucas (@andrealucasEEOC), X (Dec. 17, 2025), <https://x.com/andrealucasEEOC/status/2001439099907961012>.

⁵⁷ The EEOC also argues in a footnote that the collection of gender data fails intermediate scrutiny. Proposed Rule at 46335 n.9. For the same reasons EEO data collection does not trigger or fail strict scrutiny, it also does not trigger or fail intermediate scrutiny.

⁵⁸ See Proposed Rule Part II (explaining why EEO data collection is not narrowly tailored without explaining why it triggers strict scrutiny).

⁵⁹ *SFFA*, 600 U.S. at 230 (“[N]othing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”).

⁶⁰ *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) (“The equal protection clause does not forbid classification. It simply keeps decision makers from treating differently persons who are in all relevant respects alike.”). See also *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 747 (2007) (holding defendants violated the Equal Protection Clause by “determin[ing] admission to a public school on a racial basis”).

⁶¹ See, e.g., *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 720 (2007) (citing *Johnson v. California*, 543 U.S. 499, 505–06 (2005); *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524 (3d Cir. 2011) (“A racial classification occurs only when an action distributes burdens or benefits on the basis

racial demographics is not enough to trigger strict scrutiny; there must be evidence the government took action with the intent to materially impact particular racial groups. The Supreme Court in *Alexander v. South Carolina State Conference of the NAACP*, for example, held that a state legislature’s awareness of race during the redistricting process did not trigger strict scrutiny in the absence of evidence the district lines were motivated by race.⁶² Recent Supreme Court cases such as *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*⁶³ (*SFFA*) and *Louisiana v. Callais*⁶⁴ involved the explicit use of race to allocate benefits and burdens. These cases do not change the standard for determining whether a policy or practice triggers strict scrutiny in the first place either because the government itself is allocating benefits or burdens based on race (as occurred in those cases) or is coercing third parties to do so (as discussed further below).

EEO data collection requirements mandate employers and other covered entities report demographic data for all workers, regardless of race, and do not require race-based decisions regarding who to hire, fire, promote, or other terms and conditions of employment. Courts have routinely distinguished data collection requirements from racial classifications that trigger scrutiny and found data collection to be lawful. In *Parents Involved in Community Schools v. Seattle School District No. 1*, for example, Justice Roberts explained in his concurrence that it was unconstitutional for a school district to use race as a factor in assigning students to schools, but made clear his opinion did not call into question efforts to collect and assess demographic data on educational outcomes.⁶⁵ Numerous lower courts have rejected the argument that the collection of demographic data itself triggers strict scrutiny⁶⁶ or is evidence of discriminatory intent.⁶⁷ Nor does the EEOC point to a single case holding data collection is subject to strict scrutiny.⁶⁸ The EEOC’s argument is without support or merit on its face.

of race.” (internal citations and quotations omitted); *Anderson ex rel. Dowd v. City of Boston*, 375 F.3d 71, 77 (1st Cir. 2004) (“The term racial classification ‘normally refers to a governmental standard, preferentially favorable to one race or another, for the distribution of benefits.’”); see also *Students for Fair Admissions, Inc. v. Univ. of Tex. at Austin*, 142 F.4th 819 (5th Cir. 2025) (“[A]ll parties agree that it is lawful for the institution to collect that data for the lawful purposes of reporting to government agencies and recruiting students to enroll . . .”).

⁶² 602 U.S. 1 (2024); see also *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (“Redistricting legislatures will . . . almost always be aware of racial demographics.”).

⁶³ 600 U.S. 181, 206-07 (2023).

⁶⁴ 146 S. Ct. 1131, 1161 (2026).

⁶⁵ *Parents Involved in Community Schools*, 551 U.S. at 745 (explaining the decision does not call into question “a provision of the No Child Left Behind Act of 2001 that requires States to set measurable objectives to track the achievement of students from major racial and ethnic groups”).

⁶⁶ *Morales v. Daley*, 116 F. Supp. 2d 801 (S.D. Tex. 2000) (holding that collecting racial demographic data through the Census does not violate the Fifth Amendment); *Berkley v. United States*, 48 Fed. Cl. 361, *rev’d on other grounds* 287 F.3d 1076 (Fed. Cir. 2000); *Sussman v. Tanoue*, 39 F. Supp. 2d 13, 25 (D.D.C. 1999) (“Courts have not found requirements to collect data about the racial and gender make-up of a workforce to violate the Constitution.”) (citing *Caulfield v. Bd. of Educ.*, 583 F.2d 605, 611–12 (2d Cir. 1978) (“[T]he Constitution itself does not condemn the collection of this data,” referring to a local census of the racial and ethnic breakdown of public school employees.); *United States v. New Hampshire*, 539 F.2d 277, 280 (1st Cir. 1976), *cert. denied*, 429 U.S. 1023 (1976)).

