



April 22, 2020

Bernadette B. Wilson  
Executive Officer, Executive Secretariat  
Equal Employment Opportunity Commission  
131 M Street, N.E.  
Washington, D.C. 20507

Submitted Electronically

**Re: Notice of information collection—request for new control number and approval of collection: Employer Information Report (EEO-1) Component 1; revision of existing approval for EEO-1 Component 2, EEOC-2020-0002-0001**

Dear Ms. Wilson:

On behalf of the more than 170,000 members and supporters of the American Association of University Women (AAUW), I write to express opposition to the Equal Employment Opportunity Commission's (EEOC) intent not to renew Component 2 of the Employer Information Report (EEO-1). As an organization dedicated to eliminating the barriers and biases that stand in the way of gender equity, we are committed to workplace equality to end wage discrimination and open doors for women in the workplace.

The EEO-1 has long been a useful tool to gather data that helps protect the civil rights of all employees. Component 2, originally approved in 2016, with its focus on W-2 earnings and hours worked by pay band, as well as sex, race, ethnicity and job category, will identify compensation discrimination, improve enforcement of pay discrimination laws, and promote self-analysis and compliance by reporting employers. Not only is this collection of high-quality data and degree of transparency necessary to ensure that all Americans enjoy the fair and level playing field that is the basis for economic security for all, it is also especially relevant during our current national health and economic crisis.

No matter how you analyze it, the gender pay gap is real, persistent and harmful to women's financial well-being. A gender pay gap exists in every state, regardless of geography, occupation, education or work patterns. On average, women working full time in the U.S. are paid 82 percent of what men make. Women of color carry a double burden of both sexism and racism: Black women are typically paid 62 cents and Latinas are typically paid just 54 cents for every dollar

paid to white, non-Hispanic men.<sup>1</sup> But equal pay is not simply a women’s issue—it’s a family issue. Unequal pay early in women’s careers compounds throughout a lifetime, hindering women as they try to pay off their student loans, contribute to and raise their families, and thrive in retirement. And in this moment of crisis, the impact of unequal pay is hurting women and their families in real time. To combat and curb this problem going forward we must understand the nuances of it. The pay data collected through Component 2 will play an important role in uncovering and combating pay discrimination, a crucial factor driving gender and racial pay gaps.

Despite the clear need for transparency, especially during and after the COVID-19 crisis, the 30-Day Notice makes no reference to the benefits of the pay data collection or a response to comments by equal pay advocates about the data’s utility. Nor does the EEOC’s decision appear to be informed by the two years of data it has now collected pursuant to court order. Instead, the Notice contains an extended discussion about the burden to employers of the pay data collection. AAUW is sensitive to the concerns of business, but without a good faith analysis of these two years of pay data the EEOC cannot appropriately determine whether any burden to employers associated with the pay data collection outweighs the utility of the data.

Moreover, we are especially troubled by the EEOC’s decision to pursue rulemaking in the middle of a national emergency, and to provide only 30 days for public comment. The public health crisis and the widespread economic instability created by the COVID-19 pandemic have created substantial barriers to the ability of members of the public – including working people affected by the change sought by the EEOC – to submit comments at all, let alone in a timely manner. We therefore urge the EEOC to immediately request renewal of Component 2 to ensure continuation of collection of pay data from employers and reject attempts to block progress.

## **I. The EEOC Has Failed to Establish That the Burden of Collecting Component 2 Data Outweighs Its Utility.**

The EEOC’s justification for its decision not to renew Component 2 is that “the unproven utility to its enforcement program of the pay data as defined in the 2016 Component 2 is far outweighed by the burden imposed on employers.” But the EEOC’s justification is undermined by the fact that they reached this decision before conducting an analysis of the pay data collected or employers’ experiences in submitting the data.

The EEOC issued the 60-Day Notice on September 12, 2019, when the EEOC 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>2</sup> (The court subsequently ordered the EEOC to continue to collect data through January 31, 2020, and declared the collection complete in February 2020).<sup>3</sup> At the time the EEOC concluded that the utility of Component 2 pay data

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<sup>1</sup> American Association of University Women, *The Simple Truth about the Gender Pay Gap: Fall 2019 Update*, Washington DC, 2019, <https://www.aauw.org/resources/research/simple-truth/>.

<sup>2</sup> National Women’s Law Center. v. O.M.B., et al., 358 F.Supp.3d 66 (D.C. Cir. Mar. 4, 2019) *appeal filed* May 3, 2019, *argued* Jan. 24, 2020 (D.C. Cir.), <https://nwlc-ciw49tixgw51bab.stackpathdns.com/wp-content/uploads/2019/03/EEO-1-Opinion.pdf>.

