August 24, 2026

__Via Federal eRulemaking Portal__ **__(Regulations.gov)__**
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U.S. Equal Employment Opportunity Commission
131 M Street NE
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RE: __Comment on Removal of Reporting Requirements, RIN 3046-AB37, Document No. 2026-14937, 91 Fed. Reg. 46332 (July 23, 2026)__

Dear Associate Legal Counsel Essary,

This letter is submitted by the Attorneys General of Illinois, New York, Virginia, Washington, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaiʻi, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, and Vermont in response to the above-referenced notice of proposed rulemaking (the "NPRM")[1] issued by the Equal Employment Opportunity Commission ("EEOC"). The NPRM proposes to repeal the agency's reporting requirements for the filing of the EEO-1, EEO-2, EEO-3, EEO-4, EEO-5, and EEO-6 reports, as well as related recordkeeping and record preservation requirements related to the reports, contained in 29 CFR part 1602. The EEOC established these reports under the authority contained in Section 709(c) of title VII of the Civil Rights Act of 1964 (Title VII), and established the first reporting requirement, EEO-1, in 1966. These reporting requirements have remained critical investigative and evaluative tools for the EEOC, States, private plaintiffs, and employers alike, and have provided clear understanding to covered employers of their recordkeeping requirements under Title VII. The NPRM proposes to eliminate these reporting, recordkeeping, and preservation requirements, despite ongoing workplace discrimination. The undersigned Attorneys General strongly oppose the NPRM and urge the EEOC to withdraw this proposed rule in its entirety.

As chief state law enforcement officials, we have a vested interest in eliminating workplace discrimination, and the data contained in EEO reports have proved critical in investigating and remedying allegations of workplace discrimination. Furthermore, employers are able to conduct meaningful self-evaluation through the production of this data, reducing the harm experienced by our residents as a result of workplace discrimination. The NPRM proposes

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[1] Removal of Reporting Requirements, 91 Fed. Reg. 46332 (proposed Jul. 23, 2026) (to be codified at 29 C.F.R. pt. 1602).

to eliminate these requirements to the detriment of employees, employers, States and their agencies, and the EEOC itself.

First, the NPRM fails to acknowledge the importance of the EEO data collection in resolving individual complaints, identifying systemic and widespread disparities in the workplace, and empowering employers to conduct meaningful self-evaluation.

Second, the NPRM's proposed rescission of EEO reporting, recordkeeping, and record preservation requirements will harm States by removing a comprehensive source of employment data that States rely on, hinder enforcement of comparable state laws, and increase uncertainty and burden for state agencies operating in our States.

Third, the NPRM lacks any reasoned justification or factual basis for its policy changes, is based in flawed legal reasoning, and fails to consider any alternatives to revoking the reporting, recordkeeping, or record preservation requirements. Because of these fatal flaws, the NPRM, if finalized, would be both contrary to the text and purpose of Title VII as well as arbitrary and capricious in violation of the Administrative Procedure Act (APA).

We have included numerous citations to case law, statutory authority, and other sources to this letter. We direct the EEOC to review each of the materials cited, and request that the full text of each of the cited materials, along with the full text of our comment, be considered part of the formal administrative record for purposes of the APA.

I. Introduction to EEOC's Authority to Collect Workplace Data under Title VII

Title VII provides, as a general rule, that: "[e]very employer, employment agency, and labor organization subject to this subchapter shall (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 this subchapter or the regulations or orders thereunder."2

Title VII further provides explicit authority and conditions for the reporting, recordkeeping, and record preservation of data for employers, labor organizations, and joint labor-management committees which control an apprenticeship or other training program.[3]

First adopted in 1966,[4] the annual EEO-1 reporting requirement currently requires private employers with 100 or more employees and certain federal contractors with 50 or more

[2] 42 U.S.C. § 2000e-8(c).
[3] *Id.*
[4] Employer Reporting and Recordkeeping Requirements, 31 Fed. Reg. 2832 (Feb. 17, 1966).

employees to report workforce demographic data by job category, sex, and race or ethnicity.[5] The EEOC proceeded to adopt additional EEO reporting under Title VII: (1) EEO-2 requires certain joint labor-management committees to report the number of applicants to, and participants in, apprenticeship programs by sex and race or ethnicity;[6] (2) EEO-3, requires certain labor organizations to biennially report membership, applicant, and job referral data by sex and race or ethnicity;[7] (3) EEO-4 requires certain state and local governments to biennially report the number of employees according to specified job categories and salary bands by sex and race or ethnicity;[8] (4) EEO-5 requires certain elementary and secondary school systems and districts to biennially report the number of employees in each of nineteen activity assignment classifications by sex and race or ethnicity;[9] and (5) EEO-6 requires certain institutions of higher education to biennially report the number of employees according to specified occupational activities, salary classes, and/or ranks by sex and race or ethnicity.[10] The EEOC has also promulgated recordkeeping and record preservation requirements to parallel the specific information needed to complete the reports.[11]

The EEOC later received authority to adopt reporting requirements under the Americans with Disabilities Act of 1990,[12] the Genetic Information Nondiscrimination Act of 2008,[13] and the Pregnant Workers Fairness Act of 2022.[14]

II. EEO Data Collection, Recordkeeping, and Record Retention are Critical Tools for Addressing Workplace Discrimination

EEO data collected by the EEOC is a unique nation-wide data set that provides a factual basis from which fair employment agencies, researchers, employers, and other stakeholders can identify and understand employment patterns. This data can be a powerful tool in helping accomplish the EEOC's mission, to prevent and remedy unlawful employment discrimination and to protect equal opportunity for all. The NPRM ignores the benefits of collecting and

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[5] See EEO Data Collections, U.S. EQUAL EMP' OPPORTUNITY COMM'N, https://www.eeoc.gov/data/eeo-data-collections (last visited Aug. 11, 2026).
[6] Codified at 29 C.F.R. § 1602.15; first adopted in 1967 at Apprenticeship and Labor Organization Reporting and Recordkeeping Requirements, 32 Fed. Reg. 10650 (Jul. 20, 1967).
[7] Codified at 29 C.F.R. § 1602.22; first adopted in 1967 at Apprenticeship and Labor Organization Reporting and Recordkeeping Requirements, 32 Fed. Reg. 10650 (Jul. 20, 1967).
[8] Codified at 29 C.F.R. § 1602.32; first adopted in 1973 at Reporting and Recordkeeping by State and Local Governments, 38 Fed. Reg. 12604 (May 14, 1973).
[9] Codified at 29 C.F.R. § 1602.41; first adopted in 1973 at Recordkeeping and Filing Requirements Report EEO-5, 38 Fed. Reg. 26719 (Sept. 25, 1973).
[10] Codified at 29 C.F.R. § 1602.49; first adopted in 1975 at Higher Education Staff Information Report, 40 Fed. Reg. 25188 (June 12, 1975).
[11] *See, e.g.,* 29 CFR §§1602.12-.14; 1602.30-.31.
[12] 42 U.S.C. § 12117(a).
[13] 42 U.S.C. § 2000ff-6(a)(1).
[14] 42 U.S.C. § 2000gg-2(a)(1).

maintaining EEO data. EEO data is a critical tool that the EEOC, State Fair Employment Practice Agencies (FEPAs), courts, employers, the public, and researchers use to prevent, identify, and/or redress workplace discrimination.

The NPRM suggests that the data is used to target employers with "statistical imbalances,"[15] however this misstates how the data is used. As recently as October 2025, the EEOC used EEO-1 data to help inform its remedial efforts.[16] Further, this case illustrates how EEO-1 data can be used to protect any group of employees from barriers to employment – including individuals and groups who have not traditionally been identified as marginalized.

Generally, EEO data merely captures a snapshot of employment demographics; it does not dictate whether an employer has broken any law or must take any corrective action. In fact, rather than being a determining factor in an investigation or enforcement action, the data often simply provides a fact-based initial context for assessing any particular employer or industry.[17] This data, along with other investigatory tools, can be used to flag employers or industries where unlawful barriers to employment may exist, indicating that further investigation may be warranted. The data can be used to add credibility and/or context to individual complaints of discrimination, as well. EEO data can indicate which employers or industries could benefit from education and outreach from the EEOC and other fair employment agencies with the goal of preventing unlawful employment barriers going forward. Using established data as a tool helps the EEOC and other fair employment agencies use their limited resources effectively.

While the role this data plays in EEOC action is overstated in the NPRM, the benefits of collecting and reporting this data are understated. The data is used to ensure that equal employment opportunity is protected by encouraging transparency, reflection and evaluation. Access to this data helps all stakeholders who seek to prevent and remedy discrimination in the workplace to identify systemic disparities in employment, resolve allegations of workplace discrimination, and enable employers to meaningfully reflect on their own practices.

