



November 8, 2019

Bernadette B. Wilson  
Executive Officer, Executive Secretariat  
Equal Employment Opportunity Commission  
131 M Street NE  
Washington, DC 20507

*Submitted Electronically*

**Re: Notice of Information Collection – Request For New Control Number For a Currently Approved Collection: Employer Information Report (EEO-1) Component 1; Revision of Existing Approval for EEO-1 Component 2, EEOC-2019-0003-0001**

Dear Ms. Wilson:

On behalf of the more than 170,000 bipartisan members and supporters of the American Association of University Women (AAUW), I am writing to comment on the Equal Employment Opportunity Commission’s (“EEOC”) September 12, 2019 “Notice of Information Collection – Request For New Control Number For a Currently Approved Collection: Employer Information Report (EEO-1) Component 1; Revision of Existing Approval for EEO-1 Component 2” (“the Notice”). We oppose the EEOC’s intent to stop the collection of Component 2 data and strongly urge the EEOC to immediately request renewal of Component 2 to ensure continuation of collection of pay data from employers.

**Introduction**

For more than 130 years, AAUW has worked to improve the lives of women and their families. We are committed to workplace equality and have long been a leader in conducting and producing cutting edge research regarding the wage gap and effectively using the data to advocate for equal pay nationwide. In 2016, AAUW and its members were pleased to submit comments in support of this collection, and we were honored to testify before the Commission<sup>1</sup> on the importance of Component 2. AAUW has long asserted that additional pay data and the work of enforcement agencies and employers that would be associated with its collection can help lead to a smaller pay gap. Implementing this kind of nationwide data collection is an important and proactive step in our collective efforts to ensure fair pay for all.

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<sup>1</sup> *Public Input into the Proposed Revisions to the EEO-1 Report: Hearing of March 16, 2016 before the U.S. Equal Employment Opportunity Comm’n* (2016) (written testimony of AAUW) <https://www.eeoc.gov/eeoc/meetings/3-16-16/maatze.cfm>.

AAUW's strong support for the continuation of Component 2 is buttressed by the clear and convincing data that the gender pay gap is not a myth, but rather a pernicious problem that undermines the economic security of American families. The findings from AAUW's research reports, *The Simple Truth about the Gender Pay Gap* and *Graduating to a Pay Gap: The Earnings of Women and Men One Year after College Graduation*, provide reliable evidence that sex discrimination in the workplace continues to be a problem for women.<sup>2</sup> This can translate into hundreds of thousands of lost dollars in rightfully earned income.<sup>3</sup> Our reports demonstrate just how much this pay gap impacts women, families, businesses and the economy.

The Notice announces that while EEOC seeks to submit a request for a three-year approval of Component 1 of the EEO-1 pursuant to the Paperwork Reduction Act ("PRA"), EEOC does not intend to request renewal of Component 2. Component 2 of the EEO-1, which was originally approved in September 2016, requires covered employers to submit data on employees' W-2 earnings and hours worked by pay band, as well as sex, race, ethnicity and job category. EEOC's sudden change of position that the utility of Component 2 pay data is outweighed by burden to employers is questionable and unsupported by information in the Notice. Pay data collected through Component 2 will play an important role in uncovering and combating pay discrimination, a crucial factor in the gender wage gap. Accordingly, AAUW strongly urges the EEOC to immediately request renewal of Component 2 to ensure continuation of collection of pay data from employers.

#### **I. EEOC Prematurely and Without Evidence Concluded That the Utility of Component 2 Pay Data Was Outweighed by the Burden of Collecting It.**

At that time EEOC issued the Notice, it was in the process of collecting pay data for calendar years 2017 and 2018 pursuant to a federal court's order, with a September 30, 2019 deadline for employer submissions.<sup>4</sup> Therefore, at the time EEOC announced in the Notice that Component 2 pay data's "unproven utility" was outweighed by the burden of collecting it, EEOC had not yet finished collecting the data in question from employers. This raises two important concerns. First, if EEOC had not yet finished collecting the pay data, it was not in a position to reach a reasoned conclusion about the utility of the data. It is problematic that such a decision was made, while pay data was in the process of being collected, which could have been assessed thoughtfully and thoroughly considered in any decision-making about future PRA collections. The Notice suggests that the EEOC may be predisposed to discount the pay data collected to date.

