

Tuesday, August 2, 2016

Joseph B. Nye, Policy Analyst
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th St., N.W.
Washington, D.C. 20503

Re: Agency Information Collection Activities; Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO-1), OMB Control Number 3046-0007, Docket ID EEOC-2016-0002-0340

Dear Mr. Nye:

The Institute for Science and Human Values supports the Equal Employment Opportunity Commission's (EEOC) proposed revision of the Employer Information Report (EEO-1) to collect pay data from private employers and federal contractors. As an organization dedicated to the well-being of society, guaranteeing various rights, including those of women, racial, ethnic, and sexual minorities; and supporting education, health care, gainful employment, and other social benefits, we are committed to workplace equality and equal pay for equal work.

The proposed collection of pay data will be critically important in helping to identify compensation discrimination and improving enforcement of pay discrimination laws, and will benefit businesses, individual workers, and the economy. Collecting pay data as part of an existing instrument such as the EEO-1, particularly in light of the changes proposed in the Notice of Submission for OMB Review, Final Comment Request ("30-Day Notice"), will also reduce the burden on employers and avoid duplicative or unnecessary efforts and costs. We commend EEOC for its efforts to address employer concerns and urge the swift approval and implementation of the proposed revisions.

I. The Proposed EEO-1 Data Collection Will Be a Critical Tool in Helping to Identify And Address Pay Discrimination, a Crucial Driver of the Gender Pay Gap.

Pay data collected through the revised EEO-1 will play an important role in uncovering and combating pay discrimination, a crucial factor in the gender wage gap. Women working full time, year round continue to confront a stark wage gap, typically making only 79 percent of the median annual wages made by men working full time, year round. The wage gap is even worse when we look specifically at women of color: African American women are typically paid only 60 percent, Latinas only 55 percent, and Native American women only 59 percent of the wages typically paid to white, non-Hispanic men for full-time, year-round work.¹ The wage gap has remained stagnant for nearly a decade.² The wage gap translates into \$10,762 less in median

¹ NAT'L WOMEN'S LAW CTR., THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO (Apr. 2016), *available at* <https://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/> [THE WAGE GAP: THE WHO].

² NAT'L WOMEN'S LAW CTR., THE WAGE GAP IS STAGNANT FOR NEARLY A DECADE 1 (Sept. 2015), *available at* <http://nwlc.org/resources/wage-gap-stagnant-nearly-decade/> [THE WAGE GAP IS STAGNANT].

annual earnings for women and the families they support.³ The result is that a woman working full time, year round stands to lose \$430,480 over a 40-year period due to the wage gap.⁴ To make up this lifetime wage gap, a woman would have to work more than eleven years longer than her male counterpart.⁵

While occupational segregation is one cause of the wage gap, even when women and men work in the same occupation, women are still typically paid less than men.⁶ Studies show that controlling for race, region, unionization status, education, experience, occupation, and industry still leaves 38 percent of the pay gap unexplained.⁷ Discrimination is one cause of this gap. Nevertheless, pay discrimination remains difficult to detect in the first instance. Because individuals typically have limited information about the compensation their coworkers receive, discriminatory pay decisions frequently will not be obvious to an affected employee. Indeed, about 60 percent of workers in the private sector are either contractually forbidden or strongly discouraged from discussing their pay with their colleagues.⁸ As a result, employees are often unable to challenge pay discrimination. Collecting compensation data from employers will help both EEOC and the Office of Federal Contract Compliance Programs of the Department of Labor (OFCCP) target their limited enforcement resources, greatly enhancing the effectiveness and efficiency of pay discrimination enforcement efforts.

The proposed pay data collection also will help uncover other forms of gender and racial discrimination beyond pay-setting practices that can contribute to compensation disparities. Bias and discrimination, whether overt or implicit, can impact employer decisions at critical points – recruitment, hiring, performance evaluations and promotions, allocation of assignments and opportunities, and opportunities for advancement and leadership development – which not only create pay disparities, but perpetuate and magnify them over time. Stereotypes about the needs, abilities and priorities of women, particularly those with families and caregiving responsibilities, or assumptions that only men are family breadwinners, contribute to women being denied promotions, or assignments or opportunities that would lead to career-track, high paying jobs.

³ THE WAGE GAP: THE WHO, *supra* note 1.

