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Submitted via www.regulations.gov

August 24, 2026

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

Re: Removal of Reporting Requirements, RIN 3046-AB37

Dear Mr. Windmiller:

I write on behalf of MALDEF (Mexican American Legal Defense and Educational Fund) in response to the proposed rule Removal of Reporting Requirements that was published in the Federal Register on July 23, 2026. 91 Fed. Reg. 46,332 (July 23, 2026) (RIN 3046-AB37). Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community," MALDEF promotes social change through legislative and regulatory advocacy, community education, and high-impact litigation in the areas of voting rights, education, immigrant rights, employment, and freedom from open bias. MALDEF relies heavily on aggregate demographic data published by federal agencies like the EEOC to advance its litigation and policy priorities.

Title VII of the Civil Rights Act of 1964 requires that:

Every 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.¹

To that end, the Code of Federal Regulations currently contains reporting requirements for eligible organizations.² However, on May 15, 2026, the Office of Information and Regulatory Affairs (OIRA) under the Office of Management and Budget (OMB) published a notice that the Equal Employment Opportunity

¹ 42 U.S.C. § 2000e-8(c) (1972).

² 29 C.F.R. pt. 1602 (2026).

Commission (EEOC) intended to rescind filing requirements for EEO-1, EEO-2, EEO-3, EEO-4, EEO-5, and EEO-6 forms and their related recordkeeping and preservation requirements.³ MALDEF submitted a request for an EO 12866 meeting with OIRA on May 28, 2026, but OIRA denied that request without explanation on June 9, 2026.

Nevertheless, on July 23, 2026, the EEOC issued a proposed rule to rescind the filing requirements for forms EEO-1 through EEO-6.⁴ The listed forms each require different organizations, including certain private employers, joint labor-management committees, labor organizations, state and local governments, elementary and secondary school systems, and higher education institutions, to report information on participants' race, ethnicity, and sex to ensure compliance with Title VII and its related regulations.⁵

While MALDEF opposes the proposed rule on substantive grounds, the proposed rule also violates the Administrative Procedure Act (APA) by failing to provide the public with adequate notice and opportunity to comment on the proposed rescission of longstanding EEO forms. The APA requires that substantive rules be promulgated through notice-and-comment rulemaking, and that all comments on proposed rules be read and considered before the issuance of a final rule.⁶ These procedures are “designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.”⁷ Executive Orders 12866 and 13563 state that agencies should generally provide at least 60 days for the public to comment on proposed regulations.⁸ While the EEOC held a public hearing on the proposed rule on August 11, 2026, it allowed only two weeks for affected parties to request to testify at that hearing, and it has allowed only thirty days for affected parties to submit a comment in response to the proposed rule,⁹ raising concerns about whether this process violates the APA's requirements. Under the APA, moreover, a court must “hold unlawful and set aside agency action...found to be...arbitrary” and “capricious” or “short of statutory right[.]”¹⁰ Courts may set aside agency action as arbitrary and capricious if the agency has “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”¹¹ For all of these reasons, the proposed rule violates the APA.

In the proposed rule, the EEOC claims that the Title VII reporting requirements that current EEOC forms seek to fulfill “may hinder effective enforcement of the EEO laws...[and] may violate the U.S. Constitution.”¹² To make this claim, the EEOC cites unrelated cases and claims without proof that its existing reporting requirements “may encourage employers to discriminate against employees who are

³ Abandoning the Collection of Employment Data Will Harm Employers and Workers, EEO Leaders (May 15, 2026).

⁴ Removal of Reporting Requirements, 91 Fed. Reg. 46,332 (July 23, 2026).

⁵ 29 C.F.R. pt. 1602; 91 Fed. Reg. at 46,332.

⁶ 5 U.S.C. § 553 (2023).

⁷ Int'l Union, United Mine Workers v. Mine Safety & Health Admin., 407 F.3d 1250, 1259 (D.C. Cir. 2005).

⁸ Exec. Order No. 12866, 3 C.F.R. 638 (1994); Exec. Order No. 13563, 76 Fed. Reg. 3821 (2011).

⁹ 5 U.S.C. § 553; 91 Fed. Reg. at 46,333.

¹⁰ Administrative Procedure Act, 5 U.S.C. § 706(2) (1966).

¹¹ Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

¹² 91 Fed. Reg. at 46,335–36.

not considered ‘minorities,’ may promote racial stereotyping, and may encourage employers to engage in discrimination to avoid potential EEOC enforcement actions or to address perceived inequitable outcomes.”¹³ Even if the EEOC were truly concerned that employers or other entities are discriminating against white men, as the proposed rule implies,¹⁴ eliminating the collection of race, ethnicity and sex data would only exacerbate the problem: employees facing discrimination would no longer be able to access EEO data through discovery to support that they are experiencing discrimination based on race, ethnicity, or sex. Moreover, employers may assert, even without actual basis, that they are unaware of the race or ethnicity of their employees in defending against Title VII cases. The EEOC’s proposed rule, then, directly contradicts its stated goal in violation of the APA.¹⁵

In attempting to justify its proposed rule, the EEOC claims that the government lacks a compelling interest in collecting race and ethnicity data and that its collection of that data is insufficiently narrowly tailored.¹⁶ This is simply untrue: forms EEO-1 through EEO-6 collect specific demographic information for the specific purpose of fulfilling both employers’ and the EEOC’s obligations under Title VII.¹⁷ The EEOC also claims that existing forms “force all employees into a small number of predetermined race/ethnic categories” that “are largely arbitrary” and have changed over time.¹⁸ But the fact that race and ethnicity categories are socially constructed does not diminish their material effects on people’s lived experiences or the necessity of collecting data about those categories to enforce Title VII. In fact, the changes to minimum categories reflect a deeper and more inclusive understanding of race and ethnicity and thus provide more accurate data for employers to ensure that they are not violating civil rights laws. The EEOC’s unsupported claims represent not simply a difference in view, but a wholly implausible basis for rulemaking that runs contrary to evidence available to the EEOC; thus, the EEOC’s proposed rule runs afoul of the APA.¹⁹

As an organization, MALDEF has long advocated for the collection of more precise and more detailed race and ethnicity data, not less: reliable and comprehensive data helps realize the intent of the Civil Rights Act to guarantee equal employment opportunity for all, regardless of race or ethnicity. If the EEOC abandons its decades-long work to collect and preserve data on race, ethnicity, and sex from employers, schools, higher education institutes, and all other entities governed by Title VII, it will undermine its statutory mandate to safeguard equal employment opportunity and weaken the nation’s civil-rights infrastructure. For the foregoing reasons, MALDEF respectfully requests that the EEOC withdraw the proposed rule in its entirety. Please feel free to contact us with any questions or concerns about these comments at (202) 293-2828 or efindley@maldef.org.

Thank you.

Sincerely,

¹³ *Id.* at 46,335.

¹⁴ *See id.* at 46,337–38.

¹⁵ *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43.

¹⁶ *Id.* at 46,335–39.

¹⁷ 29 C.F.R. pt. 1602 (2026).

¹⁸ *Id.* at 46,336.

¹⁹ *Motor Vehicle Mfrs. Ass’n*, 463 U.S. at 43.



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