

114TH CONGRESS  
2D SESSION

# S. 2693

To ensure the Equal Employment Opportunity Commission allocates its resources appropriately by prioritizing complaints of discrimination before implementing the proposed revision of the employer information report EEO-1, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 16, 2016

Mr. ALEXANDER introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To ensure the Equal Employment Opportunity Commission allocates its resources appropriately by prioritizing complaints of discrimination before implementing the proposed revision of the employer information report EEO-1, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “EEOC Reform Act”.

1 **SEC. 2. CONDITIONS PRECEDENT FOR IMPLEMENTATION**  
2 **OF PROPOSED REVISION OF EMPLOYER IN-**  
3 **FORMATION REPORT.**

4 (a) FINDINGS.—Congress finds the following:

5 (1) The current employer information report  
6 EEO–1 requires most employers with 100 or more  
7 employees to annually submit employment data for  
8 its workforce, categorized by race/ethnicity, gender,  
9 and job category, for a total of 180 combinations of  
10 data collected. The proposed EEO–1 report expands  
11 the data collection to include employee income and  
12 hours worked, for a total of 3,660 combinations of  
13 data collected. This is an increase in data collection  
14 of 1,933 percent.

15 (2) The primary purpose of chapter 35 of title  
16 44, United States Code (commonly known as the  
17 “Paperwork Reduction Act”) is to “minimize the pa-  
18 perwork burden . . . for persons resulting from the  
19 collecting of information by or for the Federal Gov-  
20 ernment”. The staggering increase of data proposed  
21 to be collected by the Equal Employment Oppor-  
22 tunity Commission through the proposed revision of  
23 the EEO–1 report does not comport with that stated  
24 purpose of the Paperwork Reduction Act.

25 (3) The Commission failed to provide a detailed  
26 explanation of how the Commission will track, verify,

1 compile, ensure confidentiality of, and protect the  
2 new information, and how the Commission will use  
3 that information in enforcement efforts.

4 (4) At the end of fiscal year 2015, the Commis-  
5 sion had a pending inventory of 76,408 charges of  
6 discrimination. During fiscal years 2014 and 2015,  
7 the Commission resolved the fewest number of  
8 charges since 2010, even though the charge receipts  
9 remained stable or declined during that time period.

10 (5) The Commission reported that in 2015,  
11 “37.6 percent of EEOC staff expressed concern that  
12 their workload is not reasonable, substantially higher  
13 than the government-wide average of 26.5 percent”.  
14 If the Commission implements the proposed revision  
15 of the EEO–1 report, resources and staff that  
16 should be dedicated to reducing the pending inven-  
17 tory of charges of discrimination may be used for re-  
18 viewing the increased data collected through the pro-  
19 posed EEO–1 report, instead of working to resolve  
20 such charges and reduce the backlog of such  
21 charges.

22 (b) DEFINITIONS.—In this section:

23 (1) COMMISSION.—The term “Commission”  
24 means the Equal Employment Opportunity Commis-  
25 sion.

1           (2) DEPARTMENT.—The term “Department”  
2 has the meaning given the term “Executive depart-  
3 ment” in section 101 of title 5, United States Code.

4           (3) FEDERAL AGENCY.—The term “Federal  
5 agency” means an independent establishment de-  
6 scribed in section 104(1) of title 5, United States  
7 Code.

8           (4) PROPOSED REPORT REVISION.—The term  
9 “proposed report revision” means the proposed revi-  
10 sion of the employer information report EEO–1 set  
11 forth in the notice entitled “Agency Information Col-  
12 lection Activities: Revision of the Employer Informa-  
13 tion Report (EEO–1) and Comment Request” (81  
14 Fed. Reg. 5113 (February 1, 2016)).

15           (5) REVISED EMPLOYER INFORMATION RE-  
16 PORT.—The term “revised employer information re-  
17 port” means the employer information report EEO–  
18 1, after the proposed report revision.

19 (c) DATA COLLECTION AND REPORT.—

20           (1) LIMITATION ON IMPLEMENTATION.—

21           (A) IN GENERAL.—The Commission may  
22 not implement the proposed report revision  
23 until the date on which the Commission obtains  
24 approval of the related collection of information,  
25 at the end of the process described in para-

1 graph (5), and meets the requirements of sub-  
2 section (d)(2).