⁴ NAT'L WOMEN'S LAW CTR., THE LIFETIME WAGE GAP BY STATE FOR WOMEN OVERALL (2014) (Apr. 2016), available at <https://nwlc.org/resources/the-lifetime-wage-gap-by-state-for-women-overall-2014/> [THE LIFETIME WAGE GAP BY STATE]. Lifetime wage gaps for women of color are significantly larger: African American women lose \$877,480, Native American women \$883,040; and Latinas \$1,007,080. NAT'L WOMEN'S LAW CTR., THE LIFETIME WAGE GAP, STATE BY STATE (Apr. 2016), available at <https://nwlc.org/resources/the-lifetime-wage-gap-state-by-state/>.

⁵ THE LIFETIME WAGE GAP BY STATE, *supra* note 4.

⁶ Schieder, S. & Gould, E., "Women's work" and the gender pay gap 3, ECONOMIC POLICY INST. (July 2016), available at <http://www.epi.org/publication/womens-work-and-the-gender-pay-gap-how-discrimination-societal-norms-and-other-forces-affect-womens-occupational-choices-and-their-pay/>.

⁷ Blau, F. D. & Kahn, L.M., *The Gender Wage Gap: Extent, Trends and Explanations*, NAT'L BUREAU OF ECONOMIC RESEARCH (Jan. 2016), available at <http://www.nber.org/papers/w21913>.

⁸ INST. FOR WOMEN'S POLICY RESEARCH, PAY SECRECY AND WAGE DISCRIMINATION (2014), available at http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at_download/file.

Hiring discrimination that keeps women out of higher paying jobs in a company, or harassment that systematically pushes women out of male-dominated, highly paid jobs may result in race or gender pay gaps within the firm. If African American employees, for example, are scheduled for fewer work hours, or Asian-American women are not promoted to senior level positions, this also would be reflected in pay gaps. Collecting compensation data allows for more targeted enforcement of a range of antidiscrimination protections.

The process of responding to the data collection tool, and the more effective and targeted approach to enforcement that the tool permits, also will spur more employers to proactively review and evaluate their pay-setting practices, and correct disparities. The revised EEO-1 Report accordingly will increase voluntary employer compliance with discrimination laws and decrease the need for enforcement actions or litigation.

II. The Proposed Pay Data Collection Will Help Address Pay Disparities, Benefiting Businesses, Individual Workers and the Economy.

EEOC has taken significant steps to ensure that the burden that compiling and reporting largely pre-existing information about compensation and hours worked pursuant to the proposed EEO-1 revision imposes on employers will be minimal. At the same time, business, workers and the economy will accrue important benefits from the proposed data collection.

Self-evaluation engendered by the proposed pay data collection may encourage employers to proactively implement practices to help prevent pay disparities in the first instance and to develop a diverse workforce, both of which are good for business. A diverse workforce and equitable employment practices can confer a wide array of benefits on a company, from decreased risk of liability, access to the best talent, increased employee satisfaction and productivity, increased innovation, an expanded consumer base, and stronger financial performance.⁹ Equal pay is critical for recruiting and retaining a diverse workforce and high performers, particularly younger workers.¹⁰ And when workers are confident they are being paid

⁹ Hunt, V., Layton, D. & Prince, S., *Diversity Matters* 9-13, MCKINSEY & CO. (Feb. 2015) (finding diverse workforces correlate with better financial performance, because diversity helps to recruit the best talent, enhance the company's image, increase employee satisfaction, and improve decision making, including fostering innovation); Hewlitt, S.A., Marshall, M. & Sherbin, L., *How Diversity Can Drive Innovation*, HARVARD BUS. REV. (Dec. 2013), available at <https://hbr.org/2013/12/how-diversity-can-drive-innovation>. Conversely, companies that fail to address gender wage disparities and discriminatory employment practices could damage their reputation and brand among consumers, leading to a loss of profits and shareholder value. Lamb, N. & Klein, W., *A Proactive Approach to Wage Equality is Good for Business*, EMPLOYMENT RELATIONS TODAY (Summer 2015), available at <http://arjuna-capital.com/sites/default/files/Employment%20Relations%20Today%20Article.pdf> [*Proactive Approach*].

