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.

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

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “EEOC Reform Act”.
SEC. 2. CONDITIONS PRECEDENT FOR IMPLEMENTATION OF PROPOSED REVISION OF EMPLOYER INFORMATION REPORT.

(a) FINDINGS.—Congress finds the following:

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

(2) The primary purpose of chapter 35 of title 44, United States Code (commonly known as the “Paperwork Reduction Act”) is to “minimize the paperwork burden . . . for persons resulting from the collecting of information by or for the Federal Government”. The staggering increase of data proposed to be collected by the Equal Employment Opportunity Commission through the proposed revision of the EEO–1 report does not comport with that stated purpose of the Paperwork Reduction Act.

(3) The Commission failed to provide a detailed explanation of how the Commission will track, verify,
compile, ensure confidentiality of, and protect the new information, and how the Commission will use that information in enforcement efforts.

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

(5) The Commission reported that in 2015, “37.6 percent of EEOC staff expressed concern that their workload is not reasonable, substantially higher than the government-wide average of 26.5 percent”. If the Commission implements the proposed revision of the EEO–1 report, resources and staff that should be dedicated to reducing the pending inventory of charges of discrimination may be used for reviewing the increased data collected through the proposed EEO–1 report, instead of working to resolve such charges and reduce the backlog of such charges.

(b) DEFINITIONS.—In this section:

(1) COMMISSION.—The term “Commission” means the Equal Employment Opportunity Commission.
(2) DEPARTMENT.—The term “Department” has the meaning given the term “Executive department” in section 101 of title 5, United States Code.

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

(4) PROPOSED REPORT REVISION.—The term “proposed report revision” means the proposed revision of the employer information report EEO–1 set forth in the notice entitled “Agency Information Collection Activities: Revision of the Employer Information Report (EEO–1) and Comment Request” (81 Fed. Reg. 5113 (February 1, 2016)).

(5) REVISED EMPLOYER INFORMATION REPORT.—The term “revised employer information report” means the employer information report EEO–1, after the proposed report revision.

(c) DATA COLLECTION AND REPORT.—

(1) LIMITATION ON IMPLEMENTATION.—

(A) IN GENERAL.—The Commission may not implement the proposed report revision until the date on which the Commission obtains approval of the related collection of information, at the end of the process described in para-
graph (5), and meets the requirements of subsection (d)(2).

(B) PRIOR IMPLEMENTATION.—If the Commission implements the proposed report revision before the date of enactment of this Act, the Commission shall cease that implementation on that date and may not resume that implementation or use the data collected from the revised employer information report in its enforcement efforts until the date described in subparagraph (A).

(2) DATA COLLECTION.—The Commission shall—

(A) on an annual basis—

(i) collect information from each head of a Department or Federal agency (referred to in this paragraph as the “Federal employee information”) that is the same type of employment data information as a private sector employer with 100 or more employees would be required to collect under the revised employer information report;
(ii) verify, compile, ensure the confidentiality of, and protect the collected Federal employee information; and

(iii) publish, and make publicly available, the compiled Federal employee information in the aggregate, and analyzed by each Department or Federal agency;

(B) on an annual basis—

(i) collect and compile information (referred to in this paragraph as the “Commission information”) on the number of employees and employee hours required to carry out subparagraph (A), the number of employees and employee hours that were transferred from reducing the number of pending charges of discrimination before the Commission to carry out subparagraph (A), and the cost of carrying out subparagraph (A); and

(ii) publish, and make publicly available, the compiled Commission information; and

(C) on an annual basis—

(i) using the information obtained under subparagraph (B), calculate the
number of Commission employees and em-
ployee hours that will be required for, and
the cost of, tracking, verifying, compiling,
ensuring confidentiality of, and protecting
the information concerning the revised em-
ployer information report for private sector
employers, and enforcing the requirements
related to the report;

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

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

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

(4) COMPREHENSIVE PLAN.—
(A) IN GENERAL.—The Commission shall develop software for archiving, safely storing, maintaining, retrieving, and processing the information collected for the revised employer information report.