A. Resolving Individual Complaints

Stakeholders use the data as a tool throughout the complaint, investigation, and adjudication processes. Primarily, EEO-1 data is used to assist the EEOC and courts in addressing individual complaints of workplace discrimination. EEO-1 data has been referenced in federal court decisions since at least the late 1970s but has been a valuable source of

[15] Removal of Reporting Requirements, 91 Fed. Reg. 46332, 46338 (proposed Jul. 23, 2026) (to be codified at 29 C.F.R. pt. 1602).
[16] *See EEOC v. Vallarta Food Enters. Inc.*, No. 2:25-mc-00058-MCS-SSC, 2025 WL 3490431, at *1 (C.D. Cal. Oct. 10, 2025).
[17] *See EEOC v. Allegheny Airlines*, 436 F.Supp. 1300, 1305 (W.D. Pa. 1977) (holding that where the EEOC only investigated by considering EEO-1 data, the EEOC failed to properly investigate the issue and thus could not sufficiently conciliate the issues).

information to the EEOC since it was first collected in 1966.[18] The EEOC and Department of Labor use this data to identify employment trends, inform their investigations, and effectively focus their resources.[19]

Litigants, including the EEOC, use EEO data to support Title VII claims. The data is helpful to support both disparate impact and intentional discrimination claims.[20] Courts also find this data helpful in adjudication.[21] The data can be relevant to show a history of discrimination, defendants' knowledge of demographic disparities, defendants' monitoring of employment outcomes, and the feasibility of a disparate-impact claim. It is clear that EEO-1 data remains valuable in addressing potential new and emerging barriers to equal employment, for example with regard to the importance of monitoring AI-based hiring tools.[22] Some discriminatory employment actions like failure to hire or failure to promote are difficult to prove and having data to contextualize the action is helpful evidence for litigants and factfinders alike. In disparate treatment and disparate impact claims, litigants have used EEO-1 data to establish statistical disparities at the foundation of their case.[23] This data is a crucial fact-based tool in investigation and litigation for litigants and fact-finders, alike.

Additionally, access to these records, which are available in the discovery process,[24] can be critical for litigants to support their claims. Without the data, litigants may have no way to know whether their claims are viable.[25] This is of particular import for private parties who make up the vast majority of employment discrimination litigants after Congress repeatedly declined to

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[18] *See generally, Parker v. Kroger Co. Inc.*, No. 76-1153, 1977 WL, at *90 (N.D. Ga. Mar. 18, 1977)*; EEOC v. Andrew Corp.*, No. 81 C 4359, 1989 WL 32884 (N.D. Ill. Apr. 3, 1989).

[19] *Paycheck Fairness Act (H.R. 7): Equal Pay for Equal Work, Joint Subcomm. Hearing Before the Subcomm. on Civ. Rights and Hum. Servs. and the Subcomm. on Workforce Protections of the H. Comm. On Educ. and the Workforce*, 116th Cong. (2019) (testimony of Jenny R. Yang).

[20] *See Canton v. U.S. Foods, Inc.*, No. 22-cv-04226-TLT (LJC), 2023 WL 4372699 (N.D. Cal. Jul. 5, 2023) (holding that requested EEO-1 reports were relevant to the plaintiff's intentional discrimination allegations and ordering their production).

[21] *See Andrew Corp.,* 1989 WL 32884 at *6.

[22] *Mobley v. Workday, Inc.*, No. 23-cv-00770-RFL (LB), 2026 WL 1510537, at *6 (N.D. Cal. May 29, 2026). It is noteworthy that this case reveals the potential discriminatory impacts of AI in employment practices and why this data is important to address employment decisions not made by humans.

[23] *See, e.g. United States v. City of Warren*, 759 F.Supp. 355 (E.D. Mich. 1991); *NAACP v. Town of Harrison*, 940 F.2d 792, 812 (3rd Cir. 1991); *NAACP v. Town of East Haven*, 892 F.Supp. 46 (D. Conn. 1995) (holding that the statistical disparities from EEO-1 data showing the exclusion of black hires was sufficient to deny defendant's motion to dismiss). Disparities are also often evidence of disparate treatment. *See Washington v. Davis*, 426 U.S. 229, 242 (1976).

[24] *See Canton*, 2023 WL 4372699 at *3.

[25] *See Gambill v. Child Dev. Ctrs., Inc.*, No. 1:22-cv-286-SPB, 2024 WL 4198153, at *3 (W.D. Pa. Sept. 16, 2024) ("Plaintiffs state that they are initiating this action now because they 'did not have a factual or legal basis to assert these claims prior to their receipt of the CDC's EEO-1 Report on July 18, 2022.'") (citation omitted).

vest primary responsibility for litigating employment discrimination to the EEOC.[26] Many litigants have expert witnesses review EEO-1 data to make informed opinions about whether an employer engaged in discriminatory acts.[27] Fact-finders rely on the data to resolve employment discrimination complaints.[28] From investigation to resolution, EEO data is helpful at every stage of employment discrimination litigation.

While most of EEOC's investigations are complaint driven, EEO data has been used to inform the initiation of Commissioner Charges when employees do not have the necessary information to file a complaint.[29] Based on review of the EEO-1 data, the EEOC has initiated investigations that have resulted in successful challenges to both sex-based and race-based discrimination.[30] In both the *Walmart* case and the *Bass Pro Shops* case, the EEOC was able to recover significant settlements and improve employment practices. EEO-1 data serves as a key tool in identifying disparate impact or pattern and practice cases and helps hold employers accountable.

Finally, removing an important tool from a federal agency that is already stretched thin is not logical and will further hinder EEOC from achieving its statutorily-mandated objectives.[31] American workers rely on the EEOC to safeguard equal employment opportunity. With EEOC's staffing levels at their lowest since 1980, staff investigators and trial attorneys should not have valuable tools taken away as they attempt to identify and remedy barriers to equal opportunity in employment.

B. Identifying Systemic and Widespread Disparities in the Workplace

Beyond the investigative processes, there are several ways in which EEO data supports third parties in their efforts to address employment discrimination and systemic disparities. The

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[26] J. Maria Glover, *The Structural Role of Private Enforcement Mechanisms in Public Law,* 53 Wm. & Mary L. Rev. 1137, 1148–50 (2012) (detailing how Congress transferred primary responsibility for regulating employment discrimination litigation to private party litigants and refused the requests of civil rights advocates to vest such authority in the EEOC through cease-and-desist powers).

[27] *See Booth v. Bd. of Dirs. of Nat. Am. Bank*, 475 F.Supp. 638, 648 (E.D. La. 1979*); EEOC v. Paramount Staffing, Inc.*, No. 02;06-cv-2624-JPM, 2010 WL 2521034 (W.D. Tenn. May 17, 2010) (holding that an expert reasonably relied on EEO-1 Data for his opinions and, therefore, the opinions were admissible).

[28] *See, e.g., NAACP v. Town of East Haven*, 892 F.Supp. 46 (D. Conn. 1995) (holding that the statistical disparities from EEO-1 data showing the exclusion of black hires was sufficient to deny defendant's motion to dismiss).

[29] *Commissioner Charges*, U.S. EQUAL EMP' OPPORTUNITY COMM'N, https://www.eeoc.gov/commissioner-charges (last visited Aug. 24, 2026).

[30] *Bass Pro Failed to Hire Blacks and Hispanics at its Stores Nationwide, EEOC Says in Suit*, U.S. EQUAL EMP' OPPORTUNITY COMM'N (Sept. 21, 2011), https://www.eeoc.gov/newsroom/bass-pro-failed-hire-blacks-and-hispanics-its-stores-nationwide-eeoc-says-suit; *Walmart, Inc., to Pay $20 Million to Settle EEOC Nationwide Hiring Discrimination Case*, U.S. Equal Employment Opportunity Commission (2020), https://www.eeoc.gov/newsroom/walmart-inc-pay-20-million-settle-eeoc-nationwide-hiring-discrimination-case.

[31] Anne Cullen, '*Devastating' Cuts Would Put EEOC Workforce at 45-Year Low*, LAW360 (June 12, 2025, 7:24 PM), https://www.law360.com/employment-authority/articles/2348360.

public availability of aggregated EEO data is necessary for stakeholders to understand employment trends across industries and job categories. EEO-1 data is unique, as other data sources (e.g., the Bureau of Labor Statistics and the U.S. Census) are pooled across all employees, but EEO-1 forms include a breakdown of sex and race/ethnicity by occupation types, including executives, managers, and professionals, among other categories.[32] The data retention requirements are also helpful for members of the public, including journalists, seeking information directly from employers. Thus, this data carries value in addressing discrimination outside of the litigation context, as discussed further below.

Aggregated EEO data is made available to the public and is used to identify larger patterns in workplace demographics, including within and across industries nationwide.[33] Researchers use this data to share analysis with the public regarding race- and sex-based discrepancies, especially since EEO-1 data classifies employees by job category. While the NPRM suggests that there is no value in collecting and analyzing demographic data, there is significant value in researchers being able to evaluate aggregated data. Without access to nationwide data, researchers would not be able to identify widespread disparities and develop theories employers can use to improve equal opportunity for all. As discussed in section III.A, there is no alternative source for this nationwide data and therefore it is irreplaceably useful to researchers across the country.

While many companies have started to share their data publicly in an effort at transparency, there was a decline in public reporting in 2025.[34] With the proposed recission of EEO-1 requirements there will likely be a larger decrease going forward. Even when companies do not disclose their data publicly, journalists often ask companies for EEO-1 data, and this increases public accountability for discriminatory practices.[35] EEO data is a key tool for identifying disparities and holding employers accountable to the public.

C. Employers Can Conduct Meaningful Self-Evaluation Through EEO Data

Finally, EEO-1 data is helpful for employers seeking to evaluate and recognize unlawful employment practices. While the EEOC's concern is that this data will pressure employers into

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[32] Thomas Bourveau, Rachel W. Flam & Anthony Le, *Behind the Curtain of Workforce Diversity: Evidence from EEO-1 Reports*, 72 MGMT. SCI. 1699, 1700 (2026).

[33] *Id.*

[34] Matteo Tonello, *DEI in Transition: 2025 Corporate Diversity Disclosure Trends*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Aug. 20, 2025), https://corpgov.law.harvard.edu/2025/08/20/dei-in-transition-2025-corporate-diversity-disclosure-trends/#:~:text=In%20recent%20years,alone%20workforce%20disclosures.