3 (B) PRIOR IMPLEMENTATION.—If the  
4 Commission implements the proposed report re-  
5 vision before the date of enactment of this Act,  
6 the Commission shall cease that implementation  
7 on that date and may not resume that imple-  
8 mentation or use the data collected from the re-  
9 vised employer information report in its en-  
10 forcement efforts until the date described in  
11 subparagraph (A).

12 (2) DATA COLLECTION.—The Commission  
13 shall—

14 (A) on an annual basis—

15 (i) collect information from each head  
16 of a Department or Federal agency (re-  
17 ferred to in this paragraph as the “Federal  
18 employee information”) that is the same  
19 type of employment data information as a  
20 private sector employer with 100 or more  
21 employees would be required to collect  
22 under the revised employer information re-  
23 port;

1 (ii) verify, compile, ensure the con-  
2 fidentiality of, and protect the collected  
3 Federal employee information; and

4 (iii) publish, and make publicly avail-  
5 able, the compiled Federal employee infor-  
6 mation in the aggregate, and analyzed by  
7 each Department or Federal agency;

8 (B) on an annual basis—

9 (i) collect and compile information  
10 (referred to in this paragraph as the  
11 “Commission information”) on the number  
12 of employees and employee hours required  
13 to carry out subparagraph (A), the number  
14 of employees and employee hours that were  
15 transferred from reducing the number of  
16 pending charges of discrimination before  
17 the Commission to carry out subparagraph  
18 (A), and the cost of carrying out subpara-  
19 graph (A); and

20 (ii) publish, and make publicly avail-  
21 able, the compiled Commission informa-  
22 tion; and

23 (C) on an annual basis—

24 (i) using the information obtained  
25 under subparagraph (B), calculate the

1 number of Commission employees and em-  
2 ployee hours that will be required for, and  
3 the cost of, tracking, verifying, compiling,  
4 ensuring confidentiality of, and protecting  
5 the information concerning the revised em-  
6 ployer information report for private sector  
7 employers, and enforcing the requirements  
8 related to the report;

9 (ii) using the information obtained  
10 under subparagraph (B), calculate the  
11 number of employees and employee hours  
12 that will be transferred from reducing the  
13 number of pending charges before the  
14 Commission, to carry out such tracking,  
15 verification, compiling, ensuring confiden-  
16 tiality, protection, and enforcement; and

17 (iii) publish, and make publicly avail-  
18 able, information specifying the results of  
19 the calculations described in clauses (i)  
20 and (ii).

21 (3) REPORT.—The Commission shall submit to  
22 Congress, on an annual basis, a report containing  
23 the information published under subparagraphs  
24 (A)(iii), (B)(ii), and (C)(iii) of paragraph (2).

25 (4) COMPREHENSIVE PLAN.—

1 (A) IN GENERAL.—The Commission shall  
2 develop software for archiving, safely storing,  
3 maintaining, retrieving, and processing the in-  
4 formation collected for the revised employer in-  
5 formation report.

6 (B) COMPREHENSIVE PLAN.—

7 (i) CREATION.—Once the software is  
8 fully developed and operable, the Commis-  
9 sion shall create a comprehensive plan for  
10 the use of the information collected for the  
11 revised employer information report, in-  
12 cluding a detailed, comprehensive policy  
13 with specific examples regarding how the  
14 Commission will—

15 (I) track, verify, and compile the  
16 information;

17 (II) use the information in its en-  
18 forcement efforts;

19 (III) ensure confidentiality of the  
20 information; and

21 (IV) store the information so as  
22 to ensure protection from theft or  
23 other public dissemination, including  
24 how the Commission will enter into



1 data sharing agreements with Depart-  
2 ments and Federal agencies.

3 (ii) PUBLICATION.—The Commission  
4 shall publish, and make publicly available,  
5 the comprehensive plan created under  
6 clause (i).

7 (5) SUBMISSION TO THE OFFICE OF INFORMA-  
8 TION AND REGULATORY AFFAIRS.—

9 (A) IN GENERAL.—On completion of the  
10 first report under paragraph (3), and com-  
11 prehensive plan under paragraph (4)(B), the  
12 Commission shall comply with the requirements  
13 of section 3507 of title 44, United States Code,  
14 with respect to the collection of information re-  
15 lated to the proposed report provision.

16 (B) INFORMATION.—In complying with  
17 that section, the Commission shall submit to  
18 the Director of the Office of Management and  
19 Budget, as part of the materials described in  
20 subsection (a)(1)(C) of that section, and shall  
21 include in the notice described in subsection  
22 (a)(1)(D) of such section—

23 (i) the information published under  
24 subparagraphs (A)(iii), (B)(ii), and (C)(iii)  
25 of paragraph (2); and

1 (ii) the comprehensive plan published  
2 under paragraph (4)(B).

