Filed Electronically
August 21, 2026

Hon. Andrea Lucas
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

Re: Parents Defending Education's Comments on the Equal Employment Opportunity Commission's Proposed Rulemaking, "Removal of Reporting Requirements," 91 Fed. Reg. 46332, RIN 3046-AB37 (July 23, 2026)

Dear Commissioner Lucas,

Defending Education is a nationwide grassroots organization whose members include students, educators, professionals, and concerned citizens. Defending Education's mission is to prevent—through advocacy, legislation, and, if necessary, litigation—the politicization of America's education system. Defending Education submits these comments to express its support for RIN 3046-AB37, "Removal of Reporting Requirements," 91 Fed. Reg. 46332 (July 23, 2026) (the "Proposed Rule"), and to clarify why EEOC reporting requirements are different from other reporting systems like the Integrated Postsecondary Education Data System.

This Proposed Rule is an important step towards restoring Title VII's original promise of *protecting* individuals from discrimination rather than *encouraging* it.

I. The reporting requirements are overbroad and onerous.

The Proposed Rule would remove requirements that broadly mandate covered employers report and maintain records classifying employees by race, ethnicity, and sex. Under the requirements, employers with more than 100 employees, labor unions, and state and local governments "shall file" the reports. 29 C.F.R. §§1602.7, 1602.15, 1602.22, 1602.32, 1602.41, 1602.50. Failure to file can result in being ordered to do so by a federal court. *Id.* §§1602.9, 1602.17, 1602.24, 1602.34, 1602.43, 1602.52.

Contrary to other reporting requirements like IPEDS, which applies to schools that opt-in by their participation in federal student financial aid programs, EEOC reporting requirements apply to *all* employers with more than 100 employees. *See* 34 C.F.R. §668.14. Covered employers did not agree to subject themselves to these onerous reporting requirements to obtain the benefit of government funding like colleges and universities subject to IPEDS. The requirements also apply without regard to and unconnected with any charge or allegation of discrimination. They compel employers to classify even if they never have been suspected of any violation of antidiscrimination laws. Also unlike IPEDS, which allows students to refuse to self-report, EEOC reporting requirements require employers to classify all employees into one of the racial categories, even if the employee refuses to self-classify.

II. The reporting requirements run up against Title VII's purpose.

Title VII prohibits employment decisions based on race. It makes it unlawful for an employer to discriminate against "any individual" because of that individual's race, color, religion, sex, or national origin. 42 U.S.C. §2000e-2. It neither directs employers to achieve proportional racial outcomes nor mandates demographic balance.

But by mandating reporting, the current regulation has the opposite effect. For decades, the Commission has required thousands of employers, labor unions, school districts, and units of state and local government to categorize every employed person based on a list of racial and ethnic categories, and then to send the resulting data to the federal government.

III. Mandatory reporting encourages discrimination.

Mandatory race reporting like the EEOC reporting requirements encourages race-conscious employment practices by pressuring employers to focus on the reported categories. *See, e.g.*, *MD/DC/DE Broad. Ass'n v. FCC*, 236 F.3d 13, 19 (D.C. Cir. 2001). By requiring employers to sort employees into government-defined racial and ethnic categories and submit annual reports, the government, in effect, encourages employers to view their workforces through a racial lens. Even though the requirements do not mandate quotas and preferences, they predictably encourage employers to monitor and compare their workforce demographics. This encouragement is difficult to reconcile with Title VII's general prohibition on consideration of race in employment decisions.

The EEOC reporting requirements—untethered to any remedial purpose—create the perception that employers are expected to produce workforces whose compositions meet certain demographic benchmarks. Many employers use the EEOC reporting requirements to establish diversity goals, measure employees for promotion and hiring based on demographic outcomes, justify race-conscious hiring, promotion, internship, fellowships, and mentorship programs, and promote their resulting demographics to investors and the public.

In many ways, the EEOC reporting requirements have become the foundation for companies' internal demographic reporting systems. The EEOC requirements ask employers to focus on racial composition when federal law requires them to treat applicants and employees as individuals *regardless of those demographics*. By eliminating this requirement, the EEOC will reduce pressure on employers to engage in racial balancing. And it reduces the federal government's role in creating this pressure.

IV. Removing the reporting requirements better comports with Supreme Court precedent.

The Proposed Rule reflects Supreme Court precedent. As the Supreme Court has repeatedly emphasized, "'racial discrimination is invidious in all contexts.'" *Students for Fair Admissions v. Harvard*, 600 U.S. 181, 214 (2023) (cleaned up); *see also Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (state-ordered discrimination is "antithetical to the Fourteenth Amendment"). People should be treated "'as individuals, not as simply components of a racial, religious, sexual, or national class.'" *Miller v. Johnson*, 515 U.S. 900, 911 (1995). Though this proposal concerns Title VII, not the Fourteenth Amendment, the principle is the same: the government should not use racial reporting that compels private employers to unnecessarily discriminate based on race.

V. The reporting requirements are unnecessary to serve the Commission's goals.

Without the reporting requirements, existing enforcement tools are adequate to investigate and remedy unlawful discrimination in the workplace. Defending Education is supportive of some data collection measures, like IPEDS, that allow the organization to keep a watchful eye on known bad actors. But IPEDS serves an important purpose that EEOC reporting requirements do not. Up until 2023, race-based admissions decisions were commonplace, and colleges and universities admitted to discriminating against students in the name of amorphous goals like "diversity." *SFFA*, 600 U.S. at 214. It was only three years ago that *Students for Fair Admissions* upended that settled practice. *Id.* IPEDS reporting is a necessary mechanism to keep close tabs on colleges and universities, not only to ensure that they do not slip back into their discriminatory practices, but also to ensure that they have stopped those practices in the first place.

EEOC reporting requirements are different. First, they apply regardless of an employer's past actions. Unlike colleges and universities subject to IPEDS, there is no recent common history of discrimination across all sectors of business to justify these onerous requirements. Put simply, the EEOC requirements paint with far too broad a brush.

Second, the Commission will still retain its robust investigatory powers, and employers will remain obligated to preserve relevant records in response to investigations, produce documents during investigations, and comply with lawful requests for information. The Commission can still request and collect data on employees' protected characteristics in the context of a particular investigation. But wholesale collection unconnected to any specific allegation hinders effective enforcement because it takes resources away from targeted investigations. Without the reporting requirements, the Commission can focus on investigating specific allegations of discrimination, rather than collecting wholesale data from all covered entities.

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Civil-rights laws are meant to ensure Americans are measured by their merit, qualifications, performance, and character—not by their race. While some reporting requirements are necessary to ensure the federal government keeps its equal-protection promises, reporting requirements that are not tied to any particular problem do exactly the opposite. They encourage employers and other decisionmakers to see race and make decisions based on it. By removing EEOC's mandatory race-reporting requirements, the Commission removes that encouragement.

For these reasons, Defending Education respectfully urges the Commission to adopt the Proposed Rule.

Please contact me if the Department would like additional information relating to the subject matter discussed in this comment.

Sincerely,

<u>/s/ Nicole Neily</u>
Nicole Neily
President
Defending Education