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<sup>2</sup> AAUW, *The Simple Truth About the Gender Pay Gap, Fall 2019 Update* (Nov. 2019), <https://www.aauw.org/research/the-simple-truth-about-the-gender-pay-gap/>; AAUW, *GRADUATING TO A PAY GAP: THE EARNINGS OF WOMEN AND MEN ONE YEAR AFTER COLLEGE GRADUATION* (AAUW 2012), <https://www.aauw.org/files/2013/02/graduating-to-a-pay-gap-the-earnings-of-women-and-men-one-year-after-college-graduation.pdf>.

<sup>3</sup> NAT'L COMMITTEE ON PAY EQUITY, *The Wage Gap Over Time: In Real Dollars, Women See a Continuing Gap*, [www.pay-equity.org/info-time.html](http://www.pay-equity.org/info-time.html) (last updated September 2019).

<sup>4</sup> *Nat'l Women's Law Ctr. v. Office of Mgmt & Budget*, Civ. Action No. 17-cv-2458 (D.D.C. Mar. 4, 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/03/EEO-1-Opinion.pdf>. The court recently ordered EEOC to "take all steps necessary to complete the EEO-1 Component 2 data collection" for 2017 and 2018 by January 31, 2020. *Nat'l Women's Law Ctr. v. Office of Mgmt. & Budget*, Civ. Action No. 17-cv-2458 (D.D.C. Oct. 29, 2019).

Second, if EEOC did nevertheless conduct some form of analysis or evaluation of the utility of pay data collected through September 12, 2019, it chose not to provide any information about its methodology or assessment in the Notice, thereby preventing public notice and comment on that critical information. Both the timing of EEOC's conclusion about utility balanced against burden, and its failure to provide any information about how it reached that conclusion, call into serious question EEOC's decision making, methodology, and motivations regarding its decision not to seek PRA renewal of Component 2.

## **II. The Burden Estimates in the Notice Are Based on Questionable Methodology and Problematic Assumptions.**

The Notice concludes that the burden methodology EEOC employed in 2016, based on the number of employers reporting, underestimated the burden on employers of reporting pay data through the EEO-1. But EEOC's burden estimate in the Notice, based on the number of reports or forms filed, appears to be inflated and is based on several faulty or unexplained assumptions.

The Notice indicates that single establishment (Type 1) filers have an average estimated burden of 45 minutes, and that the average estimated burden for multi-establishment (Type 2) filers would range from 3.5 hours to 9.5 hours cumulatively depending on the number and type of reports submitted.<sup>5</sup> This results in an average estimated burden per filer of five hours.<sup>6</sup> There is no explanation in the Notice for the basis of these time estimates. These assumptions appear to ignore the centralized automation that characterizes most large employers' human resource information systems ("HRIS") and payroll systems, and the fact that this information would be readily available. Additionally, this explanation also does not appear to account for the possibility that many multi-establishment filers would choose to file through a digital file upload instead of the more time-consuming method of manually completing multiple forms online.

EEOC's burden estimate also fails to account for the fact that with each subsequent year of reporting, the burden will be reduced because employers already will have the appropriate systems in place and will be familiar with the process for reporting pay data. The first time providing such data is likely to be the most difficult for employers, yet EEOC's decision not only does not account for future efficiencies of scale as the data collection becomes more routinized, it's decision to not to seek renewal of Component 2 also prevents future collection of data using these same systems.

Relatedly, covered employers just completed reporting two years of pay data through the EEO-1, and EEOC did not address the impact of such reporting on its new burden estimate. There is no evidence in the Notice that EEOC's burden estimate was informed by a review of employers' actual experience of collecting and reporting the pay data, or that EEOC plans to conduct such an evaluation. It also increases the burden for employers if EEOC subsequently develops different pay data reporting collection requirements.

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<sup>5</sup> U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, *Notice of Information Collection – Request For New Control Number For a Currently Approved Collection: Employer Information Report (EEO-1) Component 1; Revision of Existing Approval for EEO-1 Component 2*, 84 Fed. Reg. 48138, n.9, 21 (Sept. 12, 2019) [*September 2019 Notice*].

<sup>6</sup> *September 2019 Notice*, n.21.

