January 5, 2015

Debra A. Carr  
Director, Division of Policy, Planning, and Program Development  
Office of Federal Contract Compliance Programs  
200 Constitution Avenue, NW, Room C-3325  
Washington, DC 20210


Dear Ms. Carr:

On behalf of the more than 170,000 members and supporters of the American Association of University Women, I am pleased to share AAUW’s comments on the Office of Federal Contract Compliance Programs’ (OFCCP) Notice of Proposed Rulemaking (NPRM) regarding the development and implementation of a compensation data collection tool. AAUW strongly supports the creation of the data collection tool – or “Equal Pay Report” – which will help to ensure that the over $450 billion in taxpayer dollars spent on federal contracts each year are awarded to law-abiding companies that do not engage in any form of pay discrimination.

Introduction
As OFCCP has recognized, women and people of color continue to face significant pay disparities in the United States. On average, women working full time, year round are paid only 78 cents for every dollar paid to men. African-American and Latino full-time, year-round workers overall are paid only 75 cents and 65 cents, respectively, for every dollar paid to white, non-Hispanic workers. African-American and Latina women are at a particular disadvantage: they earn only 64 cents and 56 cents for year-round, full-time work, respectively, for every dollar paid to white men. Women in every age group, at every level of educational achievement and in every industry are underpaid relative to their male counterparts. Indeed, among college-educated workers, AAUW’s Graduating to a Pay Gap controlled for factors known to affect earnings such as education and training, parenthood, and hours worked, and found that college-educated women still earn 7 percent less than men just one year out of college – even when they have the same major and occupation as their male counterparts. The troubling consistency and perniciousness of these statistics underscore the need for scrutiny of federal contractors’ pay practices.
Pay discrimination can be hard for individual employees to uncover on their own, so the vital task of proactively enforcing equal pay laws can be a particularly important role for civil rights enforcement agencies. The data collected via the proposed Equal Pay Report will provide a critical tool to OFCCP both in their provision of technical assistance to federal contractors and in their mission to ensure that equal pay laws are followed appropriately. OFCCP’s vital role in combating unlawful employment discrimination in the federal contracting workforce impacts the lives of millions of people, reaching at least 28 million employees, comprising nearly one quarter of the civilian workforce.

AAUW applauds OFCCP’s move to institute the Equal Pay Report and appreciates the care the Department has taken through the NPRM to strike a balance between the need for data to address compensation discrimination and the contracting community’s need for an efficient reporting mechanism that is not unduly burdensome. The data collection and reporting required by the proposed rule will encourage employers to assess their own compensation data, voluntarily address disparities and improve their practices. The Equal Pay Report also will enable OFCCP to identify disparities in compensation so that it can more effectively and efficiently select contractors for proactive technical assistance and closer scrutiny when necessary. Lastly, the proposed report will allow OFCCP to analyze trends in compensation practices across industries, helping to productively target research, technical assistance and legislative efforts directed towards the final goal – ending the gender pay gap.

With OFCCP’s objectives in mind, on behalf of AAUW I offer the following comments:

I. **OFFCP’s decisions about what data to collect in the Equal Pay Report should appropriately balance the needs of employees and employers.**

- **Collecting W-2 earnings and total hours worked will enable OFCCP to analyze the compensation data and assess and investigate disparities.** AAUW applauds OFCCP’s decision to collect W-2 earnings because they provide a more complete picture than the more limited Occupational Employment Statistics definition of compensation by including all taxable wages (minus pretax deductions). W-2 earnings provide information about certain benefits, overtime, shift differential pay, and other types of compensation. This information will help OFCCP obtain a more comprehensive view of compensation practices and pay disparities.

AAUW believes it is vital that once a contractor is selected for a compliance review, OFCCP continue its current practice of collecting and reviewing data in specific categories of compensation. Our understanding is that OFCCP currently collects information on bonuses, incentives, commissions, merit increases, locality pay and overtime during compliance reviews, and this level of data review should continue. OFCCP should also collect data on paid leave and paid sick time, which are important types of compensation that are often provided only to more highly-compensated professional employees within a firm. Collecting and analyzing information in these categories enables OFCCP to determine whether there are compensation disparities
within specific categories of pay that are not reflected in W-2 earnings as a whole.

A possible future improvement to the Equal Pay Report would be to collect summary data in additional related categories. These categories include average tenure and average number of hours worked, median starting or initial total compensation, average pay raises, average bonuses, the minimum and maximum salary, the standard deviation or variance of salary, and the number of workers by gender and race/ethnicity. This data would provide valuable context and help OFCCP account for hiring practices, small sample sizes, outliers, and other factors.

- **Reporting data by EEO-1 job categories by race, ethnicity, and sex in the Equal Pay Report will facilitate data collection.** EEO-1 job categories divide jobs into ten categories based on the average skill level, knowledge and responsibility involved in the position. We support OFCCP using EEO-1 job categories in its initial data collection to minimize burdens and promote efficiencies for employers. In addition, we applaud OFCCP’s decision to collect the data based on race, ethnicity, and sex. Discrimination often occurs across multiple characteristics, and obtaining the data this way will allow OFCCP to compare compensation information across categories to more accurately identify the basis of discriminatory practices.