(B) COMPREHENSIVE PLAN.—

(i) CREATION.—Once the software is fully developed and operable, the Commission shall create a comprehensive plan for the use of the information collected for the revised employer information report, including a detailed, comprehensive policy with specific examples regarding how the Commission will—

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

(II) use the information in its enforcement efforts;

(III) ensure confidentiality of the information; and

(IV) store the information so as to ensure protection from theft or other public dissemination, including how the Commission will enter into
data sharing agreements with Departments and Federal agencies.

(ii) Publication.—The Commission shall publish, and make publicly available, the comprehensive plan created under clause (i).

(5) Submission to the Office of Information and Regulatory Affairs.—

(A) In General.—On completion of the first report under paragraph (3), and comprehensive plan under paragraph (4)(B), the Commission shall comply with the requirements of section 3507 of title 44, United States Code, with respect to the collection of information related to the proposed report provision.

(B) Information.—In complying with that section, the Commission shall submit to the Director of the Office of Management and Budget, as part of the materials described in subsection (a)(1)(C) of that section, and shall include in the notice described in subsection (a)(1)(D) of such section—

(i) the information published under subparagraphs (A)(iii), (B)(ii), and (C)(iii) of paragraph (2); and
(ii) the comprehensive plan published
under paragraph (4)(B).

(C) COMMISSION EXCEPTION INAPPLICABLE.—Subsection (f) of that section 3507
shall not apply to the collection of information
described in subparagraph (A).

(d) REDUCTION OF INVENTORY OF PENDING
CHARGES.—

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

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

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

(2) LIMITATION ON IMPLEMENTATION.—

(A) IN GENERAL.—The Commission may
not implement the proposed report revision
until the Commission reduces its inventory of pending charges to not more than 3,660.

(B) PRIOR IMPLEMENTATION.—If the Commission implements the proposed report revision before the date of enactment of this Act, the Commission shall cease that implementation on that date and may not resume that implementation or use the data collected from the revised employer information report in its enforcement efforts until the Commission reduces its inventory as described in subparagraph (A).

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

Section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4) is amended by adding at the end the following:

“(l)(1) The Commission shall approve or disapprove by majority vote a decision on whether the Commission shall commence or intervene in litigation involving multiple plaintiffs, or an allegation of systemic discrimination or a pattern or practice of discrimination.

“(2) A member of the Commission shall have the power to require the Commission to approve or disapprove by majority vote a decision on whether the Commission shall commence or intervene in any litigation.
“(3) Neither the Commission nor a member of the
Commission may delegate the authority provided under
paragraph (1) or (2) to any other person.
“(4) Not later than 30 days after the Commission
commences or intervenes in litigation pursuant to approval
under this subsection, the Commission shall post and
maintain the following information on its public website
with respect to the litigation:
“(A) The court in which the case was brought.
“(B) The name and case number of the case.
“(C) The nature of the allegation.
“(D) The causes of action brought.
“(E) Each Commissioner’s vote on a decision
on commencing or intervening in the litigation.
“(5) The Commission shall issue, in a manner con-
sistent with section 713, procedural regulations to carry
out this subsection.”.

SEC. 4. EEOC TRANSPARENCY AND ACCOUNTABILITY.

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

(1) IN GENERAL.—Beginning not later than 30
days after the date of enactment of this Act, the
Equal Employment Opportunity Commission shall
maintain up-to-date information on its public
website consisting of the following:
(A) A description of each case brought in court by the Commission, not later than 30 days after a judgment is made with respect to any cause of action in the case, without regard to whether the judgment is final. Such description shall identify—

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

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

(iii) each instance in which the Commission was ordered to pay fees or costs, including the amount of such fees or costs ordered to be paid and, when applicable, the amount of fees or costs actually paid by the Commission, and the reason for the fee or cost award;

(iv) whether the case was authorized by a majority vote of the Commission or was brought pursuant to the Commission’s delegation of authority to the General Counsel of the Commission, and, in the case of such a delegation, the basis on
which the General Counsel determined that submission to the Commission for authorization was not necessary and a justification of that decision;

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

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

(B) During a fiscal year, the total number of charges of an alleged unlawful employment practice or discrimination filed during the preceding fiscal year by a member of the Commission, as authorized by the Commissioner charge authority under section 706(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(b)) and section 107(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12117(a)), and the total number of resolutions of such charges, disaggregated by type of resolution.