In contrast, EEOC's 2016 burden estimate was based on careful, rigorous analysis. The Component 2 pay data collection was adopted in 2016 after a multi-year, extensive and transparent process that included collecting data, research, and testimony from multiple sources. EEOC relied on a 2012 National Academy of Sciences study regarding the collection of compensation data;<sup>7</sup> a March 2012 meeting on data collection procedures with multiple experts and stakeholders, including employer representatives;<sup>8</sup> an EEOC-commissioned pilot study;<sup>9</sup> a public hearing on the proposed revisions, which included testimony from relevant stakeholders, including employers,<sup>10</sup> a vote by EEOC Commissioners; and two rounds of notice and public comment, which ultimately influenced the final product.<sup>11</sup>

### **III. Component 2 Data Will Help Identify Trends in Pay Disparities, a Crucial Factor in the Gender Wage Gap.**

The Notice contains no discussion of the benefits of pay data collected through Component 2, which will play an important role in identifying pay disparities 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 82 percent of the median annual wages made by men working full time, year round.<sup>12</sup> The wage gap is even worse when we look specifically at women of color: Black women typically are paid only 62 percent, Native American women 57 percent, Latinas 54 percent of the wages typically paid to white, non-Hispanic men for full-time, year-round work.<sup>13</sup> While Asian American and Pacific Islander (AAPI) women typically are paid 90 cents, but that number masks larger disparities among different communities of AAPI women.<sup>14</sup>

This wage gap has barely moved by a few cents in this century, and translates into \$10,194 less in median annual earnings for women and the families they support.<sup>15</sup> These gaps add up to average lifetime income losses of more than \$400,000 – and even greater lifetime income losses for women of color – and negatively impact women's economic security and the long-term economic stability of their families.<sup>16</sup> Women are still paid less than men in nearly every

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<sup>7</sup> NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, COLLECTING COMPENSATION DATA FROM EMPLOYERS (2012), <http://www.nap.edu/catalog/13496/collecting-compensation-data-from-employers>.

<sup>8</sup> SAGE COMPUTING, INC., EEOC SURVEY SYSTEM MODERNIZATION WORK GROUP MEETING 2 (Mar. 2012), <http://www.eeoc.gov/employers/eo1survey/survey-modernization.pdf>.

<sup>9</sup> SAGE COMPUTING, INC., FINAL REPORT (Sept. 2015), <http://eeoc.gov/employers/eo1survey/pay-pilot-study.pdf>.

<sup>10</sup> Public Hearing before the U.S. Equal Employment Opportunity Commission, Public Input into the Proposed Revisions to the EEO-1 Report, Mar. 16, 2016, <https://www.eeoc.gov/eeoc/meetings/3-16-16/index.cfm>.

<sup>11</sup> U.S. Equal Employment Opportunity Comm'n, *Agency Information Collection Activities: Revision of the Employer Information Report (EEO-1)*, 81 Fed. Reg. 5113 (Feb. 1, 2016); U.S. Equal Employment Opportunity Comm'n, *Agency Information Collection Activities, Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO-1)*, 81 Fed. Reg. 45479, 45493-5 (July 14, 2016).

<sup>12</sup> AAUW, *The Simple Truth About the Gender Pay Gap, Fall 2019 Update*, *supra* note 2.

<sup>13</sup> *Id.*

<sup>14</sup> See NAT'L WOMEN'S LAW CTR., EQUAL PAY FOR ASIAN AND PACIFIC ISLANDER WOMEN (Mar. 2019), <https://nwlc.org/resources/equal-pay-for-asian-pacific-islander-women/>.

<sup>15</sup> NAT'L WOMEN'S LAW CTR., THE WAGE GAP: THE WHO, HOW, WHY AND WHAT TO DO (September 2019) <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/The-Wage-Gap-Who-How-Why-and-What-to-Do-2019.pdf>.

<sup>16</sup> NAT'L WOMEN'S LAW CTR., THE LIFETIME WAGE GAP, STATE BY STATE (Oct. 10, 2019), <https://nwlc.org/resources/the-lifetime-wage-gap-state-by-state/>.

occupation,<sup>17</sup> state and congressional district<sup>18</sup> and studies show that even controlling for race, region, unionization status, education, experience, occupation, and industry leaves as much as 38 percent of the overall pay gap unexplained.<sup>19</sup>

Nevertheless, pay discrimination remains difficult to detect. While progress has been made, about 60 percent of workers in the private sector are either contractually forbidden or strongly discouraged from discussing their pay with their colleagues.<sup>20</sup> Discriminatory pay decisions may not be obvious to an affected employee, and employees are discouraged from gathering information that would suggest that they have experienced pay discrimination, making it harder to challenge it.