⁶⁷ *Reed v. Agilent Techs., Inc.*, 174 F. Supp. 2d 176, 185 (D. Del. 2001) (concluding that unless the plaintiff can demonstrate that the defendant’s diversity policy, which included maintaining statistical awareness of the diversity in its workforce, “had some negative impact upon his individual employment situation, the mere existence of a policy promoting diversity awareness is not evidence of discrimination”).

⁶⁸ The EEOC cites to dicta *Shaw v. Reno* explaining racial classifications are subject to strict scrutiny even if they arguably “burden or benefit the races equally.” 509 U.S. 630, 651 (1993). *Shaw*, however, concerned the explicit use of race to draw legislative district lines—not the mere collection of demographic data.

2. Demographic Data Collection Does Not Encourage Employers to Make Race-Based Decisions.

The EEOC also claims demographic data collection is subject to strict scrutiny because it “may encourage employers to engage in discrimination to avoid potential EEOC enforcement actions or to address perceived inequitable outcomes” and, in particular, to “discriminate against employees who are not considered ‘minorities.’”⁶⁹ The agency has no basis for this claim.

The EEOC has long provided employers with guidelines concerning the collection of demographic information in a manner consistent with Title VII and other antidiscrimination statutes, as well as the U.S. Constitution. As early as 1966, when the EEOC first established the EEO-1, it advised employers who keep records concerning racial or ethnic identity to keep them “separately from the employee’s basic personnel form or other records available to those responsible for personnel decisions.”⁷⁰ Today, the EEOC notifies employers that “[s]elf-identification forms should be kept separately from the employment application and must not be a basis for employment decisions.”⁷¹ Given this explicit warning, it is unclear why EEO data collection requirements would encourage employers to take race-based actions that could trigger liability under Title VII, or why employers would believe such actions would help them avoid scrutiny by the EEOC.

Nor does the EEOC cite any examples of employers making impermissible race-based decisions because of EEO reporting at any point during the decades of the collection. In fact, research consistently shows that employers continue to preference white applicants and workers over equally qualified applicants and workers of color⁷² and women,⁷³ despite the existence of these reporting requirements. The First Circuit has previously dismissed a similar claim regarding EEO-4 data, explaining “the possible and purely hypothetical misuse of data does not require the banning of reasonable procedures to acquire such data.”⁷⁴

Nor do the current EEO report requirements preference people of color in violation of *Ames v. Ohio Department of Youth Services*,⁷⁵ as the proposed rule claims. As explained in Part I, the unfortunate reality is that Black people and other people of color, women, and other groups that have historically experienced exclusion continue today to face more discrimination in the workplace.⁷⁶ In light of these facts, attention to discrimination against these groups would be appropriate. At the same time, the EEOC has long applied the same standards when determining whether workplace discrimination occurred, regardless of the race of the worker.⁷⁷ The EEOC’s demographic data collection regulations have similarly required covered employers

⁶⁹ Proposed Rule at 46335.

⁷⁰ 31 Fed. Reg. 2,832, 2,833 (Feb. 17, 1966). https://archives.federalregister.gov/issue_slice/1966/2/17/2818-2833.pdf#page=15.

⁷¹ Uniform Guidelines on Employee Selection Procedures, Supporting Statement (Dec. 2024), https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202412-3046-006

⁷² See, e.g., Kline, *supra* note 13.

⁷³ See, e.g., Corrine A. Moss-Racusin et al., *Science Faculty’s Subtle Gender Biases Favor Male Students*, 109 Proc. Nat’l Acad. Sci. U.S. 16474 (2012), <http://www.jstor.org/stable/41763373>.

⁷⁴ *State of New Hampshire*, 539 F.2d at 280.

⁷⁵ 605 U.S. 303 (2025) (holding that the same standards apply to disparate treatment claims brought by all individuals under Title VII).

⁷⁶ See Part I, *supra* notes 3–17 and accompanying text (discussing effects of occupational segregation and employment discrimination on opportunities for Black workers and other workers of color).

