WORKING IDEAL

April 27, 2023

Bob Sivinski,
Chair, Interagency Technical Working Group on Race and Ethnicity Standards
Office of Information and Regulatory Affairs
Office of Management and Budget
1650 17th St., NW
Washington, DC 20500
Via Federal eRulemaking Portal: www.regulations.gov

Re: Initial Proposals for Updating OMB's Race and Ethnicity Statistical Standards
        OMB 2023-0001, 88 FR 5375

Dear Mr. Sivinski,

We are writing to provide comments on the Initial Proposals for Updating the Office of Management and Budget's (OMB) Race and Ethnicity Statistical Standards published by the Office of Information and Regulatory Affairs.[1] The collection of accurate and inclusive data on racial and ethnic identities is critical to advance equity, including equal employment opportunity.

Working IDEAL provides trusted, effective, and innovative advice on inclusive workplaces, diverse talent and fair pay to large and small companies, universities, non-profits, unions, and other organizations across the nation. Our principals have decades of experience breaking down barriers to diversity, inclusion, equity, and access and devising new solutions to drive sustainable change. We specialize in diversity, inclusion and equity assessments, workplace harassment responses, pay equity audits, leadership development, employee learning and engagement, and strategic people and culture programs. We bring deep experience with law, data analysis, workplace practices, applied social science literature, training and development, and public engagement. We understand the practical challenges of implementing best practices. And our long history advocating on behalf of workers and worker organizations gives us unique credibility and perspective. Working IDEAL offers a customized, evidence-based, and research-informed approach to meet employers' goals for diversity, equity, access and inclusion.

We support efforts to update OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15). These standards have not been updated since 1997, and the existing standards do not align with the way that many individuals self-

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[1] Federal Register: Initial Proposals For Updating OMB's Race and Ethnicity Statistical Standards, available *at* https://www.federalregister.gov/documents/2023/01/27/2023-01635/initial-proposals-for-updating-ombs-race-and-ethnicity-statistical-standards.

identify, which results in inaccurate or incomplete data. Revisions will help to modernize the questions used in federal surveys to encourage collection of accurate, detailed data on race and ethnicity through self-identification.

We support OMB's efforts to ensure the collection of useful demographic statistics. We are particularly interested in the proposed changes as they relate to employer workforce data. The collection of accurate, detailed demographic data enables employers to assess equity in personnel decisions and identify challenges for underrepresented groups; to address bias and discrimination in hiring, promotions, compensation, and other areas; to assess the success of DEI goals and initiatives; to ensure compliance with equal employment opportunity laws and regulations; and to promote employee engagement and provide resources to support underrepresented groups, for example, through professional development, mentorship programs, and employee resource groups.

In our experience working with employers and engaging employees, we have seen substantial interest in offering a more robust and multi-faceted set of options than the usual checkboxes. In our workplace surveys, we have applied a number of the practices OMB proposes to adopt, including allowing individuals to select among different race and ethnicity categories in a combined question, including a Middle East and North African category, and creating more opportunities for open-ended responses that allow individuals to describe their identity in their own words. This approach has been positively received, and it provides a better understanding of the variety of identities individuals may hold. It enables more people to feel fully seen and may positively impact the likelihood of reporting.[2] More refined data, including having the ability to disaggregate and consider intersectionality, allows employers to better target strategies that break down barriers to equity and strengthen inclusion. These principles would also hold true for federal agencies, both in their role as employers and in their role as providers of services and benefits.

There are some practical operational considerations to expanded reporting, including the potential need to aggregate more detailed information for certain uses, the need to ensure privacy and draw appropriate inferences from identities reported by smaller groups of individuals, accurate tabulation of results where individuals can elect multiple categories (so the summaries fully reflect all data), and the challenge of leveraging open-ended responses which may require additional coding. These changes also likely require updating forms and databases. However, all of these are in our view quite feasible given advances in technology - coding open text fields is much faster and easier than in the past, and

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[2] In addition to the sources provided in the Federal Register notice on the benefits of providing expanded and more open-ended options to report, research in the health field suggests that open-ended questions allowing patients to self-define race and ethnicity instead of simply providing the standard preset categories to choose from, increased the response rate. Researchers could still aggregate the information as needed for particular reporting purposes. Romania Hasnain Wynia and David W. Baker, Obtaining Data on Patient Race, Ethnicity, and Primary Language in Health Care Organizations: Current Challenges and Proposed Solutions, Health Services Research (2006), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1797091/.

databases, analytic techniques, and data visualization tools are more sophisticated and powerful. Regardless, the substantial benefits of collecting data in expanded categories and being able to disaggregate information in new ways are worth some additional effort.

