



Proposed Revisions to the EEO-1 Report

This document is designed to help you understand the real impact of the recent proposed revisions to the EEO-1 Report.

What are the proposed revisions?

1. Along with the headcounts currently submitted, proposed revisions would create an additional section (Component 2) requiring submittal of summary ***W-2 earnings and hours worked*** by gender (2), race/ethnicity (7), EEO Job Category (10) and Pay Band (12) – that’s 3360 fields of information (3660 if you include totals)!
2. This information would be submitted electronically in the same fashion as your current EEO-1 in the July/August/September timeframe each year.

If enacted as proposed (and that’s a very big “if” given the pending OMB review and upcoming Presidential/Senatorial elections), the logistics associated with completing the revised EEO-1 form will be daunting. Many fundamental questions have yet to be answered, and nobody knows yet what the final rule would entail. But with all that said, ***it is critical to remember that while the EEOC can propose additional reporting requirements, they cannot change the Title VII/legal foundation upon which legitimate compensation disparity investigations take place...and no amount of summary W-2 data by pay band is going to change that.***

How would the revisions impact employers (if implemented)?

First, there is nothing you should do at this time. There is too much in flux and we’ve all seen initiatives like this fail before. We will work diligently to keep you abreast of the conversation as it unfolds. If there’s breaking news, we’ll make sure to synthesize it, interpret it thoughtfully, and get it out to our clients and members in a timely fashion.

Second, even if it does come to fruition as proposed, it will take at least 15-18 months to implement. We understand that budgets and HRIS modifications need time, but we can’t recommend going down that path right now with so many unknowns.

Third, the data could only be used to ***direct investigations*** (i.e., EEOC Commissioner’s Charges and/or OFCCP audits) and ***not as evidence of discrimination***. At best, overly broad analyses such as those proposed are only slightly better than throwing a dart when seeking to identify potential violators and, at worst, are a distraction and a tremendous waste of time and valuable resources.

Fourth, EEOC/OFCCP resources have not grown. Fiscal-year 2016 and 2017 budgets still reflect 615 full-time employees. As a result, it’s highly unlikely that we will encounter a meaningful increase in the number of audits and/or investigations. Perhaps there might be an increase in EEOC Commissioner’s Charges related to compensation, but as with the OFCCP, the resources are simply not available for any significant increase. The only thing that absolutely would change is the shifting away from the OFCCP’s

current, arbitrary, “black box” process by which contractors are selected for audit toward a new(er) system fraught with “false positives/false negatives.” While completely frustrating by its lack of utility, it will also **not** result in a meaningful increase in new compensation investigations (beyond what we see already under the OFCCP’s current enforcement strategy).

What does BCG recommend?

Lastly, and most importantly, since the means by which a plaintiff and/or enforcement agency ultimately **proves** that compensation discrimination has occurred hasn’t changed, our recommendations haven’t changed:

Policy/Practice Recommendations:

1. **Do your homework – Audit current pay documentation practices.** Understand your processes and verify sufficient documentation exists to support compensation decisions. Focus on rationale behind **starting pay** and performance-based compensation adjustments.
2. **Get structured – Develop specific criteria for compensation decisions.** Develop objective and measurable guidelines for compensation decisions and apply them consistently. For example: establish (narrow) starting salary ranges for specific positions; establish concrete guidelines for the relationship between performance scores and pay, etc.
3. **Create oversight – Review compensation decisions.** Establish third-party internal review processes for compensation decisions (e.g., starting salary, yearly increases, etc.). This review should be conducted by personnel with knowledge of current disparities (if any).
4. **Make changes (if necessary) – Revise document retention practices.** Maintain records regarding compensation decisions to ensure data/evidence is available in the event of future litigation and/or audits.
5. **Train Supervisors and Managers – Train all supervisors and managers regarding new policies/procedures.**

Analytical Recommendations:

1. **Identify the hot spots – Begin initial investigations of compensation.** Under attorney-client privilege, start looking for compensation disparities by using MS Excel pivot tables (you don’t need a statistician for this...just ask and we can send you a link to some great presentations/webinars). Look for the low-hanging fruit (i.e., large numbers of employees with big differences in average salaries at the job title level). This will help eliminate the vast majority of your workforce from concern and focus your attention on only those few remaining job titles/employees in need of further **internal** review.
2. **Identify the even hot(ter) spots – Conduct statistical regression analyses where differences are identified in the initial review.** This will likely require a statistician, but now you’re talking about a focused review on only those job titles with unexplained differences that, as yet, cannot be explained.
3. **Identify the hot(test) spots – Conduct a “cohort” review (i.e., a file-by-file review to identify why differences remain).** Focus on only those issues that remain after both the initial review and statistical regression analysis. Pay particular attention to **starting salary**, education, prior salary, and quantity or quality of previous experience. Starting salary is often the culprit, but the

question is ***why are the starting salaries different and do you have the information necessary to justify the difference?*** (see Policy/Practice recommendation #1, above)

4. **Make salary changes where differences cannot be justified statistically and by cohort review** – This is a big deal, and you shouldn't come to this point lightly. This is where legal and the executive teams get involved to discuss who, how much, and how to roll-out compensation adjustments to address issues that simply cannot be explained.

What is the bottom Line?

Amidst uncertainty, calmer heads will prevail. In fact, that was BCG's message way back in late 2014 when the OFCCP first proposed the (very similar) Equal Pay Report (EPR). At the time, BCGi Principle Consultant Dr. Dan Kuang wrote:

Through it all, our compensation methodology has remained 100% compliant while remaining 100% the same. Our compensation methods are based on the Civil Rights Act of 1964, Title VII framework. Needless to say, the OFCCP (and the EEOC) must always answer to this framework. As such, our compensation methods can withstand any other methodologies that the OFCCP can come up with. This is what we mean when we say that our compensation methodology is "OFCCP version-proof."