⁷⁷ See EEOC, *Section 15: Race and Color Discrimination* § 15-II n.23 & accompanying text (2006), <https://www.eeoc.gov/laws/guidance/section-15-race-and-color-discrimination>.

to report information about all employees for decades⁷⁸ and do not, as the proposed rule claims, “focus . . . attention on ‘minority’ employees.”⁷⁹ Nor does the proposed rule explain why the now-rescinded guidance on affirmative action provides the agency with a reasoned basis to rescind unrelated EEO demographic data collection requirements, as the agency claims.⁸⁰

3. Demographic Data Collection Does Not Use Race as a Stereotype or a Negative.

Finally, the EEOC claims EEO demographic data collection is unconstitutional because it allegedly relies on imprecise categories⁸¹ and “promote[s] racial stereotyping.”⁸² The proposed rule complains the EEO data collection requirements have changed over time and claims the current categories are “largely arbitrary and not based on the EEOC’s enforcement needs.”⁸³ In so arguing, the proposed rule primarily cites requirements from the 1970s, which are irrelevant to whether the current standards are appropriate.⁸⁴ The EEOC’s current standards are similar to those used across the federal government for data collection, compliance reporting, and program administration purposes, including by the U.S. Census Bureau⁸⁵ and the U.S. Department of Education.⁸⁶ The EEOC implies these categories foster employment discrimination, pointing to three recent cases involving allegations of hostile work environments for white workers.⁸⁷ However, none of these cases mention the EEO demographic data collection, and it is unclear why the EEOC believes those requirements led to unlawful workplace conditions.

The EEOC claims, “Viewing individuals as having inherent qualities based on racial stereotypes is antithetical to the Title VII requirement that employer actions be colorblind.”⁸⁸ We agree. Collecting data, however, does not require covered entities to act on racial stereotypes, but rather helps identify instances where entities have done so in violation of the law.

⁷⁸ EEOC, *Equal Employment Opportunity Report 1978: Job Patterns for Minorities and Women in Private Industry*, Appendix (1978).

⁷⁹ Proposed Rule at 46336.

⁸⁰ *Id.* at 46335-36.

⁸¹ *Id.* at 46336-47.

⁸² *Id.* at 46335.

⁸³ *Id.* at 46337. While the EEOC appears to regard these factors as independent evils, they are elements of narrow tailoring and only relevant if data collection is an impermissible race-based classification that must meet strict scrutiny. *See, e.g., SFFA*, 600 U.S. at 216-218 (holding that Harvard and the University of North Carolina’s use of race as a factor in admissions could not survive strict scrutiny because the racial categories used were imprecise); *id.* at 218-222 (holding that Harvard and the University of North Carolina’s use of race as a factor in admissions could not survive strict scrutiny because doing so involved the use of impermissible stereotypes).

⁸⁴ *Id.* at 46337.

⁸⁵ *See, e.g.,* Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58,786–58,790 (1997). The federal standards were recently updated to require the collection of more granular data, as the proposed rule suggests, but the EEOC does not consider revising its requirements to conform to these new standards, despite the revised standards of 2024 being the currently controlling standards. Revisions to OMB’s Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22,182 (Mar. 29, 2024), <https://www.federalregister.gov/documents/2024/03/29/2024-06469/revisions-to-ombs-statistical-policy-directive-no-15-standards-for-maintaining-collecting-and>.

⁸⁶ Nat’l Ctr. for Educ. Statistics, IPEDS Data Explorer, *Table 10: 12-Month Unduplicated Headcount Enrollment and Percentage Distribution of High School Students Enrolled in College Courses for Credit at Title IV Institutions, by Control of Institution, Level of Institution, Sex, and Race/Ethnicity: United States, 2024–25*, [https://nces.ed.gov/ipeds/search?query=&query2=&resultType=table&page=1&sortBy=date_desc&surveyComponents=12-month%20Enrollment%20\(E12\)&surveyComponents=Completions%20\(C\)&surveyComponents=Institutional%20Characteristics%20\(IC\)&collectionYears=2025-26&sources=Tables%20Library&overlayTableId=36701](https://nces.ed.gov/ipeds/search?query=&query2=&resultType=table&page=1&sortBy=date_desc&surveyComponents=12-month%20Enrollment%20(E12)&surveyComponents=Completions%20(C)&surveyComponents=Institutional%20Characteristics%20(IC)&collectionYears=2025-26&sources=Tables%20Library&overlayTableId=36701) (last visited Aug. 3, 2026).

⁸⁷ Proposed Rule at 46337-38.

⁸⁸ *Id.* at 46337.

4. EEO Demographic Data Collection Would Survive Strict Scrutiny, If It Applies.

Because EEO demographic data collection does not trigger strict scrutiny, it does not need to be justified by a compelling interest or be narrowly tailored. Notably, however, the EEOC does not explain why the agency's interest in collecting data to identify specific instances of discrimination is not compelling and merely states the requirements are not narrowly tailored without analysis of the relevant factors.⁸⁹

5. The EEOC's Claim that Data Collection is Unconstitutional is Inconsistent with the Position of Other Federal Agencies and Would Upend the Function of Government.

The arguments in the proposed rule, if adopted, would call into question all demographic data collection by the government, weakening its ability to serve the people. Government collection of accurate demographic information is essential to accurately identify and address societal problems. As the Supreme Court has repeatedly emphasized, and data continues to confirm, race continues to play a salient role in America,⁹⁰ impacting an individual's health,⁹¹ education,⁹² housing,⁹³ and more. The U.S. Constitution does not require the government to be blind to those realities. Indeed, it permits the government both to address these issues through policies that do not consider race⁹⁴ and to remedy specific, identified instances of discrimination

⁸⁹ *Id.* at 46339.

