

# Deadline to Object to Public Release of EEO-1 Report

## Banking Brief: Financial Services Insights

By Asha Cermak and Larry Tomlin on December 2, 2024

Federal contractors have until **December 9, 2024**, to file an objection to the public release of their Type 2 Consolidated **EEO-1 Report** for the year 2021. Failure to submit an objection by this deadline could result in the disclosure of sensitive employment and demographic data to the public.

### Who Is Affected?

“Federal contractors” is defined to include any business or organization that holds a federal contract, subcontract, or federally assisted construction contract. **This includes financial institutions with federal deposit or share insurance.**

### Why Is This Important?

The **Office of Federal Contract Compliance Programs (OFCCP)** has received two Freedom of Information Act (FOIA) requests for **Type 2 Consolidated Employer Information Reports (EEO-1 Reports)** from 2021. These requests were made by the **University of Utah** and the social advocacy group “**As You Sow.**”

Under **OFCCP regulations**, federal contractors with 50 or more employees are required to submit an EEO-1 Report, which includes demographic data about their workforce, such as race, sex, ethnicity, and job category. While data submitted to the **Equal Employment Opportunity Commission (EEOC)** is protected from FOIA requests under Title VII, data obtained by the OFCCP from federal contractors is not explicitly protected and is therefore subject to public release under FOIA unless an objection is timely filed.

### How to File an Objection

The current FOIA requests are different from the 2022 request that sought employment and demographic data for the years 2016 through 2020. Thus, even if an objection was filed by a federal contractor with respect to the 2022 request, a new objection must be filed with respect to the current request for data for the year 2021.

Federal contractors that submitted an EEO-1 Report for 2021 must submit a written objection to the **OFCCP** by **December 9, 2024**, if they wish to prevent their data from being made public. The OFCCP recommends filing objections online through the Submitter Notice Response Portal.

Objections must include a detailed written statement as to why the information qualifies as **trade secrets** or **confidential commercial or financial information** under **Exemption 4** of FOIA. At a minimum, objections must address the following questions posed by the OFCCP:

1. What specific information from the 2021 EEO-1 Report does the contractor consider to be a trade secret or commercial or financial information?
2. What facts support the contractor's belief that this information is commercial or financial in nature?
3. Does the contractor customarily keep the requested information private or closely-held? What steps have been taken by the contractor to protect the confidentiality of the requested data, and to whom has it been disclosed?
4. Does the contractor contend that the government provided an express or implied assurance of confidentiality? If not, were there express or implied indications at the time the information was submitted that the government would publicly disclose the information?
5. How would disclosure of this information harm an interest of the contractor protected by Exemption 4 (such as by causing foreseeable harm to the contractor's economic or business interests)?

Once the objection is submitted, the OFCCP will review the claim and determine whether the data falls under Exemption 4 protections.

**Deadline Reminder:** Failure to submit an objection by **December 9, 2024**, will result in the waiver of any objections, and the OFCCP will proceed with the public release of the contractor's EEO-1 Report.

Our team at Amundsen Davis LLC is ready to assist you in evaluating the best plan of action and to aid in preparing objections that highlight the specific nuances of your industry.

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