3 (C) COMMISSION EXCEPTION INAPPLI-  
4 CABLE.—Subsection (f) of that section 3507  
5 shall not apply to the collection of information  
6 described in subparagraph (A).

7 (d) REDUCTION OF INVENTORY OF PENDING  
8 CHARGES.—

9 (1) PURPOSE.—The purposes of this subsection  
10 are—

11 (A) to ensure the Commission allocates its  
12 resources appropriately by prioritizing com-  
13 plaints of discrimination before implementing  
14 the proposed report revision; and

15 (B) therefore, to prohibit the Commission  
16 from implementing the proposed report revision  
17 until the number of pending charges of dis-  
18 crimination before the Commission is not more  
19 than 3,660, the number of data points an em-  
20 ployer would be required to provide to the Com-  
21 mission under the proposed report revision.

22 (2) LIMITATION ON IMPLEMENTATION.—

23 (A) IN GENERAL.—The Commission may  
24 not implement the proposed report revision

1           until the Commission reduces its inventory of  
2           pending charges to not more than 3,660.

3           (B) PRIOR IMPLEMENTATION.—If the  
4           Commission implements the proposed report re-  
5           vision before the date of enactment of this Act,  
6           the Commission shall cease that implementation  
7           on that date and may not resume that imple-  
8           mentation or use the data collected from the re-  
9           vised employer information report in its en-  
10          forcement efforts until the Commission reduces  
11          its inventory as described in subparagraph (A).

12 **SEC. 3. EEOC APPROVAL FOR COMMENCEMENT OF OR**  
13 **INTERVENTION IN CERTAIN LITIGATION.**

14          Section 705 of the Civil Rights Act of 1964 (42  
15 U.S.C. 2000e–4) is amended by adding at the end the fol-  
16 lowing:

17          “(1)(1) The Commission shall approve or disapprove  
18 by majority vote a decision on whether the Commission  
19 shall commence or intervene in litigation involving mul-  
20 tiple plaintiffs, or an allegation of systemic discrimination  
21 or a pattern or practice of discrimination.

22          “(2) A member of the Commission shall have the  
23 power to require the Commission to approve or disapprove  
24 by majority vote a decision on whether the Commission  
25 shall commence or intervene in any litigation.

1 “(3) Neither the Commission nor a member of the  
2 Commission may delegate the authority provided under  
3 paragraph (1) or (2) to any other person.

4 “(4) Not later than 30 days after the Commission  
5 commences or intervenes in litigation pursuant to approval  
6 under this subsection, the Commission shall post and  
7 maintain the following information on its public website  
8 with respect to the litigation:

9 “(A) The court in which the case was brought.

10 “(B) The name and case number of the case.

11 “(C) The nature of the allegation.

12 “(D) The causes of action brought.

13 “(E) Each Commissioner’s vote on a decision  
14 on commencing or intervening in the litigation.

15 “(5) The Commission shall issue, in a manner con-  
16 sistent with section 713, procedural regulations to carry  
17 out this subsection.”.

18 **SEC. 4. EEOC TRANSPARENCY AND ACCOUNTABILITY.**

19 (a) AVAILABILITY OF INFORMATION ABOUT CASES  
20 ON THE EEOC WEBSITE.—

21 (1) IN GENERAL.—Beginning not later than 30  
22 days after the date of enactment of this Act, the  
23 Equal Employment Opportunity Commission shall  
24 maintain up-to-date information on its public  
25 website consisting of the following:

1 (A) A description of each case brought in  
2 court by the Commission, not later than 30  
3 days after a judgment is made with respect to  
4 any cause of action in the case, without regard  
5 to whether the judgment is final. Such descrip-  
6 tion shall identify—

7 (i) the court in which the case was  
8 brought;

9 (ii) the name and case number of the  
10 case, the nature of the allegation, the  
11 causes of action brought, and the outcome  
12 of each cause of action in the case;

13 (iii) each instance in which the Com-  
14 mission was ordered to pay fees or costs,  
15 including the amount of such fees or costs  
16 ordered to be paid and, when applicable,  
17 the amount of fees or costs actually paid  
18 by the Commission, and the reason for the  
19 fee or cost award;

20 (iv) whether the case was authorized  
21 by a majority vote of the Commission or  
22 was brought pursuant to the Commission's  
23 delegation of authority to the General  
24 Counsel of the Commission, and, in the  
25 case of such a delegation, the basis on

1           which the General Counsel determined that  
2           submission to the Commission for author-  
3           ization was not necessary and a justifica-  
4           tion of that decision;

5                   (v) any case in which a sanction was  
6           imposed on the Commission, including the  
7           amount of such sanction and the reason  
8           for the sanction; and

9                   (vi) any appeal and the outcome of  
10          the appeal.