We support the proposal to include a combined race and ethnicity question format. We support the proposal to add a Middle Eastern or North African category (MENA) that is geographically based and separate from the White category. We also support the collection of more granular, disaggregated data to better understand and address within-group disparities.

We also encourage federal agencies to be attentive, when implementing this framework, to ensure data collection practices foster trust and encourage accurate reporting. Agencies should work with stakeholders to utilize questions that encourage respondents to rely on voluntary self-identification for reporting purposes. This includes instructions and supporting material that clearly communicate the benefits of providing as much information as possible, the importance of considering the option to indicate multiple race and ethnicity categories, and the opportunity to provide more information through open-ended responses.

Best practices developed for employers to encourage voluntary self-identification have generated a number of effective strategies that should be considered.[3] Employers should request demographic data at regular touchpoints (job applications, onboarding, etc.). Employers should communicate the benefits of self-identification to collect accurate data that serves the organization's goals relating to diversity, equity, and inclusion. To follow up with employees who do not provide demographic information initially, employers should offer multiple opportunities for self-identification and ask leaders to be visible role models for participation. Employers should also provide opportunities to update responses, especially if new categories are added. Employee resource groups can also help to encourage employees to self-identify. Employers should make clear how the information is utilized, that it is managed separately from decision-makers and decision-processes involving specific individuals, explaining who will have access to the information, and the steps taken to ensure confidentiality.

These changes provide an opportunity to further modernize the EEO-1 data collection, which requires all private sector employers with 100 or more employees, and federal contractors with 50 or more employees meeting certain criteria, to submit demographic workforce data, including data by race/ethnicity, sex, and job categories.

EEO-1 data are the only federal source of data for occupation and demographic characteristics collected at the employer level. The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) can utilize EEO-1 data to identify industries, occupational groups, or geographic regions with significant disparities by race, sex, or ethnicity for use in focusing its public outreach, education, training, and compliance assistance. EEO-1 reporting encourages employers to conduct self-assessments to address and prevent workplace

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[3] See Carolyn Fullilove, ADP, Diversity and Inclusion: Getting Candidates to Self-Identify, Spark, available at https://www.adp.com/spark/articles/2019/02/diversity-and-inclusion-getting-candidates-to-self-identify.aspx.

discrimination. Increasingly, employers are voluntarily releasing EEO-1 data to promote transparency and accountability for efforts to promote diversity, equity, and inclusion.[4]

Currently, the EEO-1 report collects race and ethnicity data in the following categories: Hispanic or Latino, White, Black or African American, Native Hawaiian or Pacific Islander, Asian, Native American or Alaska Native, or Two or More races. The EEO-1 report does not include a MENA category, and it does not allow individuals to select multiple race/ethnicity categories other than the ambiguous "Two or More races" category. We recommend updating the EEO-1 report to expand the categories and options.

The proposed changes would also be expected to impact the way federal contractors report workforce demographic data for purposes of affirmative action plans (AAPs). These plans help to ensure nondiscrimination for employees of businesses providing goods and services to the federal government. Federal contractors analyze workforce demographic data to identify potential barriers to equal employment opportunity.[5] Affirmative action plans encourage federal contractors to take affirmative steps to ensure equity through recruiting, training, community outreach, etc.

Consistent with the adoption of recommended updates to SPD 15, we would encourage OFCCP and the EEOC to update the EEO-1 report and AAPs in line with the standards and in coordination with stakeholders and community leaders. This would ensure these critical tools for studying workforce demographics can provide the benefits of capturing a fuller picture of how employees identify. We understand that efforts to update these reporting systems will take time, due in part to regulatory and Paperwork Reduction Act processes, and the agencies should ensure that smaller employers get the support they need to adapt their systems. However, technology continues to evolve, and employers regularly update and modernize their systems. The federal government must also take aggressive action to adapt and modernize to keep up with these technological advances and societal change.

Respectfully submitted,

/s/ Pamela Coukos
Founder and CEO
Working IDEAL

Sarah Crawford
Principal Advisor
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[4] See Kavya Vaghul, Aleksandra Radeva, and Kim Ira, JUST Capital, Workforce Diversity Data Disclosure, Harvard Law School Forum on Corporate Governance (March 9, 2022), available at https://corpgov.law.harvard.edu/2022/03/09/workforce-diversity-data-disclosure/.

[5] See OFCCP, Sample Affirmative Action Program, available at https://www.dol.gov/sites/dolgov/files/ofccp/regs/compliance/AAPs/Sample_EO11246_AAP_final_01.03.18_Cont r508.pdf.