[35] Jessica Guynn, Jayme Fraser, & Nick Penzenstadler, *Broken Promises: Federal Contractors Made Diversity Pledges. They Didn't Keep Them,* USA TODAY(Apr. 30, 2023, 3:10 PM), https://www.usatoday.com/story/news/investigations/2023/04/28/federal-contractors-diversity-executive-jobs-fail/11705441002/.

race-based decisions to address statistical disparities, the data instead serves to shed light on unlawful barriers to equal opportunity in employment for all. Employers can use the data to identify whether their own practices are creating employment barriers.[36] Without demographic data employers would not know the precise effects of their employment practices and would not know when and whether to examine their practices more closely. This puts employers at a disadvantage in that they miss valuable opportunities to undertake efforts to remove potential barriers and thus to minimize liability in the future. This data is also helpful in assessing the impacts of remedial action for intentional discrimination. The data has been used to show compliance with consent decrees and ensure corrective practices are properly implemented.[37] Thus, the data is clearly beneficial to employers in their efforts to proactively avoid discriminatory practices or acts.

Contrary to EEOC's allegation that EEO data reporting creates an unlawful focus on particular groups, the data gives employers an opportunity to evaluate the effects of their employment practices across *all* groups and address discriminatory practices in advance of litigation. The EEOC suggests that the collection and retention of EEO data is too costly and burdensome to continue the requirements, however these requirements allow employers to get ahead of the greater potential costs of employment discrimination litigation. Furthermore, EEO data plays a significant role in identifying and addressing discriminatory practices – practices which are extremely costly to the American workforce and to individual workers – and therefore are worth the cost of collection and maintenance.

III. Harms to States

A. EEO Data is More Comprehensive than Comparable Data Sources

EEOC should continue to collect the data, especially EEO-1 data, because it is a unique dataset states, among others, rely on that cannot readily be replaced. This is true for several reasons.

First, no other existing data is as comprehensive, granular, and focused on the issue of discrimination as the data collected by the EEOC.

<u>EEO-1 Reports</u> – EEO-1 Reports generate firm-level data about individual employees across a refined set of job categories—more refined than other collections.[38] And because all large firms are reporting their data in the same way, this firm-level data can be compared to other

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[36] *EEO-1 Data Collection*, NAT'L P'SHIP FOR WOMEN AND FAMS. (Mar. 2026), https://nationalpartnership.org/report/eeo-1-data-collection-explainer/.

[37] *See Kirby v. Rizzo*, No. 2:74–cv–00258, 2014 WL 4931214 (E.D. Pa. Sept. 30, 2014).

[38] Equal Employment Opportunity Commission, Supporting Statement A: Recordkeeping and Reporting Requirements for Employer Information Report (EEO-1) Component 1 ("EEO-1 Stmt. A"), at 6, OMB Number 3046-0049 (May 2, 2023). *See also* 29 C.F.R. §§ 1602.7, 1602.12,

firms in the same industry, as well as aggregated to create a detailed picture of an industry or geographic area as a whole.

Other existing sources of data are not adequate substitutes. The Bureau of Labor Statistics provides National Longitudinal Surveys (NLS) and Occupational Employment Statistics (OES), both of which provide important data on labor market activities. But the NLS is a survey, and the OES is a sample, making both sets of data less comprehensive than the EEOC data that includes all large firms.[39] Likewise, the U.S. Census Bureau's American Community Survey captures some limited economic data, but it is household data, not employer data.[40] And the bureau's Economic Census gathers establishment-level data, not firm data, so a firm with multiple locations is not captured in a single report.[41] Indeed, the Economic Census is described as a "benchmark for current economic activity, such as the Gross Domestic Product and Producer Price Index."[42] It does not aim to capture employment practices, and in any event is carried out only every five years.[43] Finally, these data sources are subject to confidentiality restrictions that limit their use for enforcement of anti-discrimination laws.[44]

<u>EEO-3 Reports</u>[45] – EEO-3 Reports require local labor unions or labor organizations that operate as such to provide demographic information about their members.[46] In addition to the data's usefulness in investigating discrimination by a union, the data provides a different window on the state of the labor market than the firm data, and can give a state a more nuanced picture of an industry than employer data alone. To our knowledge, no other sources capture demographic data for local union activity.[47]

<u>EEO-4 Reports</u> – EEO-4 Reports include data on the demographic composition of State and Local Government Workforces.[48] The Department of Justice collects some demographic data

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[39] EEO-1 Stmt. A, at 6.
[40] *Id*.
[41] *Id*.
[42] See *Economic Census*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/economic-census.html (last visited Aug. 20, 2026).
[43] *Id*.
[44] EEO-1 Stmt. A, at 6.
[45] As the Commission notes, EEO-2 Reports were discontinued in 1981. Removal of Reporting Requirements, 91 Fed. Reg. 46332, 46333 n.3 (proposed Jul. 23, 2026) (to be codified at 29 C.F.R. pt. 1602).

[46] 29 C.F.R. §§ 1602.22, 1602.27.
[47] U.S. EQUAL EMP' OPPORTUNITY COMM'N, Supporting Statement A: Recordkeeping and Reporting Requirements for Local Union Report (EEO-3), OMB Number 3046-0006, at 6 (December 23, 2024).
[48] *See* 29 C.F.R § 1602.32.

on local law enforcement and corrections jobs, but the collection is more erratic than the biennial submission of EEO-4 Reports, and it does not come close to the breadth of EEOC data.[49]

EEO-5 Reports – EEO-5 Reports include data on the demographic composition of certain public elementary and secondary school workforces.[50] Through the National Center for Education Statistics (NCES), the Department of Education collects some data on the public school workforce, specifically some demographic data on teachers and some survey staffing data on several job categories.[51] The Department's data is not as comprehensive in the categories of information it collects, is not as regular, and does not adequately link demographic information to job categories. For example, the NCES's National Teacher and Principal Survey (NTPS), the sample survey collected intermittently by NCES, looks at school-level, aggregate totals of full- and part-time staff by certain job categories, but the staffing information is not collected by sex or race/ethnicity.[52]

In short, the data collected by EEOC is the most comprehensive, detailed, and current data on the demographics of the American workforce.

Second, although states could enact laws requiring collection of data for firms, unions, governments or schools in their jurisdiction (see below for a discussion of states that have done so), the EEOC data is national in scope. From time to time, EEOC uses this data to analyze industries and trends in way that gives individual states insight into an industry much of which may lie outside their jurisdiction.[53] This national data is important for states to understand how their own firms may be affected by larger national forces. The ability to see the national picture can help states allocate resources more effectively and can shape the way they evaluate data from individual firms.

Third, EEOC began collecting EEO-1 data in 1966—more than sixty years ago, while EEO-3 data followed in 1967 and EEO-4 and -5 were added in 1973.[54] This deep history allows data to be compared not only across firms and industries, but, importantly, across time. The EEOC or a state FEPA with access to the data can see how a firm's workforce has evolved,

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[49] U.S. EQUAL EMP' OPPORTUNITY COMM'N, Supporting Statement A: Recordkeeping and Reporting Requirements for the State and Local Government Information Report (EEO-4), at 4, OMB Number 3046-0008 (December 23, 2024).

[50] 29 C.F.R. §§ 1602.39, 1602.41.

[51] U.S. EQUAL EMP' OPPORTUNITY COMM'N, Supporting Statement A: Recordkeeping and Reporting Requirements for the Elementary-Secondary Staff Information Report (EEO-5), at 5, OMB Number 3046-0003 (December 23, 2024).

[52] *Id*.

[53] *See, e.g.*, *Diversity in High Tech,* U.S. EQUAL EMP' OPPORTUNITY COMM'N, (May 2016), https://www.eeoc.gov/sites/default/files/migrated_files/eeoc/statistics/reports/hightech/diversity-in-high-tech-report.pdf (discussing workforce composition in the technology industry).

[54] See supra, notes 4-9.

which may be a factor in an investigation. And with aggregated data, they can assess changes or improvements in workforce over time, and allocate resources accordingly. Stopping the collection of data now breaks that continuity, which will lead to gaps in our understanding.

B. EEO Data Provides Significant Value to States through Data Used in Title VII and State Law Enforcement, Reduced Production Burdens, and Reduced Discrimination.

The EEOC shares data with State FEPAs pursuant to section 709(d) of Title VII.[55] States also have access to de-identified data that is made public by the EEOC.[56] This data is valuable to the states in several ways.

1. Use by State FEPAs

State FEPAs rely on EEOC data in implementing Title VII as well as their own state anti-discrimination laws. For example, Illinois' FEPA, the Illinois Department of Human Rights (IDHR), uses EEO-1 data at the outset of an investigation to begin assessing a charge of discrimination. IDHR investigators review a Respondent's data to get a picture of a firm's demographics. Before ever asking a Respondent to produce data, an investigator can determine whether, for example, a complainant is the only (or one of only a few) member of their protected class at the firm, or whether the protected class is well represented. Employment data does not prove or disprove that a particular harm was discriminatory, but it can be evidence that supports a finding of discrimination[57] and it can shape the kind of additional information that a FEPA might seek from a Respondent. Employment data can also be relevant in identifying comparators and, of course, in analyzing disparate impact cases.