(C) The total number of charges of an alleged unlawful practice or discrimination filed during the preceding fiscal year as a result of the Commission’s use of its directed investiga-
tion authority under section 7(a) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(a)) and (for purposes of charges of violations of section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d))) under section 11(a) of such Act (29 U.S.C. 211(a)), and the total number of resolutions of such charges disaggregated by type of resolution.

(D) A description of each case of systemic discrimination (including pattern or practice discrimination) brought in court by the Commission under section 706 or 707 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5, 2000e–6) within the preceding 30 days, the court in which the case was brought, the name and case number of the case, the industry involved, the employment practice or practices at issue, the nature of the alleged discrimination, and the circumstances of the systemic discrimination alleged in the case.

(2) DISAGGREGATION.—

(A) IN GENERAL.—With respect to the total number of charges of alleged unlawful employment practices, unlawful practices, and dis-
crimination provided under subparagraphs (B) and (C) of paragraph (1), the Commission shall, on its public website, disaggregate each such total number by the number of such charges filed in each Commission District, and within each Commission District, by the number of such charges alleging discrimination on the basis of, or filed under, each of the following categories:

(i) Race.

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

(iii) National origin.

(iv) Religion.

(v) Color.

(vi) Retaliation.

(vii) Age.

(viii) Disability.

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

(B) NOTATION.—In preparing disaggregated data under subparagraph (A), the Commission shall note in the data which charges fall in 2 or more of the categories described in subparagraph (A).
(3) **ANNUAL PERFORMANCE REPORT.**—Beginning in fiscal year 2017, the Commission shall include in its annual performance report under section 1116 of title 31, United States Code, the information described in subparagraphs (A) through (D) of paragraph (1) for the preceding fiscal year, except that such information shall not be disaggregated in accordance with paragraph (2).

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

(1) by striking ``(b)'' and inserting ``(b)(1)'';

(2) in the sixth sentence—

(A) by striking ``shall endeavor'' and inserting ``shall use good faith efforts to endeavor'';

(B) by striking ``informal methods of conference, conciliation, and persuasion'' and inserting ``bona fide, informal, good faith methods of conference, conciliation, and persuasion (referred to in this subsection as 'bona fide informal good faith endeavors')'';

(3) in the seventh sentence—
(A) by striking “informal endeavors” and inserting “bona fide informal good faith endeavors”; and

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

(4) by adding at the end the following:

“(2) No action or suit may be brought by the Commission under this title unless the Commission has in good faith exhausted its obligations to use bona fide informal good faith endeavors as set forth in this subsection. No action or suit shall be so brought by the Commission unless it has certified that bona fide informal good faith endeavors are at an impasse. The determination as to whether the Commission engaged in bona fide informal good faith endeavors shall be subject to judicial review. The Commission’s good faith obligation to engage in bona fide informal good faith endeavors shall include providing the respondent believed to have engaged in an unlawful employment practice with all information regarding the legal and factual bases for the Commission’s determination that
reasonable cause exists that a charge is true as well as all information that supports the Commission’s requested monetary and other relief (including a detailed description of the specific individuals or employees comprising the class of persons for whom the Commission is seeking relief and any additional information requested that is reasonably related to the underlying cause determination or necessary to use bona fide informal good faith endeavors).”.

(e) Reporting to Congress Regarding Cases in Which the EEOC Is Ordered To Pay Fees, Costs, or Sanctions.—

(1) Investigation and Report of Inspector General.—For any case brought by the Equal Employment Opportunity Commission in which a court orders the Commission to pay fees or costs or imposes a sanction on the Commission, the Inspector General of the Commission shall—

(A) notify the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives of the order or sanction within 14 days after the court’s decision, and includes in the notification the name of the case, the nature of the court’s determination, and the amount of fees or costs ordered or
the amount of the sanction imposed by the court; and

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

(i) information obtained from interviews and affidavits of each member and staff person of the Commission involved in the case;

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

(iii) a comparison of the case to other cases in which a court ordered fees or costs or imposed sanctions against the Commission;

(iv) if the determination to bring the case was not by a vote of the full Commission, the reasons such a vote was not held; and
(v) any other relevant information.

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

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

(B) not later than 30 days after the day on which the report is submitted to the Committee on Health, Education, Labor and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives under subparagraph (A), post such report on its public website.