All of this is why it is so critical the EEOC collect pay data. The gender pay gap continues to be a pervasive problem and its persistence underscores the systemic wage disparities that motivated the EEOC's pay data collection efforts initially. Collecting compensation data from employers will help EEOC and OFCCP more effectively enforce equal pay laws, and encourage employers to proactively review their own practices and correct any discriminatory wage disparities. This data collection will empower EEOC and OFCCP to target their limited enforcement resources toward more detailed oversight of those employers who are most likely to be engaging in pay discrimination, greatly enhancing the effectiveness and efficiency of EEOC's and OFCCP's pay discrimination enforcement efforts.

Aggregated data exposes trends in pay, which can inform interventions within and across businesses. Data can reveal sex segregated jobs, a lack of women in high paying fields, and disparities in salaries and other compensation. Once these issues are apparent, businesses can receive technical assistance to remedy the gaps, or agencies can create interventions that seek to eliminate the problem before it even starts. Equally important, the data will bolster the EEOC's ability to provide robust technical assistance as well as enforce existing law. The EEOC will be better equipped to investigate allegations of pay discrimination at companies that are suspect, while reducing the likelihood of reviewing employers that are expected to be in compliance.

In addition to direct government interventions, data will empower businesses to take preemptive action. Both the process of responding to the data collection tool and the more effective and targeted approach to enforcement that the tool permits will incentivize employers to proactively review and evaluate their pay practices and to address any unjustified disparities between employees. Reporting pay data by gender and race within job categories ensures that employers are collecting and evaluating it. By incentivizing and facilitating such employer self-evaluation, Component 2 will increase voluntary employer compliance with discrimination laws. Employees and employers alike will benefit from the elimination of discrimination in pay practices

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<sup>17</sup> Hegewisch, A. & Tesfaselassie, A., *The Gender Wage Gap by Occupation 2018*, INST. FOR WOMEN'S POLICY RESEARCH (Apr. 2019), <https://iwpr.org/publications/gender-wage-gap-occupation-2018/>

<sup>18</sup> AAUW, *What's the Gender Pay Gap in Your State?*, <https://www.aauw.org/resource/gender-pay-gap-by-state-and-congressional-district/> (Sept. 2019).

<sup>19</sup> Blau, F. D. & Kahn, L.M, *The Gender Wage Gap: Extent, Trends and Explanations*, NAT'L BUREAU OF ECONOMIC RESEARCH (Jan. 2016), <http://www.nber.org/papers/w21913.pdf>.

<sup>20</sup> INST. FOR WOMEN'S POLICY RESEARCH, *PAY SECRECY AND WAGE DISCRIMINATION* (2014), [http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at\\_download/file](http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at_download/file)

absent litigation or other formal enforcement mechanisms, which can be expensive and time-consuming.

In a perfect world, all companies would take such action voluntarily. Many employers are interested in doing the right thing and eliminating the gender pay gap, they simply do not realize that there is an issue. Component 2 holds up a much-needed mirror to those businesses filing their EEO-1 forms by exposing the data and allowing employers to make appropriate, pro-active corrections before costly interventions are required. It will also set benchmarks so future salaries are appropriately calibrated and prior salary history will not drive compensation decisions. As this agency wrote during the 2016 notice and comment period, “[v]oluntary compliance is an important part of the effort to prevent discrimination and improve pay equity,” noting that the employer’s preparation of the EEO-1 report may be a useful tool to engage in voluntary self-assessment of pay practices.<sup>21</sup>

AAUW is sensitive to the concerns of business, but believes these modest requirements, which they are already complying with, can be well reconciled with the broader benefit of working to eliminate pay discrimination. The burdens are not so strong as to justify forgoing these innovative solutions. And any such burdens are certainly not well-founded in the Notice.

## **Conclusion**

We strongly support the collection of pay data from employers and urge EEOC to request renewal of Component 2 of the EEO-1. This powerful enforcement tool promises to make a real difference in closing the pay gaps that have shortchanged women for far too long. Women cannot afford to keep waiting for change; nor can the families depending on their earnings.

To eliminate the gender pay gap, enforcement agencies need more information, not less. Access to appropriate data is necessary to shine a light on disparate pay practices, reveal trends, and support employers in proactively improving systems and correcting errors. AAUW appreciates this opportunity to submit comments on a matter so critical to our membership and working families across the country.

Sincerely,



Deborah J. Vagins  
Senior Vice President, Public Policy and Research

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<sup>21</sup> U.S. Equal Employment Opportunity Comm’n, *Agency Information Collection Activities, Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO-1)*, 81 Fed. Reg. 45479, 45,483, 45,491 (July 14, 2016).