For the Maryland Commission on Civil Rights (Maryland's FEPA), EEOC data is important when there are multiple complaints against the same employer. The data provides corroborating evidence regarding possible systemic discrimination against a named class and help establish discriminatory hiring practices. Perhaps even more importantly, the Maryland Commission has relied on EEOC data to originate complaints. Workplace discrimination is widely known to be underreported, and relying solely on individuals to come forward will always be inadequate to root out unlawful practices. [58] Maryland has relied on EEO-1 data to identify possibly discriminatory practices and initiate investigations that uncovered illegal

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[55] 42 U.S.C.A. § 2000e-8(d).

[56] *See, e.g.*, *EEOC Launches New Data Tool to Track Employment Trends*, U.S. EQUAL EMP' OPPORTUNITY COMM'N, (Dec. 2, 2020), https://www.eeoc.gov/newsroom/eeoc-launches-new-data-tool-track-employment-trends.

[57] *See, e.g., Washington v. Davis*, 426 U.S. 229, 242 (1976))

[58] *See, e.g.*, Jayne S. Ressler, *Workplace Anonymity*, 70 BUFF. L. REV. 1495, 1521–24 (2022); Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace*, U.S. EQUAL EMP' OPPORTUNITY COMM'N (June 2016), https://www.eeoc.gov/select-task-force-study-harassment-workplace.

workplace discrimination. Maryland also uses EEOC data to identify year-to-year trends in employment discrimination, allowing more efficient allocation of enforcement resources.

EEO data reports have been instrumental in enforcement activity for Massachusetts' FEPA, the Massachusetts Commission Against Discrimination (MCAD), as well. MCAD uses them during investigations to assess and gather comparator information, but they are also particularly useful in discovery, settlement negotiations, and at public hearings. EEO data provides a standardized, historical snapshot of an employer's workforce by protected class in each job category, allowing the identification of patterns or disparities that may be difficult to see from individual employment records alone. During discovery, EEO reports can help establish the scope and duration of potential disparities, identify relevant comparator groups, and guide requests for additional personnel, compensation, promotion, hiring, and termination records. At public hearings, the data can provide a straightforward, objective way to demonstrate workforce patterns and support other evidence concerning discriminatory policies or practices. Because EEO reporting is standardized and submitted by employers, it can also be useful for corroborating testimony and other documentary evidence.

Similarly in California, which collects data of its own under state law, federal reports that overlap with state requirements are important for validation, comparison to other states, and as a way to assess potential national patterns in employment discrimination the effects of which are being felt in California.

2. Reduced Production Costs

Seeking information in the course of an investigation is not an adequate substitute for the federal data. The data contained in the EEO reports is the type of information necessary in any investigation or litigation, and employers will bear the cost of gathering the data, rather than quickly sharing the pre-existing report. This is particularly true in systemic or pattern and practice cases where year-to-year changes will be relevant, and some employers may actually see costs *increase* in a complaint driven reporting rather than proactive reporting.

If employers are not routinely compiling demographic data, investigations will be hobbled by arguments that gathering and producing that information in response to a FEPA investigation is unduly burdensome and disproportionate to the needs of any particular investigation. This will cause untenable delays, and in states like Arizona, where the FEPA, Arizona Civil Rights Division (ARCD), must bring suit within one year,[59] can effectively defeat a valid claim.

[59] ARIZ. REV. STAT. § 41-1481(D).

3. Effect on State Laws

In addition, many state laws piggyback on EEOC data collection. Arizona's anti-discrimination law, for example, requires certain "employer, employment agenc[ies] and labor organization[s]" to collect and record data on workforce composition, but provides that "[c]ompliance with reporting and recordkeeping regulations issued by the United States equal employment opportunity commission shall be compliance with this subsection."[60]

Recission of the data collecting rule will make it difficult for the ACRD to pursue broad, systemic, disparate impact discrimination because those cases rely on showing subtle patterns of bias and exclusion that can only be established through an employer's deviation from statistical norms. Setting those norms is also useful in individual discrimination cases when there is little comparator evidence to draw from; like when someone is not hired, and that discreet decision seems neutrally preference-based unless the ACRD can establish that the employer's demographic composition is aberrant, making it more likely that discrimination is at play.

Some states have already taken steps to fill some of the significant gaps the EEOC proposes to create. Colorado recently enacted HB26-1207, which requires employers with more than 100 employees to collect and report workforce demographic data, "even if the federal government repeals or discontinues the federal requirement to submit the EEO-1 data to the United States Equal Employment Opportunity Commission."[61] But even in states that have enacted their own data collection laws, the federal reports remain an important tool. California, for example, requires private employers, similar to the EEO-1 requirements, to submit data to the state, but, like Colorado's law, California's statute does not cover apprenticeship program applicants/participants, local union members/applicants, or public employers as covered by the EEO-2 through EEO-6 requirements.[62] If this proposed rule is finalized, additional states may enact new local data requirements to make up for the reduced availability of EEOC data.[63]

Moreover, while some of the problems that piggybacking states will face could be remedied by additional state requirements, the states would have to shoulder the burden of collection, something EEOC is better positioned to do.

4. Self-identification of systemic issues reduces discrimination

Lastly, eliminating the data collection means fewer opportunities for states and the businesses, unions, local governments, and schools in their jurisdiction to self-reflect and identify problematic practices. The EEOC also likely overestimates the cost of this self-

[60] ARIZ. REV. STAT. § 41-1482; Ariz. Admin. Code § R10-3-209.
[61] H.B. 26-1207 75th Gen. Assemb., 2026 Reg. Sess. (Colo. 2026), COLO. REV. STAT. § 7-90-501(1.5).
[62] Cal. Gov't Code § 12999.
[63] Title VII provides for the provision of EEO report data at no cost to States. 42 U.S.C. § 2000e-8(d).

identification, as employers likely do not need to conduct a complete overhaul of reports each year,[64] and many employers have existing HR platforms to easily generate these reports.[65]

IV. The NPRM Violates the Administrative Procedure Act

A. The NPRM is Based on Flawed Legal Reasoning and Mischaracterizations of How EEO Data is Collected and Used.

Under the APA, an agency action is arbitrary and capricious if it is not "reasonable and reasonably explained."[66] Agency action fails this test if "the agency has relied on factors which Congress has not intended 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."[67] "One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions."[68] Because the EEOC has violated each of these precepts in its NPRM, the NPRM must be held unlawful and set aside as arbitrary and capricious.[69]

1. The NPRM is based on Errors of Law

"An agency decision cannot be sustained . . . where it is based not on the agency's own judgment but on an erroneous view of the law."[70]

a) EEO Reporting does not implicate the Equal Protection Clause.

The NPRM fundamentally errs by conflating reporting based on race with differential treatment based on race. While there is obvious merit to the contention that the U.S. Constitution rarely countenances the latter—and only then when the differential treatment withstands the most exacting of scrutiny—there is no merit to the NPRM's claim that collecting and reporting data based on race or sex constitutes governmental classification inviting strict or heightened scrutiny.

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[64] A yearly study conducted by Payscale, an HR compensation management service and software, indicated average total turnover in 2024 was 18%, compared to the median at 15%. See http://www.payscale.com/content/report/2025-compensation-best-practice-report.pdf (last accessed Aug. 17, 2026).

[65] *See, e.g.,* Oracle, which can handle EEO-1, EEO-1, and Multiple Worksite Reports, https://docs.oracle.com/en/cloud/saas/human-resources/fauti/eeo-1-establishment-electronic-report.html#Before-You-Start (last accessed Aug. 7, 2026); Toast Payroll, which can handle EEO-1 reporting, https://support.toasttab.com/en/article/Toast-Payroll-EEO-1-Reporting-Guide (last accessed Aug. 7, 2026).

[66] *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021).

[67] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

[68] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

[69] 5 U.S.C. § 706(2)(A).

[70] *Prill v. NLRB*, 755 F.2d 941, 947 (D.C. Cir. 1985).

It is well settled that the Equal Protection Clause prohibits only differential treatment of people on the basis of their prohibited characteristics.[71] The litany of Supreme Court cases the NPRM cites do nothing to disturb this rule, as they all involve differential treatment, whether benign or malevolent.[72] On the contrary, they collectively emphasize the infirmity of the NPRM's position, as they all involve government entities or recipients of federal funds treating people differently on the basis of race or ethnicity.

The NPRM expresses concern that these data will be used to incoherently pick "winners and losers" based on race and sex.[73] However, the NPRM does not explain who is "winning" or "losing," or how, merely by virtue of data collection regarding people's membership in different categories. Nor does it engage with why equal protection analysis would apply when the government requires that all people subject to the regulation be treated equally, neither advantaged nor disadvantaged, a fact pattern not present in any of the cases it leans on to justify rescinding reporting requirements.

Tellingly, the NPRM cites no case law in support of its novel position. This reflects its audacity as well as how untethered it is to equal protection doctrine. In a footnote, the NPRM acknowledges that courts "have rejected some constitutional challenges to governmental data collections," citing *Morales v. Daley*.[74] The NPRM leaves unstated that no court has *accepted* any constitutional challenges to government data collections like the ones at issue in the NPRM. The *Morales* court summarized well the same issue that plagues the NPRM: "Plaintiffs' position is based upon a misunderstanding of the distinction between collecting demographic data so that the government may have the information it believes at a given time it needs in order to govern," which triggers rational basis review, and "governmental use of suspect classifications without a compelling interest," which triggers strict scrutiny.[75] The NPRM reduplicates this text without absorbing *Morales*'s clear admonition. However, *Morales* leaves no doubt that the government is either confused or contemptuous of the court's lucid and apposite ruling. The NPRM's view of how *Callais*, a voting rights case, might eventually apply in the employment context, cannot substitute for the legal authority on which an agency may justifiably rely to change its position.[76]

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[71] *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992) ("The Equal Protection Clause does not forbid classifications. It simply keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike.").
[72] *See Louisiana v. Callais*, 146 S. Ct. 1131, 1161 (2026) (strict scrutiny triggered because "race played a role in the drawing of district lines") (quoting *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1, 8 (2024)); *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 206–07 (2023) (*SFFA*) (classifications based on race cannot be used to either promote unconstitutionally vague concepts of educational "diversity" or to treat one racial group worse than another); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 237-39 (1995) (subcontracting preference to minority-owned businesses triggers strict scrutiny).
[73] *SFFA*, 600 U.S. at 291
[74] 116 F. Supp. 2d 801, 815 (S.D. Tex. 2000).
[75] *Id.* at 814.
[76] *Ohio v. EPA*, 603 U.S. 279, 292 (2024) ("An agency action qualifies as 'arbitrary' or 'capricious' if it is not reasonable and reasonably explained.") (quotation marks omitted).

