

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

NATIONAL WOMEN'S LAW CENTER, *et al.*,

Plaintiffs,

v.

OFFICE OF MANAGEMENT AND BUDGET,  
*et al.*,

Defendants.

Civil Action No. 17-cv-2458 (TSC)

**NOTICE**

In its August 16, 2019 status report, ECF No. 82-1, the Equal Employment Opportunity Commission (“EEOC”) explained that its “analysis of the response rates for EEO-1 data submitted over the last four years to be used to assess whether the EEOC is ‘on track’ to ‘complete’ the Component 2 data collection by September 30, 2019, as defined by the Court’s April 25, 2019 Order (ECF No. 71), is under final review.” ECF No. 82-1 at 2. The EEOC further stated that it “expects to make an interim filing before the next Status Report is due to this Court, which will present and explain this analysis.” Enclosed is the EEOC’s analysis.

The EEOC submits this analysis while fully reserving Defendants’ rights. Defendants respectfully maintain that the Court erred in establishing a completion rate for collection of EEO-1 Component 2 data. *See* ECF No. 71 at 2. As recently briefed to the D.C. Circuit, it remains Defendants’ position that the Court lacks authority to establish such a rate, and that the Court’s April 25, 2019 Order constitutes an improper interference with the agency’s ability to exercise its discretion. *See* Appellant Brief at 26-34, *Nat’l Women’s Law Center v. OMB*, No. 19-5130 (D.C. Cir.). In submitting the EEOC’s analysis, Defendants do not concede that the Court acted within

its authority in requiring the EEOC to undertake the Component 2 collection to the Court's specification.

Dated: August 30, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

JENNIFER D. RICKETTS  
Branch Director

*/s/Carlotta P. Wells*

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CARLOTTA P. WELLS  
Assistant Branch Director  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, NW  
Washington, DC 20005  
Telephone: (202) 514-4522  
Facsimile: (202) 616-8460  
Email: Carlotta.wells@usdoj.gov

*Counsel for Defendants*

### Interim NWLC Status Report

The EEOC has analyzed the response rates for EEO-1 data submitted over the last four years to be used to assess whether the EEOC is “on track” to “complete” the Component 2 data collection by September 30, 2019, as defined by the Court’s April 25 Order (ECF No. 71) (“Order”).<sup>1</sup>

Based on this analysis (described below), the EEOC has concluded that the Component 2 data collection should be deemed “complete” by Sept. 30 – per the Court’s Order - if 72.7% of the Component 2 reports have been filed.

Consistent with the Court’s Order, the EEOC analyzed response rate data from the 2014-2017 EEO-1 Component 1 collections. At the time of the Order, these were the “past four reporting years,” Order at 2, for which data had already been collected and finalized.<sup>2</sup> The EEOC focused on the response rates of the entities that are required to submit Component 2 data, as that is the relevant population for this case.<sup>3</sup> The percentage of these filers who submitted Component 1 reports by the filing deadline in 2014-2017 is:

	<b>EEO-1 Component 1 Data Collection Start Date</b>	<b>EEO-1 Component 1 Data Collection Deadline</b>	<b>Number of EEO-1 Filers Who Would Have Been Required to Submit Component 1 and Component 2 Data</b>	<b>Number of EEO-1 Filers Submitting Component 1 Data by Filing Deadline, Who Would Also be Required to Submit Component 2 Data</b>	<b>Response Rate of all EEO-1 Filers Submitting Component 1 Data Who Would Also be Required to Submit Component 2 Data</b>
2014	July 18, 2014	Sept. 30, 2014	59,529	42,847	72%
2015	Aug. 21, 2015	Sept. 30, 2015	60,835	30,977	51%
2016	Aug. 1, 2016	Sept. 30, 2016	62,526	44,896	72%
2017	Jan. 22, 2018	March 31, 2018	67,735	49,941	74%

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<sup>1</sup> In its April 25, 2019 Order, the Court concluded “that the EEO-1 Component 2 data collection(s) will not be deemed complete, for the purpose of this Order, until the percentage of EEO-1 reporters that have submitted their required EEO-1 Component 2 reports equals or exceeds the mean percentage of EEO-1 reporters that actually submitted EEO-1 reports in each of the past four reporting years.” Order at 2. It also ordered the EEOC to “take all steps necessary to complete the EEO-1 Component 2 data collections for calendar years 2017 and 2018 by September 30, 2019.” *Id.* at 1.

<sup>2</sup> While the 2018 EEO-1 Component 1 collection has also closed, the data submitted for that collection is still being finalized (*i.e.*, it is still undergoing standard data cleaning and quality assurance practices).

<sup>3</sup> The analysis would not change significantly if all filers required to submit Component 1 reports are considered. The response rate for Component 1 respondents over the relevant years is 73% (2014), 53% (2015), 73% (2016) and 76% (2017).

The average response rate by the data collection deadline for this four-year period, weighing each year the same, is 67.25%. But in 2015, the data collection period was shorter than usual, and the response rate was, therefore, artificially low.<sup>4</sup> Accordingly, it makes sense to omit the data from that year. Excluding the 2015 response rate, the average response rate by the data collection deadline increases to 72.7%. The EEOC believes this is the rate that should be used for determining completeness.

