February 16, 2007

To: EEAC Members

From: Jeffrey A. Norris
President

Re: EEOC Revises Its EEO-1 “FAQs” To Clarify There Is No Requirement To Collect and Maintain Race and Ethnicity Data in More Than the Seven Listed Reporting Categories

The Equal Employment Opportunity Commission (EEOC) has issued a revised version of its Frequently Asked Questions (FAQs) on the implementation of the new EEO-1 race/ethnicity classification system to clarify that employers are not required to collect and maintain race and ethnicity data in more than the same seven categories used for EEO-1 reporting purposes. The new EEO-1 goes into effect for the 2007 reporting cycle, and the agency’s timely clarification should eliminate any confusion as to what covered employers must do to comply.

The revised EEO-1 provides for reporting in seven identified categories. The answer to question number 9 of the FAQs, which were published by the EEOC last November,¹ states that employers “should” ask employees to identify both their race and their ethnicity, an exercise that could involve the collection of data in up to 62 race/ethnicity combinations, and has even led some to conclude that this is an actual requirement.

The EEOC now has added a footnote to FAQ No. 9 stating unequivocally that the agency will “not require employers to collect and maintain more detailed data than needed to complete the EEO-1 report.” While the footnote does say that a company may choose to collect more detailed data for its own purposes, the EEOC makes clear that collecting this additional data is purely optional.

A copy of the FAQs with the new footnote added to FAQ No. 9 is attached for your information (Attachment 1).

¹ See EEAC Memorandum 06-246 (November 10, 2006).
Background: Revised EEO-1 Contains Seven Race/Ethnicity Reporting Categories

In November 2005, the EEOC published final revisions to the 40-year-old EEO-1 Report, which among other things, implements a new classification system for collecting and reporting race and ethnicity data.\(^2\) Starting with the 2007 EEO-1 reporting cycle, employers will be required to report employee race/ethnicity data in the following seven categories:

1. Hispanic or Latino
2. White (Not Hispanic or Latino)
3. Black or African American (Not Hispanic or Latino)
4. Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino)
5. Asian (Not Hispanic or Latino)
6. American Indian or Alaska Native (Not Hispanic or Latino)
7. Two or More Races (Not Hispanic or Latino)

Importantly, the final version of the new form abandoned an earlier agency draft that would have permitted employees to report both race and ethnicity, as well as to identify with more than one race category (a proposal that would have required employers to collect and maintain data on up to 62 race/ethnicity categories).

Despite the agency’s decision to back away from the more complicated 62-category race and ethnicity classification system, some confusion persisted as to what data employers were required to collect. EEAC has consistently maintained that collecting race/ethnicity data beyond the seven listed categories on the new EEO-1 is not required. We thought that former EEOC Chair Cari Dominguez had resolved the issue in her remarks to attendees at EEAC’s Annual Meeting in 2006, when she stated that employers were not required to collect race and ethnicity data in more than the same seven categories used for EEO-1 reporting purposes.\(^3\) Nevertheless, confusion resurfaced after the agency published FAQ No. 9 last November.

\(^2\) See EEAC Memorandum 05-257 (November 18, 2005).
\(^3\) See EEAC Memorandum 06-059 (March 17, 2006).
New Footnote Offers Definitive Clarification

FAQ No. 9 states:

Q: When collecting data for the EEO-1 Report, should employers ask separate questions about ethnicity and race?

A: Yes. Employers should first ask if an employee is Hispanic or Latino (ethnicity), and second ask what race/races the employee considers himself to be. As explained in the November 28, 2005 Federal Register, this approach is called the “Two Question Format.” See 70 Fed. Reg. 71297.

According to reports we have since received from a number of EEAC member companies, some human resources information systems (HRIS) providers, applicant tracking service providers, and other consultants have understood this FAQ to say that companies have no choice but to collect in 62 race/ethnicity categories.

The new footnote added to FAQ No. 9 and published this week confirms that employers are permitted — but not required — to collect and maintain data in more than the seven categories used for EEO-1 reporting:

Employers must, at a minimum, collect and maintain the data that are necessary to complete the EEO-1 Report, which lists employee ethnicity or race in a total of seven categories. The Commission does not require employers to collect and maintain more detailed data than needed to complete the EEO-1 Report, although the Commission notes that some employers may find it necessary to do so for research or statistical purposes or for self-monitoring. We commend such efforts. See 70 Fed. Reg. 71298.

Thus, the footnote confirms that companies have a choice. They may voluntarily choose to collect more detailed data for their own purposes, such as self-monitoring, or not. But they simply are not required to collect more information than is necessary to complete the EEO-1 form.

