

EMPLOYERS SHOULD PREPARE FOR NEW RACE AND ETHNICITY CATEGORIES FOR THEIR EEOC AND OFCCP REPORTS

Insights
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The federal government recently changed how it categorizes people by race and ethnicity for the first time in over 25 years – which means employers will soon need to revise their data-collection forms for EEO-1 filings and Affirmative Action Plan (AAP) documents. The goal is for agencies like the EEOC and OFCCP to more accurately collect and report data. Although the changes took effect immediately, agencies have time to roll out their new data collection approaches, so employers should stay tuned for directions from the applicable agencies. In the meantime, here's what you need to know about the changes and what to expect next.

What Is Changing?

The White House [announced](#) on March 28 that [the federal government is making key revisions](#) to the questions agencies used to collect information on race and ethnicity. The directive's changes include the following three key aspects:

1. Using one combined question for race and ethnicity and encouraging respondents to select as many options as apply to how they identify.

2. Adding Middle Eastern or North African as a new reporting category for race and ethnicity, which means the updated list of race and ethnicity categories includes:

- **American Indian or Alaska Native.** A person with origins in any of the original peoples of North, Central, and South

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America, including, for example, Navajo Nation, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, Aztec, and Maya.

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- **Asian.** A person with origins in any of the original peoples of Central or East Asia, Southeast Asia, or South Asia, including, for example, Chinese, Asian Indian, Filipino, Vietnamese, Korean, and Japanese.
- **Black or African American.** A person with origins in any of the Black racial groups of Africa, including, for example, African American, Jamaican, Haitian, Nigerian, Ethiopian, and Somali.
- **Hispanic or Latino.** A person of Mexican, Puerto Rican, Salvadoran, Cuban, Dominican, Guatemalan, and other Central or South American or Spanish culture or origin.
- **Middle Eastern or North African.** A person with origins in any of the original peoples of the Middle East or North Africa, including, for example, Lebanese, Iranian, Egyptian, Syrian, Iraqi, and Israeli.
- **Native Hawaiian or Pacific Islander.** A person with origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands, including, for example, Native Hawaiian, Samoan, Chamorro, Tongan, Fijian, and Marshallese.
- **White.** A person with origins in any of the original peoples of Europe, including, for example, English, German, Irish, Italian, Polish, and Scottish.

This will be a welcome change, as practitioners in this area have long lamented the inclusion of Middle Eastern and North African designations in the definition of “White.”

3. Requiring federal agencies, with some exceptions, to collect additional details beyond the minimum race and ethnicity categories. Agencies may use the detailed categories from the U.S. Census Bureau’s most recent American Community Survey or the following:

- **Asian:** Chinese, Asian Indian, Filipino, Vietnamese, Korean, and Japanese, Another group (for example, Pakistani, Hmong, Afghan, etc.)

- **Black or African American:** African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, Another group (for example, Trinidadian and Tobagonian, Ghanian, Congolese, etc.)
- **Hispanic or Latino:** Mexican, Puerto Rican, Salvadoran, Cuban, Dominican, Guatemalan, Another group (for example, Colombian, Honduran, Spaniard, etc.)
- **Middle Eastern or North African:** Lebanese, Iranian, Egyptian, Syrian, Iraqi, Israeli, Another group (for example, Moroccan, Yemeni, Kurdish, etc.)
- **Native Hawaiian or Pacific Islander:** Native Hawaiian, Samoan, Chamorro, Tongan, Fijian, Marshallese, Another group (for example, Chuukese, Palauan, Tahitian, etc.)
- **White:** English, German, Irish, Italian, Polish, Scottish, Another group (for example, French, Swedish, Norwegian, etc.)

According to the directive, when possible, the “Another group” category should have a write-in field allowing respondents to self-identify. Additionally, respondents should be able to select one or more racial and ethnic designations.

The updated standards also include several changes to definitions, terminology, and guidance to agencies on the collection and presentation of data. The main goal is “to ensure consistent and comparable race and ethnicity data across the federal government,” according to the White House.

What Happens Next?

Federal agencies have been instructed to comply with the following tasks and timeline:

- Start updating surveys and forms as quickly as possible.
- Submit a compliance plan within 18 months (which will be made available to the public).
- Ensure all data collections and programs are compliant with the updated standards within five years.

The White House noted that many programs will be able to adopt the updated standards much sooner.

Additionally, the newly formed Interagency Committee on Race and Ethnicity Statistical Standards will regularly review the directive, as racial and ethnic identities and concepts continue to evolve. Some areas prioritized for additional research and data development include:

- **How to encourage respondents to select multiple race and/or ethnicity categories** when appropriate by enhancing question design and inclusive language, for example by researching methods for ensuring complete and accurate estimates of people who identify as Afro-Latino.
- **How to collect high quality and useful data related to descent from people who were enslaved in the United States**, including research on terminology, question design, data quality, and willingness to provide these data.
- **The optimal order of presentation for minimum categories**, including research on rates of data entry error, burden, and respondent preference.
- **Collecting race and ethnicity consistently across different languages** and translations of the question.
- **Evaluating the detailed checkboxes as demographics shift over time** for their ability to generate useful, high-quality data.

“It is expected that the list of important research topics to examine before the next review will grow as agencies begin implementing these new standards over the coming years,” according to the directive.

What Should Employers Do?

You should await further guidance from applicable federal agencies, like the EEOC and OFCCP, on how these new race categories will be reflected in relevant compliance obligations.

The EEO-1 Form – which collects aggregate data on employers’ workforces by race, ethnicity, and gender – stands to have a potential overhaul in its reporting requirements, which in turn, will impact how you are collecting information from your employees.

Similarly, the OFCCP will likely incorporate changes in the race categories into the long-awaited and supposedly

forthcoming OFCCP regulatory changes.

Given the long runway the government has (18 months) to provide guidance on these changes, you should “sit tight” to see what your new reporting requirements may be.

Internally, however, you may consider how these new designations can impact efforts such as diversity programming and content, as well processes within your organization that may need to be revamped for potential new reporting requirements.

Conclusion

Fisher Phillips will continue to monitor any further developments in this area as they occur, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have any questions, please consult your Fisher Phillips attorney, the authors of this Insight, or a member of Fisher Phillips' [Affirmative Action and Federal Contract Compliance Practice Group](#).