

	<i><b>DIRECTIVES TRANSMITTAL</b></i>	<b>Number</b> <b>750.001A</b>
<b>EEOC</b>		<b>Date</b> <b>April 9, 2021</b>

**SUBJECT:** FEPA Data-Sharing Policies and Practices

**PURPOSE:** This Order sets forth the EEOC’s policies and practices regarding sharing data with State and local Fair Employment Practices Agencies (FEPAs).

**EFFECTIVE DATE:** April 9, 2021

**ORIGINATOR:** Office of the Chair

**DISTRIBUTION:** This Order shall be shared with the Director of Office of Enterprise Data and Analytics (OEDA), the Director of Office of Field Programs, EEOC District Directors, and District State, Local and Tribal Program Managers/Coordinators. This Order is also available on the intranet website, InSite, Directives/Orders page.

**CURRENT CHANGES:** This Order sets forth the parameters under which the EEOC shares EEO Reports and any related nonpublic information and data with the FEPAs. It supersedes Order No. 750.001, dated January 31, 2020, to ensure the FEPA data-sharing policies and practices more closely align with the requirements of applicable law, including Section 709 of Title VII of the Civil Rights Act of 1964, as amended.

**OBSOLETE DATA AND FILING INSTRUCTIONS:** This Order must be made available to all EEOC staff whose responsibilities include FEPA coordination.

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Charlotte A. Burrows  
Chair

**RESEARCH PROGRAMS**  
**Dissemination of Data**

1. **SUBJECT:** FEPA Data-Sharing Policies and Practices.
2. **PURPOSE:** This Order covers the EEOC’s policies and practices regarding sharing data with State and local Fair Employment Practices Agencies (FEPAs). It supersedes Order No. 750.001, dated January 31, 2020.
3. **APPLICABILITY.** This Order applies to all EEOC staff.
4. **EFFECTIVE DATE.** April 9, 2021.
5. **ORIGINATOR.** Office of the Chair.
6. **RESPONSIBILITY.** The Office of Enterprise Data and Analytics (OEDA) and Office of Field Programs (OFP) are responsible for carrying out the policies and practices contained in this Order.
7. **POLICIES.**

**FEPA Data-Sharing Policies and Practices**

7.1 Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, (“Title VII”) requires every employer, employment agency, and labor organization subject to Title VII to “(1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder.”<sup>1</sup>

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<sup>1</sup> 42 U.S.C. 2000e-8(c).

7.2 Pursuant to Section 709(c) of Title VII and EEOC regulations,<sup>2</sup> the EEOC requires covered entities to submit the following information collections (“EEO Reports”):

- EEO-1 – annual collection of labor force data from employers covered by Title VII, including certain federal contractors.<sup>3</sup>
- EEO-3 – biennial collection (in even-numbered years) of labor force data covering local referral unions with 100 or more employees within the United States and District of Columbia.
- EEO-4 – biennial collection (in odd-numbered years) of labor force data covering all states and all other political jurisdictions with 100 or more employees.
- EEO-5 – joint biennial collection (in even numbered years) by the EEOC and the Office for Civil Rights of the Department of Education, covering all public elementary and secondary school districts with 100 or more employees in the United States.

7.3 EEO Reports and any related nonpublic information and data are collectively referred to in this Order as “EEO Information.”

7.4 Section 709(b) of Title VII allows the EEOC to cooperate with State and local agencies that administer State fair employment practices laws (FEPAs), stating that the EEOC “may enter into written agreements with such State or local agencies,” subject to certain conditions.<sup>4</sup> Section 709(d) of Title VII provides that the EEOC “shall furnish upon request and without cost to any [FEPA] information obtained pursuant to subsection

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<sup>2</sup> The regulations governing EEO Reports are set forth in the following subparts of 29 CFR Part 1602: Subpart B (Employer Information Report EEO-1); Subpart F (Local Union Report EEO-3); Subpart J (State and Local Government Information Report EEO-4); and Subpart M (Elementary-Secondary Staff Information Report EEO-5). In addition, Subpart D (Apprenticeship Information Report EEO-2) authorizes the EEOC’s annual collection of labor force data from certain joint labor-management committees that control apprenticeship programs. Although the EEOC does not currently conduct the EEO-2 data collection, any past or future EEO-2 reports shall be subject to this Order.

<sup>3</sup> Since 1966, all private employers that are covered by Title VII and that have 100 or more employees have been required to file EEO-1 demographic data (Component 1). Office of Federal Contract Compliance Programs (OFCCP) regulations require certain federal contractors to file the EEO-1 if they have 50 or more employees and are not otherwise exempt. In 2016, the EEOC implemented a collection of summary pay data (Component 2) from private employers with at least 100 workers and federal contractors with at least 100 workers that already filed Component 1. The Office of Management and Budget (OMB) ordered the EEOC to stay the Component 2 collection, but in *National Women’s Law Center v. Office of Management and Budget*, Civil Action No. 17-cv-2458 (TSC), the U.S. District Court for the District of Columbia vacated the stay and ordered the EEOC to collect Component 2 data for a two-year period. The EEOC complied with the court’s order and collected such pay data, and then terminated the EEO-1 pay data collection after the 2017 and 2018 Component 2 collections. As used in this Order, the term “EEO-1” includes Component 1 data and the 2017 and 2018 Component 2 data, in addition to any past and future data collections using the EEO-1 Employer Information Report.