In reaching this conclusion, the EEOC relied on the fact that the data collection period in this case (July 15, 2019 to September 30, 2019) is almost the exact duration of the data collection periods (*i.e.*, the time between the collection's opening date and the filing deadline) for the 2014, 2016, and 2017 collections. As a result, the EEOC used the data demonstrating response rates at the filing deadline in each of those years in the above analysis to determine the rate to be used to assess collection "completeness" as of a particular date. Notably, the percentages reflected in the chart above do not represent the final response rates for those years because for the 2014-17 collections the EEOC continued accepting data from late filers long after<sup>5</sup> the data collection deadlines passed.<sup>6</sup> These final response rates, which include information submitted by late filers long after the data collection deadlines had passed, are significantly higher than response rates on similar surveys, whereas the 72.7% rate described herein is essentially consistent with the response rate for similar surveys, according to contemporary social science research.<sup>7</sup>

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<sup>4</sup> The 2015 EEO-1 Component 1 data collection experienced technical difficulties implementing system changes and opened 1.5 months late. This allowed only a one-month data collection period prior to the filing deadline.

<sup>5</sup> Indeed, for the 2014 collection, the EEOC accepted reports until June 30, 2015 (resulting in an 11.5 month period), for the 2015 collection the agency accepted reports until June 30, 2016 (resulting in a 10.5 month period), for the 2016 collection the agency accepted reports until June 30, 2017 (resulting in an 11 month period), and for the 2017 collection the agency accepted reports until December 31, 2018 (resulting in an 11 month period). After the lengthy periods of accepting reports for 2014, 2015, 2016, and 2017 collections, the resulting response rates were at 100% for 3 of the years and 93% for the other.

<sup>6</sup> In 2018, the EEOC implemented new practices for maximizing response rates prior to the close of data collection on May 31, 2019, and therefore accepted late submissions only until July 15, 2019; a period of six weeks. By using these practices for maximizing timely response rates, and with the caveat that the 2018 data is still being finalized, the EEOC obtained a response rate of 83% by the filing deadline (and 93% by the time it stopped accepting late submissions). Even with these new practices, we do not expect response rates from the Component 2 collection to be as high because the Component 2 survey is new and more difficult to complete than the Component 1 survey. *See* Declaration of Samuel C. Haffer (Apr. 3, 2019)(ECF No. 54-1) (explaining that filing system for Component 1 data collects 140 data fields, while each Component 2 report has 3,360 data fields to be addressed).

<sup>7</sup> For example, the Bureau of Labor Statistics' survey of Current Employment Statistics, which is a voluntary survey of 142,000 businesses and government agencies regarding employment, hours, and earnings, had an average response rate of 62% from 2014-2017; it uses a two-month data collection period. *See* <https://www.bls.gov/osmr/response-rates/home.htm>. Also, the Census Bureau has succeeded, albeit with some difficulty, at maintaining response rates at about 75% for five mandatory business surveys. Ruth Detlefsen, U.S. Census Bureau, 2007, *Issues related to Achieving Target Response Rates for Economic Surveys at the U.S. Census Bureau*, at 2, available at <https://www.bls.gov/advisory/fesacp3121407.pdf>. *In addition, extending the filing deadline is not industry practice as it gives rise to potential data quality concerns and is rarely used. See Jaki S. McCarthy, Morgan S. Earp, Carl Ramirez, Non-response Reduction Techniques for Establishment Surveys: Introductory Overview, Fourth International Conference on Establishment Surveys, June 2012, available at https://ww2.amstat.org/meetings/ices/2012/papers/302294.pdf (accessed July 18, 2019); and Rita Petroni, Richard*

Thus, for the reasons stated above, the Component 2 data collection should be deemed “complete” by Sept. 30 – per the Court’s April 25 Order – if 72.7% of the Component 2 reports have been filed.

At this point (and at least until a significant percentage of filers have submitted Component 2 data), the EEOC cannot project what percentage of filers will submit Component 2 data by September 30, 2019.

The EEOC also notes that a small number of filers to date have requested exemptions from the reporting requirements, pursuant to 29 C.F.R. § 1602.10 (providing that filers may request an exemption from reporting requirements because the preparation or filing of the report would cause an “undue hardship”). The EEOC is evaluating these requests. The EEOC does not, at this point, know whether hardship exemption requests will have any impact on the overall response rate for the submission of Component 2 data.

Thus, the EEOC cannot yet project whether it is “on track” to “complete” (as defined above) the Component 2 collection by September 30, 2019.

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[Sigman, Diane Willimack, Steve Cohen, Clyde Tucker, Response Rates and Nonresponse in BLS and Census Bureau Establishment Surveys. American Statistical Association Section on Survey Research Methods, 2004. available at http://www.asarms.org/Proceedings/y2004/files/Jsm2004-000405.pdf \(accessed July 18, 2019\).](http://www.asarms.org/Proceedings/y2004/files/Jsm2004-000405.pdf)