¹⁰ A recent study found that “pay and financial benefits drive Millennials’ choice of organization more than anything else.” THE 2016 DELOITTE MILLENNIAL SURVEY: WINNING OVER THE NEXT GENERATION OF LEADERS 19 (2016), available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-millennial-survey-2016-exec-summary.pdf>. Noel, L. & Hunter Arscott, C., *Millennial Women: What Executives Need to Know About Millennial Women* 4, ICEDR (2015), available at http://www.icedr.org/research/documents/14_millennial_snapshot.pdf (Millennial women leave jobs primarily for more compensation).

fairly, they are more likely to be engaged and productive.¹¹ Significantly, shareholders and potential investors are increasingly interested in companies' commitment to diversity and equal employment opportunity, and see compliance with antidiscrimination laws -- particularly with regard to equal pay -- as an important factor impacting risk and profitability, and therefore relevant to investment decisions.¹²

Furthermore, addressing discrimination and closing the gender wage gap would have a significant positive impact on the economy. A recent study found that if women received the same compensation as their comparable male co-workers, the poverty rate for all working women would be reduced by half, from 8.1 percent to 3.9 percent.¹³ Moreover, nearly 60% of women would earn more if working women were paid the same as men of the same age with similar education and hours of work.¹⁴ Increased wages would augment these workers' consumer spending power and benefit businesses and the economy.¹⁵ A recent study estimates that by closing the wage gap entirely, women's labor force participation would increase and \$4.3 trillion in additional gross domestic product could be added in 2025, about 19 percent more than would otherwise be generated in 2025.¹⁶

III. The Revisions Proposed By the 30-Day Notice Further Minimize the Reporting Burden to Employers.

We commend EEOC for constructively addressing the concerns expressed by employers regarding the burden of the proposed pay data collection, and support its suggested changes. The proposal to collect pay information through the EEO-1 and to share it across agencies reduces a significant amount of the reporting burden for employers, and avoids duplication of effort or wasted costs in several ways. Employers who are already required to report race and gender data under the EEO-1 are familiar with the form, the job categories and the reporting requirements.

¹¹ Courtney Seiter, "The Counterintuitive Science of Why Transparent Pay Works," *Fastcompany.com*, Feb. 26, 2016, available at <http://www.fastcompany.com/3056975/the-future-of-work/the-transparent-pay-revolution-inside-the-science-and-psychology-of-open->.

¹² *Proactive Approach*, supra note 9; Natasha Lamb, "Closing the pay gap: Silicon Valley's gender problem," *Ethical Boardroom*, June 7, 2016, available at <http://ethicalboardroom.com/leadership/diversity/close-the-pay-gap/>; Trillium Asset Mgm't, *Letter to Citigroup Shareholders*, Apr. 16, 2016, available at <https://www.sec.gov/Archives/edgar/data/831001/000121465916010905/j415160px14a6g.htm>.

¹³ Hartmann, H., Hayes, J. & Clark, J., *How Equal Pay for Working Women Would Reduce Poverty and Grow the American Economy* 1, INST. FOR WOMEN'S POLICY RESEARCH (2014), available at <http://www.iwpr.org/publications/pubs/how-equal-pay-for-working-women-would-reduce-poverty-and-grow-the-american-economy/>.

¹⁴ *Id.*

¹⁵ *See id.* (finding that the U.S. economy would have produced additional income of more than \$447 billion in 2012 if women received pay equal to their male counterparts).

¹⁶ Ellingrud, K., et al., *The power of parity: Advancing women's equality in the United States* 1-2, MCKINSEY GLOBAL INST. (Apr. 2016), available at <http://www.mckinsey.com/global-themes/employment-and-growth/the-power-of-parity-advancing-womens-equality-in-the-united-states>. The same study estimates that even if the wage gap was only partially closed, \$2.1 trillion in additional GDP could be added in 2025.

Moreover, the proposal requires employers to report W-2 earnings¹⁷ as the measure of compensation, utilizing a source of data employers are already required to maintain and generate under federal law.