⁹⁰ *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmty.*, 576 U.S. 519, 546 (2015) ("Much progress remains to be made in our Nation's continuing struggle against racial isolation."); *SFFA* at 317 (Kavanaugh, J., concurring) ("To be clear, although progress has been made since *Bakke* and *Grutter*, racial discrimination still occurs and the effects of past racial discrimination still persist.").

⁹¹ Monica E. Peek, *Increasing Representation of Black Primary Care Physicians: A Critical Strategy to Advance Racial Health Equity*, 6 JAMA Network Open e236678 (2023), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2803903>; Bruce G. Link, *Epidemiological Sociology and the Social Shaping of Population Health*, 49 J. Health & Soc. Behav. 367, 372-75 (2008); Risa Lavizzo-Mourey & David Williams, *Being Black Is Bad for Your Health*, U.S. News (Apr. 14, 2016), <https://www.usnews.com/opinion/blogs/policy-dose/articles/2016-04-14/theres-a-huge-health-equity-gap-between-whites-and-minorities>; Asma Pinkey et al., *Advances in the Understanding of Health Disparities in the United States Hispanic Population*, 6 J. Cancer Biology 71, 73 (2025).

⁹² See, e.g., Educ. Trust, *Equal Is Not Good Enough* (2022), <https://edtrust.org/wp-content/uploads/2014/09/Equal-Is-Not-Good-Enough-December-2022.pdf>; Educ. Trust, *As Districts Face Teacher Shortages, Black and Latino Students Are More Likely to Have Novice Teachers Than Their White Peers* (Dec. 15, 2021), <https://edtrust.org/press-release/as-districts-face-teacher-shortages-black-and-latino-students-are-more-likely-to-have-novice-teachers-than-their-white-peers/#:~:text=Not%20only%20do%20Black%20students,5%25%20first%20year%20teachers>; Chris Hacker, *Majority-Black School Districts Have Far Less Money to Invest in Buildings — and Students are Feeling the Impact*, CBS News (Sept. 14, 2023), <https://www.cbsnews.com/news/black-school-districts-funding-state-budgets-students-impact/>; Roby Chatterji, *Closing Advanced Coursework Equity Gaps for All Students*, Ctr. for Am. Progress (June 30, 2021), <https://www.americanprogress.org/article/closing-advanced-coursework-equity-gaps-students/>; Laura Lumpkin, *Flagship Universities Say Diversity is a Priority. But Black Enrollment in Many States Continues to Lag*, Wash. Post (Apr. 18, 2021 7:00 AM ET), <https://www.washingtonpost.com/education/2021/04/18/flagship-universities-black-enrollment/>.

⁹³ Tom Shapiro et al., LDF Thurgood Marshall Inst. & Inst. On Assets & Soc. Pol'y at Brandeis Univ., *The Black-White Racial Wealth Gap* (2019), <https://tminstituteldf.org/wp-content/uploads/2019/11/FINAL-RWG-Brief-v1.pdf>.

⁹⁴ *SFFA*, 600 U.S. at 384 (Thomas, J., concurring) ("Race-neutral policies may thus achieve the same benefits of racial harmony and equality without any of the burdens and strife generated by affirmative action policies."); *id.* at 317 (Kavanaugh, J., concurring) ("And governments and universities still 'can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race.'" *Richmond v. Croson*, 488 U.S. 469, 526 (Scalia, J., concurring in judgment) (internal quotation marks omitted); see *id.* at 473 (plurality opinion of O'Connor, J.) ("the city has at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races").

through race-based means.⁹⁵ Understanding the ways in which race, ethnicity, and gender impact people's lives is essential in moving the United States toward "[t]he dream of a Nation of equal citizens"⁹⁶ in fact as well as in name, and data plays a critical role in ensuring the development and implementation of evidence-based responses.

In addition to the U.S. Census Bureau, many federal entities require and rely upon the routine collection and dissemination of demographic data.⁹⁷ Beyond civil rights enforcement, agencies use demographic data "for such varied purposes as computing federal grant-in-aid benefits, drafting of legislation, urban and regional planning, business planning, and academic and social studies."⁹⁸ The proposed rule's arguments, if adopted, would upend government's normal functioning.

