

Justification for non-substantive changes to EEO-1 instructions

The EEOC obtained clearance to collect the EEO-1 information collection in November of 2023, which expires on November 30, 2026. The instructions that were part of that 2023 clearance include an option for respondents to voluntarily report on employees who referred to themselves as “non-binary”; respondents electing to respond to this voluntary disclosure provided the information in a comment box. We now request clearance of a non-substantive change to the EEO-1 instructions to remove this response option for voluntary reporting of “non-binary” employees for the reasons described below.

On January 20, 2025, the President issued Executive Order 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, which provides that “[a]gency forms that require an individual’s sex shall list male or female, and shall not request gender identity.” To comply with the requirements of EO 14168, the EEOC believes it must remove the voluntary option to report on “non-binary” employees. We believe this change is non-substantive, because on February 11, 2025, the Office of Information and Regulatory Affairs (OIRA) issued guidance to agencies providing that an agency may use a non-substantive change to bring its existing information collections into compliance with the Executive Order. OIRA’s February 11 guidance specifically states that removing a response option from a collection is an example of a non-substantive change. In light of that guidance, the EEOC proposes to revise part 10 and Section J in part 22 of the instructions, as well as a number of associated footnotes, to remove all discussion of the response option for voluntary reporting of “non-binary” employees consistent with EO 14168.

The EEOC proposes three other non-substantive changes to its EEO-1 information collection instructions that are not tied to compliance with recent Executive Orders. First, the

EEOC proposes edits to streamline the EEO-1 collection process for the upcoming reporting period covering 2024 by removing language about “Notice of Failure to File” and removing references to postal mail for notifications to filers.¹ Second, the EEOC proposes to update the instructions’ discussion of requests for undue hardship, due to revisions to the EEOC’s EEO-1 regulations concerning how and by whom undue hardship requests are processed, but not the requester’s right to make such requests. Specifically, the EEOC proposes revisions to part 24 and associated footnotes to reflect revisions to 29 CFR part 1602 that became effective on January 10, 2025. Finally, the EEOC seeks to remove a footnote in Appendix B that contains an inoperable whitehouse.gov link. These changes impact the instructions only, not the EEO-1 collection instrument.

¹ In addition, as is done each year, dates will be revised throughout the instructions and collection instrument to reflect the 2024 reporting period; we believe this is a de minimis change.