EEAC’s Sample Self-ID Form

EEAC has developed a model self-identification form that represents the simplest method of collecting the race/ethnicity data that employers will be required to report starting with the 2007 EEO-1 reporting cycle. See Attachment 2. The model form is compliant with the revised EEO-1 reporting requirements and allows individuals to self-identify with one and only one of the seven race/ethnicity categories that will be used for reporting those data beginning in 2007.
Please note that our model self-id form is designed for EEO-1 race/ethnicity compliance purposes only, and does not contain questions on the other demographic characteristics (such as gender and veterans status, for example) commonly required for EEO/AA compliance purposes.4

Questions concerning this memorandum should be directed to Joe Lakis, Bill Holmes or Laura Giantris at 202-789-8650.

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4 For a detailed discussion of the rules governing invitations to self-identify, including sample self-identification forms for collecting data on disability and veterans status, please see EEAC Special Memorandum 05-137 (June 24, 2005).
Questions and Answers - Implementation of Revised Race and Ethnic Categories

Introduction

These Frequently Asked Questions (FAQs) provide answers to common questions about how to implement the revised race, ethnic and job categories in the new EEO-1 report. The new EEO-1 report and supporting documents may be found on the EEOC’s website at http://www.eeoc.gov/eeo1/index.html.

The EEO-1 report originally dates to 1966. Employers use it to report anonymous annual data about the number of women and minorities in broad occupational categories and subcategories. The EEOC uses this data to support its enforcement of Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination on the bases of race, color, religion, national origin, and sex. The EEOC changed the EEO-1 due to several developments, including the revised 1997 government-wide standards about how to report data about race and ethnicity to the federal government.

Effective Date

1. **Q: What is the effective date of the revised EEO-1 report?**

   **A:** Employers must use the new EEO-1 report starting with the report due on September 30, 2007.

2. **Q: May employers use employment figures from any pay period in 2007 to complete the EEO-1 report due on September 30, 2007?**

   **A:** No. As has always been the case with EEO-1 reports, employers must use employment figures from any one pay period between July and September of the survey year in question. The revised EEO-1 report due on September 30, 2007, therefore, must be based on employment figures from any one pay period between July and September, 2007.

Resurveying Current Employees

3. **Q: Does the EEOC encourage employers to resurvey current employees using the new race and ethnic categories as soon as possible?**

   **A:** Yes. Opportunities to resurvey should be used as soon as possible. For example, an employer that periodically asks its employees to update their personal information may use these periodic requests to ask employees to confidentially self-identify using the new EEO-1 race and ethnic categories. Alternatively, an employer could provide a page on its internal (private) website, where employees could voluntarily and confidentially self-identify. Other methods that achieve the same result would be acceptable.

4. **Q: May an employer resurvey current employees during the period of July-September, 2007?**

   **A:** An employer may resurvey current employees from July to September, 2007. As stated above in Question 2, the new EEO-1 report continues the practice of requiring employers to use employment figures from any one pay period between July and September.

5. **Q: Will the EEOC require covered employers to resurvey current employees with the new race and ethnic categories before the September 30, 2007 deadline for submitting the first new EEO-1 report?**

   **A:** No. As has always been the case with EEO-1 reports, employers must use employment figures from any one pay period between July and September of the survey year in question. The revised EEO-1 report due on September 30, 2007, therefore, must be based on employment figures from any one pay period between July and September.

http://www.eeoc.gov/eeo1/qanda-implementation.html
6. Q: May employers choose to resurvey only employees who were identified as “Asian/Native Hawaiian or Other Pacific Islander”?

A: Yes. This would risk, however, creating a perception among employees that management is singling out one racial group. It also may create the perception that management is being unfair to other employees who want to self-identify with the new category for “Two or More Races” but would not have the opportunity to do so at that time.

7. Q: If an employer does not resurvey for the 2007 EEO-1 report, how should it divide employees previously counted as “Asian/Native Hawaiian or Other Pacific Islander” into either “Asian” or “Native Hawaiian or Other Pacific Islander”?

A: If an employer does not resurvey for the 2007 EEO-1 report, it should count these employees as “Asian” for the 2007 EEO-1 report.

Employee Self-identification by Ethnicity and Race

8. Q: When should employers start asking new hires to self-identify using the new race and ethnic categories?

A: As stated in the Federal Register Notice of November 28, 2005, employers should seek self-identification of new employees under the new race and ethnic categories as soon as possible. See 70 Fed. Reg. 71300.

9. Q: When collecting data for the EEO-1 report, should employers ask separate questions about ethnicity and race?

A: Yes. Employers should first ask if an employee is Hispanic or Latino (ethnicity), and second ask what race/races the employee considers himself to be. As explained in the November 28, 2005 Federal Register Notice, this approach is called the “Two Question Format.” See 70 Fed. Reg. 71297. (1)

10. Q: What should an employer do if employees specify several specific races even though the employer only asked if they consider themselves to be “Two or More Races”?

A: The employer should count these employees in the “Two or More Races” category. However, the employer should preserve the detailed race information because it is an employment record. See 29 C.F.R. § 1602.14.

11. Q: May employers ask employees to specify particular races rather than simply to check the category “Two or More Races”?