The EEOC's arguments in the proposed rule are also inconsistent with the position of other federal agencies under the Trump administration. The Department of Commerce, for example, recently argued in court that government collection of demographic data does not trigger strict scrutiny, explaining:

[S]eeking government information related to race . . . [is] not allocating a benefit or burden based on race but you're simply seeking to collect information demographic data related to race. My understanding under current case law [is] that's not a racial classification that triggers strict scrutiny.⁹⁹

Similarly, in 2025, the Department of Education expanded the collection of demographic data regarding higher education admissions and enrollment using similar racial categories to the EEO data collection requirements.¹⁰⁰ In its rulemaking, the Department of Education did not raise any constitutional concerns about collecting this data. The different approach appears driven by how the Trump administration intends to use the data rather than a coherent distinction between what data is collected or its impact: the Trump administration has used higher education enrollment data to target schools that enroll Black and Latino students,¹⁰¹

⁹⁵ *SFFA*, 600 U.S. at 207. *See also* M. Geron Gadd & Mara K. Youdelman, *Constitutionality of Demographic Data Collection*, Nat'l Health L. Program, 4 (June 2023), <https://healthlaw.org/resource/the-constitutionality-of-demographic-data-collection/> (last visited August 21, 2026).

⁹⁶ *Croson*, 488 U.S. at 506.

⁹⁷ *See, e.g.*, 42 U.S.C. § 300kk (requiring any federally conducted or supported health care or public health program, activity or survey to collect and report data on race, ethnicity and sex); 12 U.S.C. § 2803(a) et seq., (b)(4) (requiring financial institutions that originate or purchase mortgage loans to collect and disclose demographic information about mortgagors and mortgage applicants, including their race and gender); 42 U.S.C. § 19152(a) (requiring federal research agencies to collect demographic information on "applications for merit-reviewed research and development awards made by such agency"); 50 U.S.C. § 3334b(b) (requiring Director of National Intelligence to publish "aggregate demographic data . . . of the workforce of the intelligence community"); 45 C.F.R. § 1355.40(a), (b)(1) (requiring that states submit to the Administration for Children and Families race, ethnicity and gender data on the children placed in foster care or adopted and the foster or adoptive parents); 7 U.S.C. § 2279-1(c)(1)(a) (requiring the Department of Agriculture to compile reports on programs that serve agricultural producers and landowners, including the number of applicants and participants by race, ethnicity, and gender).

⁹⁸ *Baldrige v. Shapiro*, 455 U.S. 345, 353–354 n.9 (1982).

⁹⁹ Transcript of Mot. Hr'g at 11-12, *Nat'l Digital Inclusion All. v. Trump*, No. 25-3606 (JDB), (D.D.C. June 11, 2026).

¹⁰⁰ *Massachusetts v. Dep't of Educ.*, No. 1:26-cv-11229, 2026 WL 803726 (D. Mass. Mar. 13, 2026); Agency Information Collection Activities; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2024-25 Through 2026-27, 90 Fed. Reg. 39,384 (Aug. 15, 2025), <https://www.federalregister.gov/documents/2025/08/15/2025-15536/agency-information-collection-activities-comment-request-integrated-postsecondary-education-data>.

¹⁰¹ Press Release, U.S. Dep't of Educ., *U.S. Department of Education Investigates Five Medical Schools as Trump Administration Pushes to End Racial Discrimination in Admissions* (July 22, 2026), <https://www.ed.gov/about/news/press-release/us-department-of-education-investigates-five-medical-schools-trump-administration-pushes-end-racial-discrimination-admissions>.

while data in the EEO data reports would call into question the EEOC's focus on discrimination against white men. The inconsistency between the EEOC's position and the position of other federal agencies demonstrates the proposed rule is arbitrary and capricious.

F. The Proposed Rule Does Not Consider Alternatives to Completely Rescinding Its EEO Demographic Data Collection Regulations.

The EEOC improperly fails to consider revising its EEO demographic data collection requirements to address its concerns rather than rescinding the regulations entirely, as required by Executive Order 12866.¹⁰² For example, if the EEOC believes the racial categories in its EEO data collection requirements are imprecise, it could revise those categories to better align the requirements with EEO law. Similarly, if the EEOC believes data collection will pressure employers and other covered entities to make race-based employment decisions, the agency could remind them that Title VII prohibits such actions. Yet the EEOC does not assess alternative ways to address its alleged concerns.

G. The Proposed Rule Fails to Accurately Account for the Costs and Benefits of EEO Demographic Data Collection.

The proposed rule claims that covered entities and the agency will see reduced costs as a result of rescinding the EEO data collection requirements, without fully considering all the costs of rescission and the benefits of the EEO data collection.¹⁰³ It also fails to take into account the costs and benefits for workers and worker advocates.

1. Removing EEO Demographic Data Collection Requirements Could Expose Covered Entities to Liability.

The proposed rule will not change employer obligations under federal anti-discrimination laws. However, in upending a regulatory requirement that has been in place for 60 years, will potentially increase employers' exposure in defending employment discrimination cases.