Likewise, federal law already requires employers to keep records of hours worked for nonexempt employees. Accordingly, reporting actual hours worked for each nonexempt employee, as the 30-Day Notice proposes, will not create an additional burden for employers. For exempt employees, the 30-Day Notice suggests employers could report either hours actually worked, or report 40 hours per week for full-time employees and 20 hours per week for part-time employees as a substitute to reduce the reporting burden. We support this approach, as the 40-hour workweek is a widely accepted definition and is a reasonable approximation of full-time work. Compensation and total hours worked information is readily available to most employers in their computerized payroll systems, and the software can be updated to address the proposed collection.

The additional revisions of filing deadlines proposed in the 30-Day Notice will further diminish employers' reporting burden. EEOC's proposal to move the 2017 report's filing deadline to March 31, 2018, will allow employers to utilize, for the purposes of the EEO-1, the calculation and reporting of W-2 data for the calendar year that is already required by federal law. The proposed change would also allow employers more time to adapt their payroll and HRIS systems to prepare for the new data collection.

In the 30-Day Notice EEOC also proposes moving the "workforce snapshot" period from the third quarter (July-September) to the fourth quarter (October-December) to address employer concerns. By counting and reporting its total number of employees in the fourth quarter, an employer can fully account for promotions that result in job category or pay band changes for employees during that calendar year. The proposed change, which would take effect for the 2017 reporting cycle, thus aligns the workforce snapshot period with federally required W-2 reporting timeline as well, and should result in more accurate and less burdensome reporting.

IV. Certain Improvements Would Strengthen the Proposed Data Collection.

The proposed compensation data collection will enhance the discovery of pay discrimination and enforcement of antidiscrimination laws. Nevertheless, we urge EEOC to strengthen the effectiveness of the pay data collection further in two key ways:

¹⁷ The 30-Day Notice further clarifies that the revised EEO-1 would use the measure of compensation reported in Box 1, wages, tips and other compensation. 81 Fed. Reg. 45479, 45486 (July 14, 2016). The W-2 provides a comprehensive picture of compensation, which is critical because although compensation discrimination may manifest in workers' base salaries, it may also occur through discrimination in other less frequently measured forms of compensation such as bonuses, commissions, stock options, differential pay, and opportunities for overtime.

- Extend the proposal to cover smaller federal contractors that have between 50 to 99 employees and are otherwise required to submit the EEO-1. Although EEOC indicated in the 30-Day Notice that it would retain the same employee thresholds, we urge EEOC to reconsider this position given the heightened importance of ensuring that recipients of public funds, regardless of their size, do not discriminate in pay practices. Moreover, many of these smaller contractors are already required to maintain the relevant information, reducing the potential burden.
- Require employers to report their pay data using additional, narrower pay bands to capture data on pay disparities for employees earning more than \$208,000. In the 30-Day Notice EEOC declined to adopt narrower pay bands or additional pay bands at the top end of the wage scale, stating that the proposed pay bands would maximize the collection of data since the majority of wages in the United States are well below \$208,000. But data show that women up and down the income scale experience pay gaps compared to their male counterparts, including in highly compensated jobs such as attorneys, executives, and surgeons.¹⁸ We therefore urge EEOC to add additional pay bands to ensure that meaningful pay data is captured as to virtually all of the workforce. We also suggest that the pay bands EEOC ultimately uses be regularly adjusted (either by continuing to track the Occupational Employment Statistics (OES) or by otherwise adjusting for changes in inflation and the employment distribution) in order to provide the most relevant data reflecting the distribution of pay in the economy.

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We applaud EEOC for its continued leadership on the issue of equal pay. We strongly support the proposed revisions to the EEO-1 and urge their swift approval and implementation. Women cannot afford to keep waiting for change; nor can the families depending on their earnings. The powerful enforcement tool proposed by EEOC promises to make a real difference in closing the pay gaps that have shortchanged women for far too long.

Sincerely,

Toni Van Pelt, President and Policy Director
Institute for Science and Human Values

¹⁸ U.S. CENSUS BUREAU, 2014 AMERICAN COMMUNITY SURVEY, Table 1 (Full-Time, Year-Round Workers and Median Earnings in the Past 12 Months by Sex and Detailed Occupation: 2014) (2016), available at http://www.census.gov/people/io/publications/table_packages.html?eml=gd&utm_medium=email&utm_source=govdelivery; Schieder & Gould, *supra* note 6, at 6. (“Women in the top 95th percentile of the wage distribution experience a much larger gender pay gap than lower-paid women).