<sup>3</sup> National Women’s Law Center v. Office of Mgm’t & Budget, Civ. Action No. 17-cv-2458 (D.D.C.), Order dated Oct. 29, 2019; Order dated Feb. 10, 2020.

was outweighed by the burden of collecting it, the EEOC had not yet finished collecting the data in question from employers. If the EEOC had not yet finished collecting the pay data, it was not in a position to reach a reasoned conclusion about the burden or the utility of the data; it could only rely on assumptions to evaluate burden, and not employers' actual experience submitting the pay data. The information the EEOC selected and summarized from employer comments in response to the 60-Day Notice does not change that. And while the EEOC spends a considerable amount of time in the 30-Day Notice discussing the burden to employers of collecting and reporting the data through Component 2, there is no discussion of the significant burden the pay gap imposes on women, particularly women of color, and the economy.

The EEOC's burden estimates in the 60-Day and 30-Day Notices are based on faulty assumptions. In contrast, the 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 from multiple sources. The EEOC relied on a 2012 National Academy of Sciences study regarding the collection of compensation data;<sup>4</sup> a March 2012 meeting on data collection procedures with multiple experts and stakeholders, including employer representatives;<sup>5</sup> an EEOC-commissioned pilot study;<sup>6</sup> a public hearing on the proposed revisions which included testimony from relevant stakeholders, including employers;<sup>7</sup> a vote by EEOC Commissioners; and two rounds of notice and public comment.<sup>8</sup>

## **II. Component 2 Data Will Help Identify and Address Pay Discrimination, a Crucial Factor in the Gender Pay gap.**

The 30-Day Notice fails to discuss the benefits of pay data collected through Component 2, which will play an important role in uncovering and combating pay discrimination, a crucial factor in the gender pay gap. The EEOC's effort to discontinue the Component 2 pay data collection, at a time when race and gender pay gaps are especially harmful against the backdrop of the COVID-19 pandemic, is particularly misguided and short-sighted.

Women working full time, year round continue to confront a stark pay gap, on average making only \$45,097 while men make \$55,291— amounting to 82 cents on the dollar.<sup>9</sup> The pay gap is even worse when we look specifically at women of color: Black women typically are paid only 62 cents, Native American women 57 cents, and Latinas 54 cents on the dollar compared to white, non-Hispanic men.<sup>10</sup> While Asian American and Pacific Islander (AAPI) women are

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<sup>4</sup> National Research Council of the National Academies, *Collecting Compensation Data From Employers*, Washington, DC: The National Academies Press, 2012, <http://www.nap.edu/catalog/13496/collecting-compensation-data-from-employers>.

<sup>5</sup> Sage Computing, Inc., *EEOC Survey System Modernization Work Group Meeting 2* (March, 2012), <http://www.eeoc.gov/employers/eo1survey/survey-modernization.pdf>.

<sup>6</sup> Sage Computing, Inc., *Final Report* (September, 2015), <http://eeoc.gov/employers/eo1survey/pay-pilot-study.pdf>.

<sup>7</sup> U.S. Equal Employment Opportunity Commission, *Public Hearing: Public Input into the Proposed Revisions to the EEO-1 Report* (March 16, 2016), <https://www.eeoc.gov/eeoc/meetings/3-16-16/index.cfm>.

<sup>8</sup> U.S. Equal Employment Opportunity Commission, *Agency Information Collection Activities: Revision of the Employer Information Report (EEO-1)*, 81 Fed. Reg. 5113 (February 1, 2016); U.S. Equal Employment Opportunity Commission, *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>9</sup> AAUW, *The Simple Truth*.

<sup>10</sup> *Ibid*.

typically paid 90 cents, that number masks larger disparities among different communities of AAPI women.<sup>11</sup> This pay gap has barely changed in a decade, and translates into \$10,194 less in median annual earnings for women and the families they support.<sup>12</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>13</sup> Women are still paid less than men in nearly every occupation,<sup>14</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 pay gap is unexplained.<sup>15</sup>

Nevertheless, pay discrimination remains difficult to detect and challenge. Whether by custom or a workplace prohibition, salary information is cloaked in secrecy. About 60 percent of workers in the private sector are either contractually forbidden or strongly discouraged from discussing their pay with their colleagues.<sup>16</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. In these instances, employers can simply state they are an equal opportunity employer with little chance of being held accountable. Without the equal pay data collection, pay discrimination can simply be swept under the rug.

Ensuring equal pay, and closing gender and race pay gaps, is even more critical in light of COVID-19. The pandemic is highlighting the consistent undervaluing of women’s work, and the way that pay disparities make women, particularly women of color, more at risk for economic insecurity and crises. Women are on the frontlines of the COVID-19 crisis, working as first responders, child care providers, and grocery store clerks. Women are also over-represented in the industries – namely hospitality and retail – that are shedding jobs as a result of this crisis.<sup>17</sup> But their over-representation in many of these low-paid jobs, combined with the loss of significant earnings due to the gender pay gap, has left them with no financial cushion to deal with job loss and to pay for health care, rent and food during this pandemic.<sup>18</sup> The lack of key legislative action addressing long standing issues that contribute to the pay gap make Component

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<sup>11</sup> National Women’s Law Center., *Equal Pay for Asian and Pacific Islander Women*, Washington DC, 2020, <https://nwlc.org/resources/equal-pay-for-asian-pacific-islander-women/>.