A: Yes. Employers may ask employees to specify particular races rather than to check “Two or More Races,” but they are not required to do so. If employees supply detailed race data, employers must preserve it as an employment record under 29 C.F.R. § 1602.14. For purposes of the new EEO-1 report, employers should count such employees in the “Two or More Races” category.

12. Q: What should employers do if employees who self-identify as Hispanic or Latino also answer the question about race?

A: Race data for employees who self-identify as Hispanic or Latino will not be reported on the EEO-1. If employees supply race data, employers must preserve such data as an employment record under 29 C.F.R. § 1602.14.

13. Q: What should an employer do if it believes that an employee is of a different race or ethnicity than the employee claims to be?
A: The employer must accept the employee’s self-identification by race and by ethnicity. Self-identification is a basic principle underlying these changes to the EEO-1 report. See 70 Fed. Reg. 71296.

14. **Q: What should an employer do if an employee refuses to self-identify using the new race and ethnic categories?**

   A: An employer may obtain the necessary information from existing employment records or visual observation if an employee declines to self-identify. Employment records and visual identification may be used only if an employee refuses to self-identify.

**New Job Categories**

15. **Q: Has the EEOC updated its Job Classification Guide to reflect the new EEO-1 job categories and the 2000 Census?**

   A: Yes. The EEOC mailed employers the updated Job Classification Guide in the summer of 2006. The updated Guide will be posted in electronic form on the EEO-1 webpage at www.eeoc.gov. Among other things, the Guide helps employers identify the business and financial jobs that must be moved from “Officials and Managers” to “Professionals” for the 2007 EEO-1 report.

**Miscellaneous Questions**

16. **Q: Is the EEOC considering any further revisions to the EEO-1 Report at this time?**

   A: No, the EEOC is not considering any further revisions. The new version of the EEO-1 report has been authorized under the Paperwork Reduction Act (PRA) for three years, through January 2009. PRA authorization routinely extends for three years.

17. **Q: Does the EEOC plan to update the EEO-3, EEO-4 and EEO-5 reports to use the same race and ethnic categories as the new EEO-1?**

   A: Yes. The Commission expects to consider proposals to update the EEO-3, EEO-4 and EEO-5 reports to use the same race and ethnic categories as the new EEO-1 report.

   The EEO-2 report (apprenticeship programs) and the EEO-6 report (higher education) are no longer in use.

18. **Q: Will employers still have access to their previous EEO-1 reports on EEOC’s website?**

   A: EEOC plans on continuing to make this information available to employers, but has not yet determined the logistics of how this will be done. We will do so prior to the 2007 reporting cycle.

19. **Q: The sample 2007 EEO-1 report on the EEOC website asks for “Previous Year Total.” In 2007, how should employers complete the cells for “Previous Year Total” for the new racial categories, which did not exist previously, specifically “Two or More Races,” “Asians” and “Native Hawaiian or Other Pacific Islanders”?**

   A: When employers complete their online 2007 EEO-1 reports, the line for “Previous Year Total” already will be completed. The data cells for the new racial categories will be marked “VOID.” These cells must be completed beginning with the 2008 EEO-1 survey.

**FOOTNOTES**

(1) Employers must, at a minimum, collect and maintain the data that are necessary to complete the EEO-1 report, which lists employee ethnicity or race in a total of seven categories. The Commission does not require employers to...
collect and maintain more detailed data than needed to complete the EEO-1 report, although the Commission notes that some employers may find it necessary to do so for research or statistical purposes or for self-monitoring. We commend such efforts. See 70 Fed. Reg. 71298.

This page was last modified on February 14, 2007.
INSTRUCTIONS
PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM

Anti-Discrimination Notice. It is an unlawful employment practice for an employer to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to that individual’s terms and conditions of employment, because of such individual’s race, color, religion, sex, or national origin.

This employer is subject to certain governmental recordkeeping and reporting requirements for the administration of civil rights laws and regulations. In order to comply with these laws, this employer invites applicants and employees to voluntarily self-identify their race and ethnicity.

Submission of this information is voluntary, and refusal to provide it will not subject you to any adverse treatment. The information will be kept confidential and may only be used in accordance with the provisions of applicable laws, executive orders, and regulations, including those that require the information to be summarized and reported to the federal government for civil rights enforcement. When reported, data will not identify any specific individual.

INVITATION TO SELF-IDENTIFY
PLEASE ANSWER THE FOLLOWING QUESTION

What is your race/ethnicity? You may mark only one box.

- [ ] Hispanic or Latino: a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

- [ ] White (Not Hispanic or Latino): a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

- [ ] Black or African American (Not Hispanic or Latino): a person having origins in any of the black racial groups of Africa.

- [ ] Native Hawaiian or Other Pacific Islander (Not Hispanic or Latino): a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

- [ ] Asian (Not Hispanic or Latino): a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

- [ ] American Indian or Alaska Native (Not Hispanic or Latino): a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

- [ ] Two or More Races (Not Hispanic or Latino): All persons who identify with more than one of the above five races.