Eliminating the requirement for covered entities to collect and report workforce demographic data does not change underlying federal antidiscrimination laws, including Title VII of the Civil Rights Act of 1964.¹⁰⁴ Nor does it change how cases of employment discrimination are pled, proven, or defended. Section 709 of Title VII requires employers to make, keep, and preserve records "relevant to the determinations of whether unlawful employment practices have been or are being committed" for use in future investigations and enforcement actions, such as records related to hiring, promotions, and other personnel decisions. Employers who are faced with defending discrimination claims may also find robust demographic information is helpful during investigations and litigation in their own defense, as courts frequently consider statistical evidence in disparate treatment and disparate impact cases alike.¹⁰⁵

¹⁰² 58 Fed. Reg. 51,735, 51,741 (Oct. 4, 1993) (codified at Section 6(a)(3)(C)).

¹⁰³ Proposed Rule at 46343.

¹⁰⁴ 42 U.S.C. §2000e et seq.

¹⁰⁵ See, e.g., *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324 (1977); *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299 (1977); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977 (1988).

In addition to helping employers defend discrimination claims, the reporting of EEO-1 data to the EEOC supports prevention and proactive compliance. Employers can use the aggregate data to self-evaluate their workforce composition and identify potential areas for improvement to ensure civil rights compliance. For instance, analysis of aggregate demographic data provides a necessary first step in evaluating, at a high level, potential issues with employment practices including recruitment, hiring, and promotion, and whether disparate treatment is occurring and address those impacts through lawful means.¹⁰⁶ Analysis of EEO-1 data can allow employers to proactively identify, investigate, and if necessary, correct unlawful practices. These actions can reduce employers' risk of liability under federal and state law before they can lead to complaints, litigation, and reputational harm,¹⁰⁷ in addition to losing out on the potential contributions of talented and qualified applicants and workers.

2. Demographic Data Collection Benefits Federal Agencies.

While the proposed rule emphasizes the costs to the agency of collecting EEO demographic data,¹⁰⁸ it fails to address the ways in which access to this data can help the EEOC effectively allocate resources to the industries and workers who are most impacted by discrimination. In the absence of this data, the EEOC may allocate its resources less effectively, focusing on industries or claims that are less likely to achieve systemic improvements for workers. The agency may also spend additional staff time and resources requesting demographic workforce data from employers and, if necessary, litigating subpoenas for those records. Moreover, by weakening the EEOC's enforcement efforts, the proposed rule would increase the costs discriminatory employment practices already impose on the American economy.¹⁰⁹

The proposed rescission of the EEO data collections will also result in the loss of critical information about employment practices of federal contractors with 50 or more employees, who were required to submit EEO-1 reports.¹¹⁰ As the Supreme Court has explained, "It is beyond

¹⁰⁶ See, e.g., Scott Moore, *EEOC Proposes to Eliminate Longstanding EEO-1 Workforce Reporting Requirements: What Employers Need to Know*, Am. Ambulance Ass'n (July 22, 2026), <https://ambulance.org/2026/07/22/eeoc-proposes-to-eliminate-longstanding-eeo-1-workforce-reporting-requirements-what-employers-need-to-know/> ("Many organizations use workforce demographic information to:

- Evaluate recruiting effectiveness
- Conduct adverse impact analyses
- Monitor promotion and compensation practices
- Defend discrimination claims
- Support internal compliance audits

Without internal demographic information, employers may find it more difficult to identify potential disparities before they become litigation risks.").

¹⁰⁷ See, e.g., Erik K. Eisenmann et al., *Should Employers Keep Collecting Workforce Demographic Data?*, Thought Leadership (Husch Blackwell) (July 29, 2026), <https://www.huschblackwell.com/newsandinsights/should-employers-keep-collecting-workforce-demographic-data> ("What has changed is posture, not practice. A growing number of companies are pulling back on public disclosure of EEO-1 data and internal DE&I metrics while continuing to collect that information internally . . . The goal is to identify statistically meaningful disparities before they surface in a charge or lawsuit.").

¹⁰⁸ Proposed Rule at 46342-43.

¹⁰⁹ Dana M. Peterson & Catherine L. Mann, Citi GPS, *Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.*, at 61 (2020), <https://www.citigroup.com/global/insights/citigps/closing-the-racial-inequality-gaps-20200922>.

