April 22, 2020

Ms. Bernadette B. Wilson
Executive Officer
Executive Secretariat
Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

Re:  Agency Information Collection Activities: Existing Collection: Notice of Information Collection—Request for new Control Number and Approval of Collection: Employer Information Report (EEO-1) Component 1; Revision of Existing Approval for EEO-1 Component 2

On behalf of the more than 8,000 members of the American Road and Transportation Builders Association (ARTBA), we respectfully offer comments on the March 23 Federal Register notice of the existing information collection regarding separation of components 1 and 2 of the Employer Information report (EEO-1) by the Equal Employment Opportunity Commission (EEOC).

ARTBA’s membership includes private and public sector members that are integral to the planning, designing, construction and maintenance of the nation’s roadways, waterways, bridges, ports, airports, rail and transit systems. Our industry generates more than $500 billion annually in U.S. economic activity and sustains more than 4 million American jobs. ARTBA members – especially transportation construction contracting firms – must comply with EEOC regulations. Therefore, any regulatory changes regarding the EEO-1 would directly impact them.

Component 1 of the EEO-1 form requires information on employees’ ethnicity, race and gender by job category. In 2016, the EEOC expanded the scope of the EEO-1 for firms with 100 or more employees to require that the form include salary data as well (Component 2). ARTBA submitted concerns to both EEOC and the Office of Management and Budget (OMB) regarding the addition of Component 2.

The EEOC is now reexamining Component 2, noting “the unproven utility of the 2016 Component 2 is far outweighed by the burden imposed on employers that must comply with the reporting obligation. Therefore, the EEOC is not seeking to renew Component 2 of the EEO-1.” ARTBA supports EEOC’s decision not to renew Component 2.

ARTBA’s members work diligently to build and maintain transportation improvement projects in as safe and efficient a manner as possible, while minimizing costs for the taxpayers and complying with a myriad of federal and state regulations.

ARTBA looks at all proposed new federal mandates through this context. Generally speaking, Component 2 unnecessarily increases the amount of data collected and the administrative burden on affected employers, while not yielding accurate, useful information for its stated purpose. Component 2 also carries security and legal risks for the firms submitting the information. For all these reasons, ARTBA continues to oppose Component 2.
The transportation construction industry is unique. Nonetheless, Component 2 obtains salary information from industry employers through a generic source, the data found on the federal W-2 tax forms.

As ARTBA pointed out both in our 2016 comments to the EEOC and similar comments made last year, this approach is problematic in that it would show an employee’s salary, but provide absolutely no context as to how that salary is determined. In fact, transportation construction firms utilize a number of completely-permissible factors to make these determinations, including:

- shift time (i.e. day-time vs. night-time work hours),
- location of the job site (which can vary widely, because the work sites are generally transportation construction projects),
- specialized training of the employee,
- seniority,
- education, and
- job performance, among others.

W-2 forms do not include any of this information, nor would it be included on the revised EEO-1. It would be a travesty for regulators to conduct fishing expeditions predicated on such limited employer information. In an analysis using this information from the W-2, the EEOC could simply see one employee at pay level “X” and another at pay level “Y,” to draw conclusions out of context, and launch an investigation when, in actuality, no discriminatory practice exists at all. An excellent example of this is pay based on location, which is actually a practice also used by the federal government. An employee based in a rural area may earn less than an employee in an urban area simply because of cost-of-living differences. This would not be reflected on a W-2. Further, a W-2 does not take into account perhaps the most important factor in determining pay level—performance. Component 2 does not take any of these factors into account.

Moreover, it is easy to state that employers who do not discriminate will simply be exonerated at the conclusion of any such investigation. In reality, though, these employers would have to commit significant time and resources to defend themselves against scurrilous accusations based on incomplete information.

It should also be noted that many ARTBA members already conduct self-audits to guard against race- or gender-based pay disparities. This shows that ARTBA members are committed to the concept of equal work for equal pay, while opposing any form of employment discrimination.

ARTBA also continues to have concerns about the confidentiality of salary data once it is collected. Component 2 data is collected electronically, which introduces the possibility of a security breach through which sensitive, proprietary information could be publicly disclosed when the data is
submitted or being maintained by the EEOC. Although the EEOC has tried to offer reassurance by noting it had not experienced a data breach and consistently monitors its on-line security systems, this is of course not a guarantee that one could not occur in the future. There have been many high-level, damaging cyber-attacks on federal government servers, including those of the Internal Revenue Service and Office of Personnel Management, resulting in repercussions to innocent parties that will persist for many years. Since ARTBA submitted our 2016 comments to the EEOC, one of the two major political parties in this country has also suffered a very significant and well-publicized data breach. Up until now, the EEOC has only collected data on ethnicity and gender, but the addition of salary data makes the agency a more attractive target for cyber-criminals.

The consequences of such a data breach would be very serious for any company. For example, any publication of salary data could have serious implications for employee morale. Also, in a competitive marketplace, firms could use leaked salary information to “poach” employees from their rivals. Finally, current or former employees and other parties could use this information to initiate civil litigation based solely on perceived discrepancies in pay, efforts that would be as equally misguided as the government investigations described above.

**Added Costs**

Component 2 adds significant administrative costs to affected employers. Many employers manually enter their EEO-1 data as a common practice. According to some ARTBA members, adding W-2 information as a requirement could result in 25 or more additional hours of data entry and preparation for each report. Further, companies may have to invest in new software systems to comply with the Component 2. Unfortunately, these added costs for transportation construction companies will simply result in more expensive transportation improvement projects at a time when transportation funding is constrained at all levels of government. As noted above, transportation construction firms take pride in maximizing efficiency in building these projects. However, cost increases from federal mandates, such as Component 2, would be unavoidable. It should also be noted that delays resulting from Component 2 run counter to recent efforts on the federal level to improve the project delivery process for transportation improvements.

ARTBA and its members are committed to full compliance with employment laws, including those related to pay equity. However, Component 2 does little to achieve this goal, while opening the door to unfounded litigation, data security breaches and costs increases in transportation projects. As such, ARTBA supports OMB’s decision not to renew collection of Component 2 to the EEO-1.

Sincerely,

David Bauer
President & C.E.O.