The NPRM omits mention of *U.S. v. State of N.H.*, on which *Morales* relies.[77] This is notable because it dealt with the precise issue the NPRM misleadingly indicates is unsettled. In *State of N.H.*, the First Circuit upheld EEO-4 reporting as constitutionally sound and not subject to strict scrutiny, observing that "Statistical information as such is a rather neutral entity which only becomes meaningful when it is interpreted" and distinguishing such information-gathering from "any positive steps which the United States might subsequently take as a result of its interpretation of the data in question."[78] Importantly, the First Circuit dismissed concern about the plaintiffs' parade of horribles, which mirror those espoused by the NPRM, because any such action would "remain subject to law and judicial scrutiny."[79] Because strict scrutiny is inapposite to the data collection requirements at issue in this NPRM, its many contentions that they are not "narrowly tailored" need not be addressed.

b) EEOC Reporting Requirements are consistent with EEO Law, including *Ames*

As the NPRM points out, the EEOC has required regulated employers to report the race and sex of all employees, not just those of minorities, for nearly sixty years. Nothing in *Ames v. Ohio Department of Youth Services* or any other federal case law can plausibly be read to require otherwise.

In 2025, a unanimous Supreme Court in *Ames v. Ohio Department of Youth Services* held that Title VII's disparate treatment provision establishes the same protections and burdens of proof for all individuals, regardless of their membership in a minority or majority group.[80] The NPRM expresses concern that "by focusing attention on 'minority' employees, the EEO Reports potentially conflict with *Ames* by requiring regulated entities to force all employees into a small number of predetermined race/ethnic categories,"[81] but it is unclear where in *Ames* the NPRM locates this conflict, nor did the NPRM offer any citation to support this contention.

Relying entirely on deductive reasoning to the exclusion of case law, the NPRM suggests that collecting data based on certain groups disadvantages those not cleanly captured by the data, "potentially" in conflict with *Ames*. Acknowledging that the EEO Reports allow for comparisons between White and Asian individuals, but not between Koreans and Indians, the NPRM expresses concern that these designations "*may* effectively guide how employers, employees, and even the EEOC look for potential discrimination under Title VII, to the exclusion of the myriad

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[77] 539 F.2d 277 (1st Cir. 1976).
[78] *Id.* at 280.
[79] *Id.*
[80] 605 U.S. 303, 309-10 (2025).
[81] Removal of Reporting Requirements, 91 Fed. Reg. 46332, 46336 (proposed Jul. 23, 2026) (to be codified at 29 C.F.R. pt. 1602).

other forms of discrimination than [sic] can, and do, exist." (emphasis added).[82] The NPRM concludes that "As a result, combatting discrimination against members of the predetermined categories *is* prioritized over combatting discrimination involving other categories, contrary to . . . *Ames*."[83] (emphasis added).

However, the NPRM merely asserts that such prioritization logically follows from a delimited list of racial categories; it does not cite to any positive support for the sweeping conclusion to its motivated reasoning.[84] Moreover, the necessarily delimited list of racial categories has not, as a matter of fact, prevented the EEOC from asserting the rights of groups not explicitly covered by the data.[85] Such speculative concerns that contradict the public record indicate that the NPRM on which they are based is arbitrary and capricious.[86]

Lastly, the EEOC's current leadership has announced its prioritization of the rights of some groups over those of others.[87] Such announcements not only show that categories not captured by the EEO Reporting data (e.g., disability, religion) can and are being prioritized, they also undercut the NPRM's stated concern that shifts in enforcement prioritization somehow trammel the rights of non-prioritized groups in violation of *Ames*, and thereby justify ending demographic data collection. Such inconsistencies indicate that the NPRM is arbitrary and capricious in violation of the APA.[88]

c) The EEO Reports do not promote racial stereotyping.

The NPRM's Section II.A.2 explores various ways in which different racial and ethnic classifications have shifted over time, with particular attention paid to the EEOC's evolving taxonomy for distinguishing among groups of individuals based on race and best practices for accomplishing the same. The NPRM abruptly pivots from this catalogue of alterations to the

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[82] As a threshold matter, it is unclear why the NPRM considers this potential impact on employees or employers problematic. The EEOC citing its own potential inability to refrain from temptation to commit unconstitutional acts indicates that the NPRM is pretextual. *Department of Commerce v. New York*, 588 U.S. 752, 782, 784 (2019) (seemingly "contrived" justifications indicate pretext)

[83] 91 Fed. Reg. at 46336.

[84] *See United Techs. Corp. v. U.S. Dep't of Def.*, 601 F.3d 557, 562 (D.C. Cir. 2010) (courts need not "defer to the agency's conclusory or unsupported suppositions").

[85] *See*, *e.g.*, *E.E.O.C. v. Spitzer Mgmt., Inc.*, 866 F. Supp. 2d 851 (N.D. Ohio 2012) (EEOC brought cause of action on behalf of Korean individuals); *E.E.O.C. v. WC&M Enters., Inc.*, 496 F.3d 393 (5th Cir. 2007) (EEOC brought cause of action on behalf of Indian salesman).

[86] *Missouri Pub. Serv. Comm'n v. FERC*, 337 F.3d 1066, 1075 (D.C. Cir. 2003).

[87] Rescission of *Strategic Enforcement Plan Fiscal Years 2024-2028* (SEP) and Replacement Thereof with *National Enforcement Plan Fiscal Years 2025-2029* (NEP), U.S. EQUAL EMP' OPPORTUNITY COMM'N, https://www.eeoc.gov/sites/default/files/2026-06/NEP_-_signed.pdf?gqpuoa2vvow (listing Chair Priorities, including "Protecting American workers from anti-American national origin discrimination").

[88] *See*, *e.g.*, *Evergreen Shipping Agency (Am.) Corp. v. Fed. Mar. Comm'n*, 106 F.4th 1113, 1117–18 (D.C. Cir. 2024) ("This logical inconsistency alone renders the Commission's Order arbitrary and capricious.").

statement that "Viewing individuals as having inherent qualities based on racial stereotypes is antithetical to the Title VII requirement that employer actions be colorblind."[89] While this statement is true enough, it is not at all clear what connection it has to the detailed discussion preceding it.

The case the NPRM cites to justify its reasoning, *SFFA*, involved preferences being provided on the basis of group identity; yet the NPRM points to no similar preference being provided to racial minorities or women simply being tallied for data reporting requirements. To the extent that the NPRM implies that women and minority groups benefit from this data in a way that men and White individuals do not, such an implication is belied by the fact that men and White individuals have been counted by the data since the late 1970s, and have just as much recourse to the EEO Reporting data to support their own claims of discrimination as do women and racial minorities.[90] The NPRM concludes this section by summarizing three cases: *Chislett v. New York City Department of Education*, 157 F.4th 172 (2d Cir. 2025); *Diemert v. City of Seattle*, 776 F. Supp. 3d 922, 941 (W.D. Wash. 2025); and *Johnson v. Or. by and though Or. Dep't of Env't Quality*, No. 3:24-cv-002979, 2024 WL 5038803, at *4 (D. Or. Dec. 9, 2024). While each case dealt with racial stereotypes, none of them considered, much less ruled on, any connection between the collection of racial data and the formation of the stereotypes in question.

d) The NPRM does not demonstrate a likelihood that the data will be misused.

The NPRM's Section II.A.3 is arbitrary and capricious because it relies on speculation rather than evidence.[91] Courts considering constitutional challenges to EEO reporting data have held that "possible 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."[92] Any steps a discriminating entity "might subsequently take as a result of its interpretation of the data in question remain subject to law and judicial scrutiny."93 Indeed, the cases the NPRM cites under this section show that courts are capable of guarding against illegal quotas and preferences.[94]

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89 Removal of Reporting Requirements, 91 Fed. Reg. 46332, 46337 (proposed Jul. 23, 2026) (to be codified at 29 C.F.R. pt. 1602).

90 *See Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 310 (2025).

91 *Delaware Dep't of Nat. Res. & Env't Control v. EPA*, 785 F.3d 1, 11 (D.C. Cir. 2015) (agency action may be invalid if it relies on nothing more than speculation).

92 *United States v. New Hampshire*, 539 F.2d 277, 280 (1st Cir. 1976) (upholding collection of EEO-4 data against Equal Protection challenge).

93 *Id.* The EEOC's failure to consider this as a potential alternative to the NPRM is another indicator that it is arbitrary and capricious for failure to vet alternatives. *See* Section IV.B.1, *infra*.