¹¹⁰ EEOC, EEO Data Collections, <https://www.eeoc.gov/data/eeo-data-collections> (last visited Aug. 24, 2026) ("The EEO-1 Component 1 report is a mandatory annual data collection that requires all private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, to submit workforce demographic data, including data by job category and sex and race or ethnicity, to the EEOC. The authorities under which EEO-1 Component 1 data are collected include: Section 709(c) of Title VII and Sections 1602.7-1602.14, Chapter XIV, Title 29 of the Code of Federal Regulations (CFR); Exec. Order No. 11246, 30 FR 12319 (Sept. 24, 1965) and 41 CFR 60-1.7(a).").

dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice.”¹¹¹ For 60 years, the Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor ensured that companies doing business with the federal government did not use taxpayer dollars to discriminate against workers. OFCCP used EEO-1 data in its compliance reviews and investigations to enforce Executive Order 11246, which provided protections against employment discrimination based on race, ethnicity, gender and other characteristics in federal contracting, as well as requiring contractors to take proactive steps to identify and remove barriers to equal opportunity. When this administration rescinded Executive Order 11246¹¹² and slashed the staff, mission, and budget of OFCCP,¹¹³ it removed a key mechanism for ensuring oversight and accountability for the use of federal funds by contractors doing business with the federal government. All the same arguments discussed above are particularly salient when assessing workplace disparities based on race, ethnicity, and gender, given the heightened government interest in preventing the use of federal taxpayer dollars to fund discrimination.

3. The Proposed Rule Fails to Account for the Benefits of EEO Data Collection and the Costs of Rescission for Workers and Their Advocates.

The proposed rule lacks any discussion of the benefits afforded by the EEO data collection for workers and worker advocates, or the costs of the proposed rescission. While individual workers may become aware of discrimination to which they are subjected, it is often difficult for them to learn about or obtain information concerning discrimination against other individuals in their workplace or systemic discrimination. The aggregated, anonymized EEO demographic data published by the EEOC provides workers and worker advocates with important insight into trends regarding hiring, promotions, and occupational segregation (and in the case of the EEO-4, pay) within certain sectors or geographic regions. Without such publicly available aggregated data, or the special reports and public analyses of sectors produced by the EEOC using EEO data collections, workers would have to expend resources to secure counsel and obtain such data through costly and time-consuming litigation.

4. Removing EEO Data Collection Requirements Could Create Confusion and Regulatory Uncertainty for Covered Entities.

The proposed rule would also sow confusion and uncertainty and create additional burdens for employers and other covered entities. Even if federal EEO data reporting requirements are eliminated, the EEOC failed to consider that employers may be required to continue reporting that data to state agencies. Several states require similar employer demographic data collection and reporting to the EEOC.¹¹⁴ Without a single federal standard,

¹¹¹ *Croson*, 488 U.S. at 492.

¹¹² Exec. Order 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025) (“Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), is hereby revoked. For 90 days from the date of this order, Federal contractors may continue to comply with the regulatory scheme in effect on January 20, 2025.”). OFCCP continues to enforce two statutes, Section 503 of the Rehabilitation Act and the Vietnam Era Veterans’ Readjustment Assistance Act (VEVRAA), which provide antidiscrimination protections based on disability and certain veteran status, respectively, and require federal contractors to take proactive steps to advance equal employment opportunity for those groups.

¹¹³ See Coral Davenport, *Trump Gutted Civil Rights Agency, Stifling U.S. Scrutiny of Workplace Bias*, N.Y. Times (Jul. 19, 2026), <https://www.nytimes.com/2026/07/19/us/politics/trump-gutted-civil-rights-agency-stifling-us-scrutiny-of-workplace-bias.html> (“The agency has been gutted, down from about 480 employees on Mr. Trump’s first day in office last year to about 75 as of May. Mr. Trump’s current budget proposal calls for eliminating it entirely....”).

¹¹⁴ Michael R. Luchsinger et al., *EEOC Signals End to Federal EEO-1 Reporting, but Employers Should Still be Prepared to File in 2026*, News & Knowledge (Goldberg Segalla) (Jun. 1, 2026).

employers with multi-state operations may be forced to comply with a patchwork of different reporting requirements, increasing compliance costs.

Rescinding the EEOC's data collection requirements could also increase employer costs by removing necessary guidance employers have relied on for decades to understand their obligations under Title VII. While counsel may advise employer clients to continue compiling robust demographic data for a variety of reasons, including those discussed here,¹¹⁵ employers would have to do so without the benefit of guidance from the EEOC. In the absence of these regulations, the EEOC could create confusion regarding what employers *must* do to comply with the law, and what they are *permitted* to do, increasing compliance burdens and the likelihood of costly litigation.

III. The EEOC Failed to Give the Public an Adequate Opportunity to Comment on the Proposed Rule

The 30-day public notice and comment period provided by the agency is inadequate and fails to conform to regulatory requirements. The proposed rule would rescind a 60-year-old reporting requirement and if finalized, would have a significant impact on enforcement of federal anti-discrimination laws. Workers, advocates, employers, and other impacted stakeholders need sufficient time to review the proposed rule; assess its legal arguments, cost-benefit analysis, and potential impact; seek input from their members, partners, or those they represent; and craft written comments.