11           (B) During a fiscal year, the total number  
12          of charges of an alleged unlawful employment  
13          practice or discrimination filed during the pre-  
14          ceding fiscal year by a member of the Commis-  
15          sion, as authorized by the Commissioner charge  
16          authority under section 706(b) of the Civil  
17          Rights Act of 1964 (42 U.S.C. 2000e-5(b)) and  
18          section 107(a) of the Americans with Disabil-  
19          ities Act of 1990 (42 U.S.C. 12117(a)), and the  
20          total number of resolutions of such charges,  
21          disaggregated by type of resolution.

22           (C) The total number of charges of an al-  
23          leged unlawful practice or discrimination filed  
24          during the preceding fiscal year as a result of  
25          the Commission's use of its directed investiga-

1           tion authority under section 7(a) of the Age  
2           Discrimination in Employment Act of 1967 (29  
3           U.S.C. 626(a)) and (for purposes of charges of  
4           violations of section 6(d) of the Fair Labor  
5           Standards Act of 1938 (29 U.S.C. 206(d)))  
6           under section 11(a) of such Act (29 U.S.C.  
7           211(a)), and the total number of resolutions of  
8           such charges disaggregated by type of resolu-  
9           tion.

10           (D) A description of each case of systemic  
11           discrimination (including pattern or practice  
12           discrimination) brought in court by the Com-  
13           mission under section 706 or 707 of the Civil  
14           Rights Act of 1964 (42 U.S.C. 2000e-5,  
15           2000e-6) within the preceding 30 days, the  
16           court in which the case was brought, the name  
17           and case number of the case, the industry in-  
18           volved, the employment practice or practices at  
19           issue, the nature of the alleged discrimination,  
20           and the circumstances of the systemic discrimi-  
21           nation alleged in the case.

22           (2) DISAGGREGATION.—

23           (A) IN GENERAL.—With respect to the  
24           total number of charges of alleged unlawful em-  
25           ployment practices, unlawful practices, and dis-

1           crimination provided under subparagraphs (B)  
2           and (C) of paragraph (1), the Commission  
3           shall, on its public website, disaggregate each  
4           such total number by the number of such  
5           charges filed in each Commission District, and  
6           within each Commission District, by the num-  
7           ber of such charges alleging discrimination on  
8           the basis of, or filed under, each of the fol-  
9           lowing categories:

10                   (i) Race.

11                   (ii) Sex (except as provided in clause  
12                   (ix)).

13                   (iii) National origin.

14                   (iv) Religion.

15                   (v) Color.

16                   (vi) Retaliation.

17                   (vii) Age.

18                   (viii) Disability.

19                   (ix) Section 6(d) of the Fair Labor  
20                   Standards Act of 1938 (29 U.S.C. 206(d)).

21           (B) NOTATION.—In preparing disaggregat-  
22           ed data under subparagraph (A), the Commis-  
23           sion shall note in the data which charges fall in  
24           2 or more of the categories described in sub-  
25           paragraph (A).



1           (3) ANNUAL PERFORMANCE REPORT.—Begin-  
2           ning in fiscal year 2017, the Commission shall in-  
3           clude in its annual performance report under section  
4           1116 of title 31, United States Code, the informa-  
5           tion described in subparagraphs (A) through (D) of  
6           paragraph (1) for the preceding fiscal year, except  
7           that such information shall not be disaggregated in  
8           accordance with paragraph (2).