94 *See Duvall v. Novant Health, Inc.*, 95 F.4th 778, 788–91 (4th Cir. 2024) (jury verdict in favor of white male plaintiff, awarding over $3.7M in statutory damages, backpay, and front pay upheld by magistrate judge and circuit

The concern the NPRM ventilates in this section is hardly new—in fact, the Supreme Court and Congress settled it more than three decades ago. The Supreme Court engaged with the exact concern that the NPRM raises regarding potential misuse of data in the employment context, but its instructions do not stand for the proposition that the NPRM indicates. The NPRM distorts dicta in *Watson v. Fort Worth Bank & Trust* to suggest employers will be tempted to engage in preferential treatment or adopt quotas in light of racial disparities revealed by employment data.[95] *Watson* merely warned that such a danger would accrue "[i]f quotas and preferential treatment become *the only cost-effective means of avoiding expensive litigation and potentially catastrophic liability*."[96] The NPRM cites no evidence to establish this proposition.

e) The EEOC fails to provide any explanation or reasoning as to its proposed rescission of sex-based data reporting.

Though the NPRM appropriately recognizes that sex-based classifications are subject to intermediate scrutiny—unlike the strict scrutiny that attaches to race-based classifications—it fails to provide any analysis or reasoning as to whether collecting and reporting sex-related employment data would pass constitutional muster under that level of scrutiny.[97] Instead, the EEOC cursorily claims that, "given that the collection of sex data in the EEO Reports suffers from many of the same kinds of problems as the collection of race data, *e.g.*, stereotyping and the lack of a connection to an ongoing charge or investigation, the Commission believes that requiring employers to collect and report sex data also may violate the Constitution."[98]

However, the NPRM's entire discussion of stereotyping focuses solely on the agency's purported concerns about race-based stereotyping —which, as explained above are unfounded—with no discussion of alleged sex-based stereotyping.[99] Indeed, there is no reasoned discussion or analysis, much less any factual findings, to support the agency's claim that stereotyping concerns exist with the use of data based on sex. An agency must provide more detail "when, for example, [the agency's] new policy rests upon factual findings that contradict those which underlay its prior policy…."[100] The EEOC has failed to provide any detail whatsoever supporting its

court); *Dill v. Int'l Bus. Machs. Corp.*, No. 1:24–cv–852, 2025 WL 913744 (W.D. Mich. Mar. 26, 2025) (denying motion to dismiss).

[95] 487 U.S. 977, 993 (1988).

[96] *Id.* (emphasis added).

[97] Removal of Reporting Requirements, 91 Fed. Reg. 46332, 46336 n.9 (proposed Jul. 23, 2026) (to be codified at 29 C.F.R. pt. 1602).

[98] *Id.*

[99] *See* 91 Fed. Reg. at 46336-338 (discussing concerns with the racial and ethnic categories the EEOC has used over the years and how those categories have allegedly led to individuals being viewed "as having inherent qualities based on racial stereotypes").

[100] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

contention that the collection and reporting of sex-based data would create stereotyping risks.[101] Accordingly, the agency has acted arbitrarily and capriciously.

2. The Current Rule Promotes Compliance with Civil Rights Laws and the Equal Protection Clause and Ensures Consistency Across Jurisdictions

a) Statistical evidence is an important tool for promoting compliance with civil rights laws.

The Supreme Court has expressly rejected the NPRM's view of statistics as evidence of discrimination, noting that "statistics can be an important source of proof in employment discrimination cases."[102] Countless lower courts have echoed the probative value of statistical evidence, including cases the NPRM cites for the opposite proposition.[103]

The uses of EEO-1 data alone are legion in the litigation context. The federal judiciary has used them in myriad ways, which speaks to their utility and versatility: to inform expert analysis;[104] as highly probative and relevant evidence for jury consideration;[105] as relevant and therefore discoverable information;[106] as relevant to whether an entity's AI-screening system offered to third parties operates to discriminatory effect;[107] by defendants, as proof of

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[101] *See Prometheus Radio Project v. F.C.C.*, 373 F.3d 372, 402-03 (3d Cir. 2004) (agency acted arbitrarily and capriciously by failing to justify its assumptions and claims).

[102] *Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307 (1977); *see also Price Waterhouse v. Hopkins*, 490 U.S. 228, 271 (1989) ("As should be apparent, the entire purpose of the *McDonnell Douglas* prima facie case is to compensate for the fact that direct evidence of intentional discrimination is hard to come by.") (O'Connor, J. concurring).

[103] *Burns v. Thiokol Chem. Corp.*, 483 F.2d 300, 305 (5th Cir. 1973) ("In the problem of racial discrimination, statistics often tell much, and Courts listen.") (quoting *State of Ala. v. United States*, 304 F.2d 583, 586 (5th Cir.), *aff'd sub nom. Alabama v. United States*, 371 U.S. 37 (1962)); *Ford v. Jackson Nat'l Life Ins. Co.*, 45 F.4th 1202, 1217 (10th Cir. 2022) ("It is uniformly recognized that statistical data showing an employer's pattern of conduct toward a protected class can create an inference that an employer discriminated against individual members of the class.") (citation omitted).

[104] *Cormier v. P. P. G. Indus., Inc.*, 519 F. Supp. 211, 252 (W.D. La. 1981), *aff'd*, 702 F.2d 567 (5th Cir. 1983).

[105] *Davis v. Gen. Accident Ins. Co. of Am.*, No. CIV.A. 98-4736, 2000 WL 1780235, at *6 (E.D. Pa. Dec. 1, 2000) ("[Defendant]'s EEO–1's, which contain evidence of gross disparity at the officer/manager level positions, are highly probative and relevant to drawing an inference of racial discrimination, and whether [defendant] was aware of this disparity."); *Young v. Time Warner Cable Cap., L.P.*, 443 F. Supp. 2d 1109, 1122 (W.D. Mo. 2006).

[106] *Gatewood v. Stone Container Corp.*, 170 F.R.D. 455, 458 (S.D. Iowa 1996); *Davis v. Northpoint Senior Servs.*, No. 3:14-CV-106-PLR-HBG, 2015 WL 8752068, at *3 (E.D. Tenn. Dec. 14, 2015); *Canton v. U.S. Foods, Inc.*, No. 22CV04226TLTLJC, 2023 WL 4372699, at *2 (N.D. Cal. July 5, 2023); *Moore v. Shaw Grp., Inc.*, 2015 WL 4939880, at *4 (M.D. La. Aug. 18, 2015); *Peterson v. Medtronic, Inc.*, No. 217CV02457JTFDKV, 2018 WL 11240431, at *12 (W.D. Tenn. May 10, 2018).

[107] *Mobley v. Workday, Inc.*, No. 23-CV-00770-RFL (LB), 2026 WL 1510537, at *7 (N.D. Cal. May 28, 2026).

nondiscriminatory employment practices;[108] to support class certification;[109] and as evidence of pretext at the summary judgment stage.[110]

It is also evident that the EEOC uses EEO reporting to accomplish its own statutory purposes.[111] Until recently, the EEOC admitted that it uses EEO-1 data to support civil rights enforcement and to analyze employment patterns, such as the representation of female and minority workers within companies, industries or regions."[112]

b) Consistency Across Jurisdictions

Nationwide collection of race and sex data ensures consistency across jurisdictions, and for many litigants and enforcers of civil rights laws may be the favored (or only) source of important data on workplace statistics. An agency must consider all important aspects of an issue, particularly when mandated by statute. Because it failed to consider the important impact of rescinding these documents in light of its statutory duty to eradicate discrimination, the NPRM is arbitrary and capricious.[113]

As discussed above, state agencies charged with enforcing fair employment practices and plaintiffs pursuing their charges frequently rely upon EEOC reports for evidentiary support.[114]

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[108] *Coates v. Johnson & Johnson*, 756 F.2d 524, 536 (7th Cir. 1985).

[109] *U.S. Fid. & Guar. Co. v. Lord*, 585 F.2d 860, 870, 872 (8th Cir. 1978) (finding that EEO-1 statistics showed class numerosity and typicality requirements); *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137, 164-65 (N.D. Cal. 2004), *aff'd sub nom. Dukes v. Wal–Mart, Inc.*, 222 F.R.D. 189, 191 (N.D.Cal.2004) (EEO-1 data used to show commonality).

[110] *Salazar v. Ferrara Bros. Bldg. Materials Corp.*, No. 13-CV-3038 JG VMS, 2015 WL 1535698, at *7 (E.D.N.Y. Apr. 6, 2015).

[111] *See*, *e.g.*, *E.E.O.C. v. Cent. Steel & Wire Co.*, No. 81 C 2485, 1981 WL 342, at *1 (N.D. Ill. Aug. 10, 1981) (EEO-1 data, in combination with onsite tour and interviews, led EEOC to investigate employer regarding recruiting of Black and female applicants); *E.E.O.C. v. Paramount Staffing, Inc.*, No. 02:06-CV-2624-JPMDKV, 2010 WL 2521034, at *8 (W.D. Tenn. May 17, 2010) (EEOC's expert used EEO-1 data to determine Hispanic representation in the Memphis labor market); *see also* "Remarks of Commissioner Stuart J. Ishimaru," U.S. Equal Emp. Opportunity Comm'n, https://www.eeoc.gov/meetings/meeting-november-16-2005-address-operations-wake-hurricane-katrina-revisions-eeo-1-report/ishimaru (expressing "fear that the proposed changes to the EEO-1 form are disturbingly similar to the actions of other federal civil rights agencies in which they appear to be backing away from strong enforcement of our civil rights laws" and explaining how plaintiffs use EEO-1 reports in litigation and how the EEOC uses EEO-1 data in support of Commissioner Charges).