<sup>4</sup> 42 U.S.C. 2000e-8(b).

[709](c) ... from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency.”<sup>5</sup> Section 709(d) further states that the EEOC shall provide that information “on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information.”<sup>6</sup>

7.5 The EEOC enters into a contract with particular FEPAs to reimburse their resolution of dual-filed charges of discrimination and into a Work-sharing Agreement that sets forth the terms and conditions of the EEOC’s and the FEPA’s cooperation. Each FEPA contract and separately executed Work-sharing Agreement delineates, among other things, the EEOC’s and the FEPA’s respective responsibilities relating to data and information shared by the EEOC pursuant to its laws and regulations. (As used in this Order, each such agreement is referred to as a “FEPA agreement,” and each FEPA with a contract and separately executed Work-sharing Agreement is referred to herein as a “Contracted FEPA.”) Each FEPA agreement includes provisions imposing obligations on the Contracted FEPA with respect to confidentiality, privacy, and data security.

7.6 To ensure EEOC’s data-sharing practices with FEPAs comply with the confidentiality provisions of Title VII, and to further ensure that relevant FEPA contract and Work-sharing Agreement provisions are interpreted consistent with Title VII, this Order sets forth the EEOC’s policies and practices relating to data-sharing with FEPAs as follows:

7.6.1 The EEOC shall share EEO Information only with Contracted FEPAs to ensure such information is protected by the confidentiality, privacy, and data security obligations imposed by FEPA agreements on the Contracted FEPAs. The EEOC retains discretion to share with FEPAs that do not have separately executed contracts and/or Work-sharing Agreements on a case-by-case basis, and subject to imposing confidentiality, privacy, and data security obligations on noncontracted FEPAs that are similar to those imposed on Contracted FEPAs.

7.6.2 The EEOC shall share with a Contracted FEPA the EEO Information EEOC obtains from any covered entity that is subject to such FEPA’s jurisdiction. For the purposes of this Order, “jurisdiction” of a FEPA shall be interpreted consistent with Title VII, and the state or local laws and regulations conferring authority on the FEPA to enforce equal employment opportunity laws. For ease of administration, the EEOC will generally understand an entity to be subject to a FEPA’s jurisdiction if that entity is located within the geographical jurisdiction of the FEPA and is subject to the laws enforced by the FEPA. If questions arise regarding a FEPA’s jurisdiction, EEOC staff may condition data sharing on the

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<sup>5</sup> 42 U.S.C. 2000e-8(d).

<sup>6</sup> *Id.*

FEPA's provision of authority demonstrating the scope of the FEPA's jurisdiction.

- 7.6.3 EEOC staff shall consult with the Office of Field Program's (OFP) Director of State, Local and Tribal Programs ("Director") or designee, before releasing any EEO Information if (1) the staff questions whether the request for EEO Information is made by a FEPA that does not have a contract with the EEOC (a "non-contracted FEPA"); or (2) the request is for EEO Information for an entity not within such FEPA's jurisdiction (whether the request is made by a Contracted FEPA or a non-contracted FEPA).<sup>7</sup> If the Director of State, Local and Tribal Programs has specific questions related to the data sharing of EEO Information under Title VII, the Director should consult with OEDA's Deputy Chief Data Officer or designee.<sup>8</sup>
- 7.6.4 If any EEOC staff learns that a FEPA has failed to comply with its obligation not to make public any EEO Information before the institution of a proceeding under State or local law involving such information, the staff shall immediately contact the OFP's Director of State, Local, & Tribal Programs. Pursuant to the EEOC's *Breach Notification Policy*, the Director shall notify the appropriate EEOC officials in the agency's Office of Information Technology (OIT). Additionally, the Director shall make OEDA's Deputy Chief Data Officer or designee aware of any such EEO data disclosures.
- 7.6.5 If, upon investigation, the EEOC determines a FEPA has failed to comply with its obligation not to make public any EEO Information before the institution of a proceeding under State or local law involving such information, including EEO Information provided to it any time prior to the institution of this Order, the EEOC shall take any actions pursuant to the EEOC's *Breach Notification Policy* and the FEPA Contract, including refusing subsequent requests for information from such FEPA, as provided by Section 709(d) of Title VII.
- 7.6.6 Current and future FEPA Contracts and Work-sharing Agreements shall be interpreted and performed consistent with Title VII and this Order.
- 7.6.7 This Order shall apply to pending and future requests for EEO Information.

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<sup>7</sup> For example, the EEOC may provide a FEPA the EEO Information for an entity not within such FEPA's jurisdiction when the FEPA will use the EEO Information to conduct a labor market analysis comparing entities not within such FEPA's jurisdiction.

<sup>8</sup> OEDA is responsible for administering the EEO data collections and serves as the repository for EEO data.

8. **SUPERSESSION.** This Order supersedes and replaces Order No. 750.001, issued on January 31, 2020.

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Charlotte A. Burrows  
Chair