Moreover, OIRA has designated the proposed rule as economically significant within the meaning of Executive Order 12866, which requires the agency to provide a rigorous cost-benefit analysis and assess “reasonably feasible alternatives” to the proposed regulatory action.¹¹⁶ Executive Orders 12866 and 13563 also require agencies to provide the public with a meaningful opportunity to participate in the regulatory process. Section 6(a)(1) of Executive Order 12866 specifically provides that agencies should provide the public with “a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.”¹¹⁷ The EEOC has provided no justification for this deviation from Executive Order 12866. The abbreviated comment period is also a departure from the agency's recently published regulatory agenda, which anticipated publication of the NPRM in July and the end of the comment period in September. The EEOC should not finalize the proposed rule given the inadequate opportunity for public input.

<https://www.goldbergsegalla.com/news-and-knowledge/knowledge/eec-signals-end-to-federal-eeo-1-reporting-but-employers-should-still-be-prepared-to-file-in-2026/>.

¹¹⁵ See, e.g., Caroline Carrier, *Employers: Your Next EEO-1 Report May Be Your Last Ever*, Employment Law Worldview (Squire Patton Boggs) (May 21, 2026), <https://www.employmentlawworldview.com/employers-your-next-eeo-1-report-may-be-your-last-ever-us/> (“Employers should also be aware that even if the EEO-1 reporting requirement is scaled back or eliminated entirely, state and local data reporting laws, where applicable, would remain in effect and would still require data collection and analysis. Employers at the center of discrimination complaints also may be asked to report demographic data, and future EEOC rulemaking could reintroduce EEO-1 reporting or similar data collection requirements. The consistent collection and maintenance of personnel data in accordance with state and local law and internal policies will help employers navigate this space even as federal policy around personnel data reporting evolves.”).

¹¹⁶ 58 Fed. Reg. 51,735, 51,741 (Oct. 4, 1993) (codified at Section 6(a)(3)(C)).

¹¹⁷ 58 Fed. Reg. 51,740.

IV. Conclusion

Occupational segregation and employment discrimination remain persistent barriers for Black communities and other communities of color, women, and other historically excluded groups. Demographic data collection requirements have been, and continue to be, vital tools for assessing and responding to discrimination. Not only are these requirements consistent with both constitutional and statutory requirements, the EEO data collections themselves help ensure employers, the EEOC, and other stakeholders advance the goal of equal opportunity. Given the economically significant nature of the changes, the agency has also failed to give the public sufficient opportunity to comment on the proposed rule. For these reasons, the EEOC should abandon the proposed rule in its entirety.

Thank you for the opportunity to comment. If you have any questions, please contact Amalea Smirniotopoulos, Senior Policy Counsel and Equal Protection Initiative Co-Manager, the Legal Defense Fund (asmirniotopoulos@naacpldf.org); Maya Raghu, Director, Protecting and Advancing Diversity, Equity, and Inclusion Initiative, Lawyers' Committee for Civil Rights Under Law (mraghu@lawyerscommittee.org); and Deborah J. Vagins, Senior Vice President for Advocacy and Programs, The Leadership Conference for Civil and Human Rights (vagins@civilrights.org).

Sincerely,

The Legal Defense Fund
The Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
Actors' Equity Association
AFT
American Association of University Women (AAUW)
American Pride Rises
Asian American Legal Defense and Education Fund (AALDEF)
Asian Americans Advancing Justice-AAJC
Association of Public Data Users
Center for Law and Social Policy (CLASP)
Coalition on Human Needs
Empowering Pacific Islander Communities (EPIC)
Environmental & Climate Justice Initiative, NYU School of Law (which is not purporting to represent NYU or NYU School of Law)
Equal Justice Society
Equal Rights Advocates
Equality California
Family Voices NJ
Funders' Committee for Civic Participation (FCCP)
Hispanic Federation
Institute for Women's Policy Research
Joint Center for Political and Economic Studies
Labor Council for Latin American Advancement (LCLAA)
Lambda Legal
LatinoJustice PRLDEF
League of United Latin American Citizens (LULAC)
MANA, A National Latina Organization

National Association of Social Workers
National Coalition for Asian Pacific American Community Development (National CAPACD)
National Coalition on Black Civic Participation
National Community Reinvestment Coalition
National Consumer Law Center, on behalf of its low-income clients
National Council of Asian Pacific Americans (NCAPA)
National Education Association
National Fair Housing Alliance
National Network for Arab American Communities (NNAAC)
National Organization for Women
National Partnership for Women & Families
National PLACE
National Urban League
Open to All
PFLAG National
Secular Student Alliance
Service Employees International Union (SEIU)
Silver State Equality
SPAN Parent Advocacy Network
The Sikh Coalition
UNITE HERE International Union
Women Employed