At the compliance review stage, review of compensation data by Affirmative Action Plan (AAP) job groups is appropriate. AAP job groups are created based on similar job duties and responsibilities, as well as similar wages and similar opportunities for training, promotion, transfer, and other employment benefits. Because AAP job groups are based on more information than EEO-1 job categories, OFCCP can more accurately determine whether there are compensation disparities between employees in similar positions.

In addition to using the EEO-1 job categories, the rule would adopt the EEO-1 Report’s definition of “employee,” which includes part-time workers. At least one in five women ages 25 to 64 works part-time, compared with just one in ten men of comparable age, and women made up 64 percent of the part-time workforce in 2012. Including part-time workers is vital to understanding pay disparities, and we applaud OFCCP for taking this step. In addition, it is just as vital to collect information on temporary workers, which the EEO-1 Report’s definition of “employee” excludes. AAUW strongly urges OFCCP to consider including these employees in its initial data collection and in compliance reviews.

### II. Data should be collected from all contractors and subcontractors who are required to submit EEO-1 reports because the interests of the government in identifying compensation discrimination and the interests of employees in fair compensation are the same regardless of the employer’s size.

- **OFCCP should collect Equal Pay Report data from contractors and subcontractors with 50 or more employees, rather than setting a higher employer-size threshold.**

Via the NPRM, OFCCP proposes to collect Equal Pay Report data from prime
contractors and first tier subcontractors that are required to file an EEO-1 report, have more than 100 employees and a federal contract, subcontract or purchase order amounting to $50,000 or more. AAUW believes the 100-employee size threshold is too high. Contractors must file EEO-1 reports if they have at least 50 employees and a contract of $50,000 or more – varying these thresholds is not only unnecessary but could also cause confusion for employers. Utilizing the same 50-employee threshold would not significantly burden smaller contractors because these contractors are already required to maintain compensation data for the purpose of compliance reviews. The Equal Pay Report would simply require these contractors to submit this data as a matter of course. Conversely, setting a higher threshold for the Equal Pay Report means that smaller contractors will not be routinely screened for discriminatory pay practices and their data will not be included in analyzing trends across industries. AAUW does not believe the federal government should subsidize possible pay discrimination because of an arbitrary 100-employee threshold, nor should employees at such companies forfeit their civil rights for such a reason.

- **Construction contractors should be required to submit the Equal Pay Report because the same goals are served as by requiring supply and service contractors to submit compensation data.** Under the proposed rule, construction contractors are required to submit the Equal Pay Report based on the same requirements as for other contractors – if they have contracts of $50,000 or more and more than 100 employees. AAUW agrees that construction contractors should be covered by the rule. However, in the NPRM, OFCCP explains that many construction contractors are not likely to meet these thresholds, as 99 percent of construction firms have fewer than 100 employees. For this reason, we again urge OFCCP to require all contractors with 50 or more employees to submit the Equal Pay Report. In addition to capturing other smaller contractors, this would bring more construction contractors under the proposed rule’s coverage.

III. OFCCP should collect and disseminate the data in a timely manner to better enable the contracting community to voluntarily monitor and improve pay practices.

- **OFCCP’s plan to publish collected data, and to use the data to analyze compensation trends by industry, will assist employers in complying with equal pay requirements.** Under the NPRM, OFCCP proposes publishing aggregate information based on the collected compensation data, such as ranges or averages by industry or labor market. It would use this data to develop objective industry-based compensation standards, with the goal that employers who fall below the industry average might voluntarily change their employment policies and practices in reliance on this data. The industry-based standards would include the total number of employees in each EEO-1 category based on all the data submitted by contractors in a particular industry group, the industry group’s total W-2 pay and total hours worked, and the mean hourly wage in the industry group. This information would be disaggregated and calculated separately by sex, race and ethnicity. AAUW strongly supports OFCCP publishing this data and using it for these purposes. Disclosure should lead to better outcomes for all.
• **OFCCP should implement the Equal Pay Report without delay.** In the interest of speedy implementation necessary to prevent and correct pay discrimination among federal contractors, AAUW does not think it is necessary for OFCCP to pilot the Equal Pay Report. OFCCP’s previous experience collecting the Equal Opportunity Survey, a more complex data collection tool than the Equal Pay Report, clearly reduces the need for such further testing. OFCCP should move forward with the Equal Pay Report immediately. Refinements or improvements can be made after the tool has been established.

**Conclusion**

AAUW commends President Barack Obama for his administration’s ongoing efforts to ensure fair pay for all workers, including his signing of this executive order and the U.S. Department of Labor for its implementation. The Executive Order and this subsequent rulemaking will benefit upwards of 28 million workers, representing nearly a quarter of the national workplace and billions of dollars in federal contract funds that will no longer be able to be used to underwrite or subsidize pay discrimination.

AAUW appreciates this opportunity to submit comments on a matter so critical to our membership and working families across the country. We strongly support the development and swift implementation of the Equal Pay Report and believe that this action will significantly advance OFCCP’s efforts to combat pay discrimination. If you have any questions or I can provide further information, please feel free to contact me at 202-785-7720.

Sincerely,

Lisa M. Maatz
Vice President of Government Relations

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2. Ibid.
3. Ibid.