<sup>12</sup> AAUW, *The Simple Truth*.

<sup>13</sup> Black women lose \$941,600 and Latinas \$1,121,440 over a 40-year career. Fins, A., *Women and the Lifetime Wage Gap: How Many Woman Years Does It Take To Equal 40 Man Years?*, Washington DC: National Women’s Law Center, 2020, <https://nwlc-ciw49tixgw51bab.stackpathdns.com/wp-content/uploads/2020/03/Women-and-the-Lifetime-Wage-Gap.pdf>.

<sup>14</sup> Hegewisch, A. & Tesfaselassie, A., *The Gender Wage Gap by Occupation 2018*, Washington DC: Institute for Women’s Policy Research, 2019, <https://iwpr.org/publications/gender-wage-gap-occupation-2018/>.

<sup>15</sup> Blau, F. D. & Kahn, L.M, *The Gender Wage Gap: Extent, Trends and Explanations*, Cambridge, MA: National Bureau of Economic Research, 2016, <http://www.nber.org/papers/w21913.pdf>.

<sup>16</sup> Institute For Women’s Policy Research, *Pay Secrecy and Wage Discrimination*, Washington DC, 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).

<sup>17</sup> Raghu, M. & Tucker, J., *The Wage Gap Has Made Things Worse for Women on the Front Lines of COVID-19* [blog], March 30, 2020, <https://nwlc.org/blog/the-wage-gap-has-made-things-worse-for-women-on-the-front-lines-of-covid-19/>; Tucker, J. & Vogtman, J., *When Hard Work Is Not Enough: Women in Low-Paid Jobs*, Washington DC: National Women’s Law Center, 2020, <https://nwlc.org/resources/when-hard-work-is-not-enough-women-in-low-paid-jobs/>.

<sup>18</sup> Ibid.

2 more essential today than ever before. EEOC's decision to reject this important enforcement tool at this time is deeply troubling.

Collecting pay data would allow the EEOC to see which employers have racial or gender pay gaps that differ significantly from the pay patterns from other employers in their industry and region. By comparing wage data for firms employing workers in the same job categories, in the same industry, in the same location, in the same year, the EEOC can target its limited 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 the EEOC's pay discrimination enforcement efforts.

Additionally, both the process of responding to the data collection tool and the more effective and targeted approach to enforcement that the tool permits will spur more employers to proactively review and evaluate their pay practices and to address any unjustified disparities between employees.<sup>19</sup> 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 both increase voluntary employer compliance with discrimination laws and yield economic benefit. Leading employers have recognized the importance of self-evaluation of pay practices because they know that committing to equal pay isn't just the right thing to do, it boosts corporate productivity and benefits the economy. A recent McKinsey study estimates that by closing the pay 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.<sup>20</sup> And if women in the United States received equal pay with comparable men, poverty for working women would be reduced by half.<sup>21</sup> Employees and employers alike will benefit from the elimination of discrimination in pay practices absent litigation or other formal enforcement mechanisms, which can be expensive and time-consuming.

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AAUW is committed to promoting the economic well-being of all persons, including ensuring pay equity and fairness in compensation and benefits in the workplace. Accordingly, we strongly support the collection of pay data from employers and believe that its use will significantly advance the EEOC's efforts to combat pay discrimination. We urge the EEOC to request renewal of Component 2 of the EEO-1 as this powerful enforcement tool promises to make a real difference in closing the pay gaps that have shortchanged women, and women of color in particular, for far too long. In this moment of national crisis, women cannot afford to keep

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<sup>19</sup> Harvard Business Review Analytic Service., *Pulse Survey: Navigating the Growing Pay Equity Movement: What Employers Need to Know About What To Do* 3, Cambridge, MA, 2019, <https://hbr.org/sponsored/2019/10/why-your-company-needs-to-implement-pay-equity-audits-now> ("Fifty-four percent of U.K. respondents cite pay reporting requirements from national and regional governments as external drivers for them to perform pay equity analyses, versus only 28% of their U.S. counterparts reporting the same").

<sup>20</sup>McKinsey Global Institute, *The Power of Parity: Advancing Women's Equality in the United States*, Washington DC, 2016, <https://www.mckinsey.com/featured-insights/employment-and-growth/the-power-of-parity-advancing-womens-equality-in-the-united-states>.

<sup>21</sup> Institute for Women's Policy Research, *Status of Women in the States: The Economic Impact of Equal Pay by State*, Washington DC, 2016, <https://iwpr.org/publications/the-economic-impact-of-equal-pay-by-state/>.

waiting for change, nor can families depending on their earnings. If you have any questions or I can provide further information, please feel free to contact me at (202) 728-7617 or Leticia Bustillos, Federal Policy Manager, at 202-785-7724.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Nielson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kate Nielson  
Director of Public Policy & Legal Advocacy  
American Association of University Women (AAUW)