9           (b) GOOD FAITH CONFERENCE, CONCILIATION, AND  
10          PERSUASION.—Section 706(b) of the Civil Rights Act of  
11          1964 (42 U.S.C. 2000e–5(b)) is amended—

12                 (1) by striking “(b)” and inserting “(b)(1)”;

13                 (2) in the sixth sentence—

14                         (A) by striking “shall endeavor” and in-  
15                         serting “shall use good faith efforts to endeavor”;  
16                         and

17                         (B) by striking “informal methods of con-  
18                         ference, conciliation, and persuasion” and in-  
19                         serting “bona fide, informal, good faith meth-  
20                         ods of conference, conciliation, and persuasion  
21                         (referred to in this subsection as ‘bona fide in-  
22                         formal good faith endeavors’)”;

23                 (3) in the seventh sentence—

1 (A) by striking “informal endeavors” and  
2 inserting “bona fide informal good faith endeav-  
3 ors”; and

4 (B) by striking “persons concerned” and  
5 inserting “respondent involved, except for the  
6 sole purpose of allowing a party to any pending  
7 litigation to present to the reviewing court evi-  
8 dence to ensure the Commission’s compliance  
9 with its obligations under this section prior to  
10 filing suit”; and

11 (4) by adding at the end the following:

12 “(2) No action or suit may be brought by the Com-  
13 mission under this title unless the Commission has in good  
14 faith exhausted its obligations to use bona fide informal  
15 good faith endeavors as set forth in this subsection. No  
16 action or suit shall be so brought by the Commission un-  
17 less it has certified that bona fide informal good faith en-  
18 deavors are at an impasse. The determination as to wheth-  
19 er the Commission engaged in bona fide informal good  
20 faith endeavors shall be subject to judicial review. The  
21 Commission’s good faith obligation to engage in bona fide  
22 informal good faith endeavors shall include providing the  
23 respondent believed to have engaged in an unlawful em-  
24 ployment practice with all information regarding the legal  
25 and factual bases for the Commission’s determination that

1 reasonable cause exists that a charge is true as well as  
2 all information that supports the Commission's requested  
3 monetary and other relief (including a detailed description  
4 of the specific individuals or employees comprising the  
5 class of persons for whom the Commission is seeking relief  
6 and any additional information requested that is reason-  
7 ably related to the underlying cause determination or nec-  
8 essary to use bona fide informal good faith endeavors).”.

9 (c) REPORTING TO CONGRESS REGARDING CASES IN  
10 WHICH THE EEOC IS ORDERED TO PAY FEES, COSTS,  
11 OR SANCTIONS.—

12 (1) INVESTIGATION AND REPORT OF INSPECTOR  
13 GENERAL.—For any case brought by the Equal Em-  
14 ployment Opportunity Commission in which a court  
15 orders the Commission to pay fees or costs or im-  
16 poses a sanction on the Commission, the Inspector  
17 General of the Commission shall—

18 (A) notify the Committee on Health, Edu-  
19 cation, Labor, and Pensions of the Senate and  
20 the Committee on Education and the Workforce  
21 of the House of Representatives of the order or  
22 sanction within 14 days after the court's deci-  
23 sion, and includes in the notification the name  
24 of the case, the nature of the court's determina-  
25 tion, and the amount of fees or costs ordered or

1 the amount of the sanction imposed by the  
2 court; and

3 (B) conduct an investigation to determine  
4 why an order for a sanction, fees, or costs was  
5 imposed by the court, and, not later than 90  
6 days after the court's decision, submit a related  
7 report to the Committee on Health, Education,  
8 Labor, and Pensions of the Senate and the  
9 Committee on Education and the Workforce of  
10 the House of Representatives that includes—

11 (i) information obtained from inter-  
12 views and affidavits of each member and  
13 staff person of the Commission involved in  
14 the case;

15 (ii) the amount of resources allocated  
16 to the case, including in terms of full-time  
17 equivalents;

18 (iii) a comparison of the case to other  
19 cases in which a court ordered fees or costs  
20 or imposed sanctions against the Commis-  
21 sion;

22 (iv) if the determination to bring the  
23 case was not by a vote of the full Commis-  
24 sion, the reasons such a vote was not held;  
25 and

1 (v) any other relevant information.

2 (2) REPORT OF THE COMMISSION.—For any  
3 case described in paragraph (1), the Commission, in  
4 consultation with the General Counsel of the Com-  
5 mission, shall—

6 (A) not later than 60 days after the court’s  
7 decision, submit a report to the Committee on  
8 Health, Education, Labor, and Pensions of the  
9 Senate and the Committee on Education and  
10 the Workforce of the House of Representatives  
11 detailing the steps the Commission is taking to  
12 reduce instances in which a court orders the  
13 Commission to pay fees or costs or imposes a  
14 sanction on the Commission; and

15 (B) not later than 30 days after the day  
16 on which the report is submitted to the Com-  
17 mittee on Health, Education, Labor and Pen-  
18 sions of the Senate and the Committee on Edu-  
19 cation and the Workforce of the House of Rep-  
20 resentatives under subparagraph (A), post such  
21 report on its public website.

○