[112] EEO-1 Frequently Asked Questions and Answers, U.S. EQUAL EMP' OPPORTUNITY COMM'N, https://web.archive.org/web/20190119204658/https://www.eeoc.gov/employers/eeo1survey/faq.cfm.

[113] *Pub. Citizen v. Fed. Motor Carrier Safety Admin.*, 374 F.3d 1209, 1216 (D.C. Cir. 2004).

[114] *See*, *e.g.*, *Donaldson v. Akibia, Inc.*, 2008 WL 4635848, at *13 (Mass. Super. Aug. 30, 2008) (court allowed introduction of EEO-1 reports for race discrimination case); *Gray v. Morgan Stanley DW Inc.*, 130 Wash. App. 1047 (Wash. Ct. App. 2005) (testimony regarding gender statistics based on EEO-1 reports admissible at trial); *In the Matter of Bergen Pines Cnty. Hosp. Layoff*, No. CSV 11, 2000 WL 1738430, at *4 (N.J. Admin. Nov. 8, 2000); *Matter of: Luis and Sonia Fragoso and Federal Chicago Corporation*, 1997 WL 407826, at *6 (Ill. Hum. Rts. Com. 1997); *Russ Berrie & Co., Inc. v. Human Rights Comm'n*, 224 Ill. App. 3d 874, 880 (Ill. App. Ct. 1992) (observing

Employers also make use of EEO-1 reports to buttress their defenses against discrimination claims.[115]

It stands to reason that in jurisdictions without race- and sex-based reporting requirements, employers might not otherwise keep this information, thereby denying state agencies enforcing antidiscrimination law and plaintiffs important evidence of discriminatory practices. This concern is not speculative, but corroborated by the litigation record.[116] When

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that EEO-1 reports showing a "small number of black people hired . . . may lead to an inference of discrimination"); *In the Matter of the Accusation of the Dep't of Fair Employment & Hous.* (June 4, 1981) FEHC Dec. No. 81-12 (Cal. F.E.H.C. 1981) (EEO-4 data showed that women were underutilized in all categories except clerical positions, and female employees were among the lowest paid city workers); *New York State Div. of Human Rights v Nationwide Mut. Ins. Co.*, 74 AD2d 16, 18 (N.Y. 1st Dept 1980), *aff'd sub nom. In re New York State Div. of Human Rights v Nationwide Mut. Ins. Co.*, 53 NY2d 1008 (N.Y. 1981) (detailing NYSDHR attempts to locate EEO-1 reports for the purpose of creating a model for employment practices of insurance companies doing business in New York State); *Jean R. Spencer, Complainant v. Burlington Industries; William A. Lopman and Louis Hipp, Respondents*, 1979 WL 61554, at *13 (N.Y.C. Com. Hum. Rts. 1979) (listing EEO-1 report findings as the primary example of the "staggering evidence" of company's "underutilization of women"); *In the Matter of: Clyde W. Hardeman, Complainant* (Dec. 6, 1979) FEHC Dec. No. 79-12 (Cal. F.E.H.C. 1979) (finding EEO-1 reports relevant to racial harassment claim) (citing *McDonnell Douglas*); *Massachusetts Comm'n Against Discrimination v. Liberty Mut. Ins. Co.*, 371 Mass. 186, 186 (Mass. 1976) (reversing quashal of lower court's subpoena of Massachusetts Commission Against Discrimination's subpoena request, which included, *inter alia*, EEO-1 reports); *Chrysler Corp. v. Michigan Civil Rights Comm.*, 68 Mich App 283, 285 (Mich. 1976) (Michigan Civil Rights Commission sought production of documents, including EEO-1 report); *Carol Jacobson, Complainant, v. Restaurant Associates, Inc., Et Al Respondents*, 1975 WL 40912, at *6 (N.Y.C. Com. Hum. Rts. 1975) (upholding finding of discrimination "based mainly upon the testimony" of New York City Commission on Human Rights employee, who relied upon interpretation of employer's EEO-1 reports). *Cf. Dean Witter Reynolds, Inc. v New York State Exec. Dept. Div. of Human Rights*, 98 AD2d 676, 677 (N.Y. 1st Dept 1983) (quashing subpoena duces tecum not for irrelevance but because "these reports are available upon request to respondent New York State Division of Human Rights [NYSDHR] from the Equal Employment Opportunity Commission"); *cf. Alioto's Fish Co. v. Human Rights Com. of San Francisco* (1981) 120 Cal.App.3d 594, 610 [174 Cal.Rptr. 763, 771] (EEO-1 reports are among the types of reports a business must furnish to evaluate compliance with nondiscrimination obligations).

[115] *See*, *e.g.*, *Angela Jones, Petitioner v. Grand Boulevard Health and Rehabilitation, D/b/a Fl Hud Destin, LLC*, Respondent, 2021 WL 3863706, at *5 (Fla. Div. Admin. Hrgs. 2021) (EEO-1 report used to defeat plaintiff's pretext claim); *Marilyn J. Mcneely, Petitioner v. Childhood Development Service, Respondent*, 1998 WL 866546, at *4 (Fla. Div. Admin. Hrgs. 1998) (employer's EEO-1 report used as evidence to disprove petitioner's claims of race discrimination); *Luckett v. Human Rights Comm'n*, 569 N.E.2d 6, 15 (Ill. App. Ct. 1989) (EEO-1 racial data supported Illinois Human Rights Commission's dismissal of discrimination claims); *St. Vincent Hosp. v. Ohio Civ. Rights Com'n*, 1984 WL 14268, *5 (Oh. 6th Dist. Aug. 17, 1984) (EEO-1 report undercut plaintiff's race discrimination claim); *In the Matter of McKinney James Huff v. Ohio Rubber Co.*, 1982 WL 196976, at *2 (Ohio Civ. Rts. Com. 1982) (EEO-1 reports undercut complainant's claim of race discrimination); *Matter of Charles Lee and St. Vincent Hospital and Medical Center*, 1982 WL 197031, at *6 (Ohio Civ. Rts. Com. 1982) (EEO-1 reports undercut complainant's claim of race discrimination).

[116] *See*, *e.g.*, *In the Matter of the Request For Review By: Juana Rosales, Petitioner*, 2018 WL 5909427, at *4 (Ill. H.R.C. 2018) (analyzing race data, which was available because it is required by the EEO-1, but not data on national origin or immigration status, which is not); *Howard Sav. Inst. v. Francis*, 133 N.J. Super. 54, 62 (N.J. App. Div.

proposing rules, agencies are "required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing factors."[117] However, the NPRM simply decides that statistical data are of little use, or lead to unwelcome inferences, without considering their great utility to the many agencies and litigants that rely on them to learn of and support their efforts to realize the promise of Title VII. This also renders the NPRM arbitrary and capricious.[118]

c) The NPRM conflicts with the Commission's statutorily mandated requirements.

A statutorily mandated factor, by definition, is an important aspect of any issue before an administrative agency, and the EEOC's proposed rescission entirely neglects its statutory duty to confer with interested state and federal agencies, and to require covered entities to maintain relevant records.[119] Accordingly, the NPRM is arbitrary and capricious.

The NPRM conflicts with 42. U.S.C. § 2000e-8(d), which states, "In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies." The NPRM contains no representation that the Commission has consulted with other interested Federal agencies, or with interested state agencies regarding the changes proposed for 42 U.S.C. § 2000e-8(c); as such, the EEOC proposes contradicting its own statutory mandate. For this reason, the NPRM is arbitrary and capricious.

3. The NPRM is contrary to the EEOC's statutory purpose and legislative history.

The Supreme Court has made clear that Title VII has two plain and interrelated purposes: "to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens."[120] While the NPRM is correct that "[d]iscriminatory preference for any group, minority or majority, is precisely and only what Congress has *proscribed*" (emphasis added), the NPRM impermissibly ignores what Congress *required* through Title VII, namely "the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate

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1975) (denying motion to strike interrogatories because "the information may be furnished by submitting copies of the federal EEO-1 forms [employer] has filed for the past three years").

[117] *DHS v. Regents*, 591 U.S. 1, 33 (2020).

[118] *R.I. State Council of Churches v. Rollins*, 808 F. Supp. 3d 370, 382 (D.R.I. 2025) (finding agency action to be "patently" arbitrary and capricious where agency failed to account for the "practical consequences" of its action and thereby disregarded an "important aspect of the problem").

[119] *Getty v. Fed. Sav. & Loan Ins. Corp.*, 805 F.2d 1050, 1055 (D.C. Cir. 1986).

[120] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800 (1973).

invidiously to discriminate on the basis of racial or other impermissible classification."[121] The NPRM advances a view of Title VII that regards these dual mandates as at odds with one another and arbitrarily focuses on targeting discriminatory preferences for minority groups. This view is plainly at odds with decades of Supreme Court precedent, and thus must be discarded as arbitrary and capricious for being contrary to law.[122]

The NPRM's interpretation also contradicts Congress' explicit objectives, as evidenced by relevant legislative history. Inquiries into congressional intent are relevant to APA arbitrary-and-capricious analysis.[123] Congressional debate surrounding the recordkeeping relevant to the NPRM undercuts the NPRM's thesis. Congressman Smith introduced an amendment striking out the recordkeeping provisions required by Section 709(c), and echoed many of the arguments the NPRM puts forth.[124] Congressman Corman opposed the amendment to strike the recordkeeping requirement, identifying them as necessary to prevent discrimination, and warned that removing recordkeeping requirements risked turning Title VII into a "sham piece of legislation."[125] Congressman Goodell opposed the amendment, calling reporting "a vital sector of title VII."[126] The amendment was soundly defeated in the House, 61 to 135.[127] The Senate record also contains concerns paralleling those expressed in the NPRM and an amendment similar to Congressman Smith's, yet the recordkeeping requirement passed there as well.[128]

Six years hence, Congress began considering amendments to Title VII, which culminated in H.R. 1746.[129] The House Report's "Need for the Bill" section noted that "[d]espite the commitment of Congress to the goal of equal employment opportunity for all our citizens, the machinery created by the Civil Rights Act of 1964 is not adequate. Despite the progress which has been made since passage of the Civil Rights Act of 1964, discrimination against minorities and women continues."[130] In pursuit of its effort to shore up the adequacy of Title VII, Congress amended Section 709—to expand recordkeeping, eliminate exemptions, and narrow the avenues employers could pursue to avoid recordkeeping.[131] Thus, the NPRM's proposed rescission

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[121] *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971).
[122] *BNSF Ry. Co. v. Fed. R.R. Admin.*, 62 F.4th 905, 911 (5th Cir. 2023) ("The paucity of reasoning is especially glaring in the face of the agency's statutory mandate").
[123] *Pension Ben. Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 649 (1990).
[124] "Congressional Debate on Titles VII and XI Introduction," in 1964 Legis.Hist. at 3358-72; 110 Cong.Rec. 12812.
[125] *Id.* at 3371.
[126] *Id.* at 3371-2.
[127] *Id.* at 3372.
[128] *Id.* at 3087.
[129] *See* H.Rep. 92-238.
[130] *Id.* at 2139; *see also NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 275 (1974) ("congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress. We have also recognized that subsequent legislation declaring the intent of an earlier statute is entitled to significant weight.").
[131] H.Rep. 92-238 at 2164.

thwarts Congress's express intention[132] and rejects one of the key tools Congress endowed the EEOC with for the purposes of adequately achieving its statutory mandate, rendering it arbitrary and capricious.[133]

B. The NPRM Fails to Consider Any Alternatives to Full Withdrawal

The EEOC acted in an arbitrary and capricious manner by failing to consider (1) any alternatives when issuing the proposed rule, much less reasonable or responsible ones, (2) alternatives that would reduce the EEOC's burden or the burden on entities subject to the current rule, and (3) more narrowly tailored alternatives consistent with its current view of civil rights law. It also failed to consider any of the harms that might flow to states through the proposed rule.

1. The NPRM Fails to Consider Reasonable or Responsible Alternatives

The EEOC acted arbitrarily and capriciously by failing to consider any alternatives. An agency "must consider and explain its rejection of ... significant and viable and obvious alternatives,"[134] that are "within the ambit of the existing standard."[135] The EEOC, however, has not offered any alternatives to wholesale rescission of the EEO reporting and related recordkeeping requirements.[136]

The EEOC could have considered numerous reasonable alternatives to wholesale rescission, including: (1) preserving the recordkeeping and reporting requirements only as to certain entities, such as private employers and federal contractors as currently encompassed by EEO-1; (2) preserving the current requirements but issuing additional guidance to address the agency's alleged concern regarding the misuse of such demographic data (i.e., entities preemptively attempting to correct statistical imbalances); and (3) prioritizing investigations of entities the agency believes is "misusing" EEO data or utilizing quotas. Each alternative is significant, viable, and obvious, and "within the ambit of the existing standard."[137]

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[132] *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 274–75 (1974) (reenactment of statute without pertinent change is persuasive evidence of Congress' intent).

[133] *Judulang v. Holder*, 565 U.S. 42, 64 (2011) (an agency's action cannot be "unmoored from the purposes and concerns" of the statute as a whole).

[134] *Nat'l Shooting Sports Found., Inc. v. Jones*, 716 F.3d 200, 215 (D.C. Cir. 2013).

[135] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 51 (1983).

[136] *See* Removal of Reporting Requirements, 91 Fed. Reg. 46332, 46332-34 (proposed Jul. 23, 2026) (to be codified at 29 C.F.R. pt. 1602); *Wages and White Lion Invs., L.L.C. v. F.DA.*, 16 F.4th 1130, 1139 (5th Cir. 2021) (FDA acted in an arbitrary and capricious manner by "not consider[ing] alternatives when changing from its no-long-term-studies-necessary policy to its apparent long-term-studies-required policy").

[137] *Jones*, 716 F.3d at 215.

a) The EEOC Fails to Consider More Narrowly Tailored Alternatives.

The EEOC also could have considered whether it could preserve the EEO recordkeeping and reporting requirements only as to certain entities, *e.g.*, the private companies and federal contractors covered by EEO-1 and labor unions covered by EEO-3. Such an alternative might reduce the burden both on the EEOC and on covered entities. As part of this consideration, the EEOC could have analyzed whether any material distinctions exist between and among the various entities covered by existing requirements. For example, the governmental objectives in requiring private companies to report race and sex data might be different than in requiring state and local governments to report such data, the potential for alleged "misuse" of such data might be different, and the burdens and costs might be different. The NPRM fails to raise or discuss any material distinctions despite conducting the required analysis regarding burden and cost data.[138]

As discussed above, EEO-1 data is of particular importance because no other existing data is as comprehensive and granular. EEO-1 reports generate firm-level data about individual employees across a refined set of job categories—more refined than other collections. And because all large firms are reporting their data in the same way, this firm-level data can be compared to other firms in the same industry, as well as aggregated to create a detailed picture of an industry or geographic area as a whole. Other existing sources of data are not adequate substitutes and are subject to confidentiality restrictions that limit their use for enforcement of anti-discrimination laws.

b) The EEOC Could Preserve the Requirements and Issue Guidance.

The EEOC also failed to consider whether it could preserve the current EEO requirements but issue guidance consistent with its view on EEO and civil rights law to help covered entities avoid the supposed concerns it raises, including stereotyping and potential misuse of the data.[139] The agency speculates that "regulated entities may mistakenly believe that the EEOC will target them for enforcement actions based on statistical imbalances and therefore take discriminatory action to correct those imbalances in violation of EEO law,"[140] but fails to consider whether guidance to covered entities would be a reasonable alternative to address this purely speculative concern.

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[138] 91 Fed. Reg. at 46342-345.

[139] *See* 91 Fed. Reg. at 46336-338.

[140] *Id.* at 46338.

c) The EEOC Could Prioritize Investigations.

The NPRM also fails to consider whether the EEOC could, instead of wholesale rescission, simply prioritize investigations of entities they have reason to believe are violating the law according to the agency's current view of constitutional and EEO law. Given all of the agency's professed concerns with the use of quotas, it fails to consider whether prioritizing investigations of entities that use quotas would be a reasonable alternative to wholesale rescission.

2. The EEOC Fails to Consider Harms to States

As discussed in more detail above, the EEOC fails to consider any of the harms to states from the proposed rule. States will likely be harmed because they will be unable to obtain any replacement data that is as comprehensive, granular, and useful for discrimination investigations as the EEO data, they will be impeded in understanding nationwide employment data that would allow them to allocate resources more effectively within each state, and they will be impeded from comparing EEO data not only across industries but across time to gain a better understanding of particular employers and industries.[141]

3. The NPRM Provides Insufficient Time for Public Comment

The EEOC violates the APA's requirements for notice-and-comment rulemaking when it provides 30 days for public comment rather than 60 or 90 days. The APA requires agencies to provide a reasonable and meaningful opportunity for public comment when promulgating regulations.[142] Courts and the executive branch have established that a meaningful opportunity requires at least 60 days unless there are exigent circumstances.[143]

In its July 21, 2026, Commission Meeting, the EEOC considered Commissioner Kotagal's motion to extend the notice and comment period to 60 days which Commissioner Kotagal argued would allow the public adequate time and be in-line with previous EEOC rules and the administration's regulatory agenda.[144] Commissioner Kotagal also pointed out that the EEOC began such data collection 60 years ago and a proposal to rescind the data collection is a matter of great importance and a monumental change that requires additional time for the public to comment.[145] While the Commission subsequently debated the substantive merits of the

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[141] *See supra* III.A.
[142] 5 U.S.C. § 553.
[143] *See N.C. Growers' Ass'n v. UFW*, 702 F.3d 755, 770 (4th Cir. 2012); Exec. Order No. 12866, § 6(a), 58 Fed. Reg. 51735 (October 4, 1993).
[144] Meeting of July 21, 2026 - Transcript, U.S. EQUAL EMP' OPPORTUNITY COMM'N, available at https://www.eeoc.gov/meetings/meeting-july-21-2026/transcript (last accessed Aug. 17, 2026).
[145] *Id.*

proposed rule, it did not consider arguments for why the comment period should only be 30 days specifically.[146]

Given the significant impacts this proposed rule could have on longstanding EEOC practice, the EEOC should carefully consider the record before it, and a 30-day comment period is insufficient to provide an adequate opportunity for public comment, particularly given the harms to States outlined above. Furthermore, the EEOC has failed to proffer any justification for a 30 day comment period rather than a 60 or 90 day period and should therefore adopt a 60 day period to be in-line with precedent, caselaw, executive orders, the administration's own regulatory agenda, and Commissioner Kotagal's motion.

V. Conclusion

As detailed above, the NPRM fails to acknowledge the importance of the EEO data collection, the proposed rescission of EEO reporting, recordkeeping, and record preservation requirements will harm States, and the NPRM if finalized would be both contrary to the text and purpose of Title VII as well as arbitrary and capricious. For all these reasons, the States strongly oppose the NPRM and respectfully urge that it be withdrawn.

Sincerely,

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[146] *Id.*

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