November 29, 2016

General Services Administration
Regulatory Secretariat Division (MVCB)
Attn: Ms. Flowers
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Washington, DC 20405-0001


Thank you for the opportunity to provide comments on the proposed interim rule amending the Federal Acquisition Regulation (“FAR”) to implement both Executive Order 13665, which requires that certain federal contractors allow employees and applicants to inquire about, discuss, and disclose compensation information without fear of retribution or penalty, and the final rule implementing that Executive Order subsequently issued by the Department of Labor’s Office of Federal Contract and Compliance Programs.\(^1\) The National Women’s Law Center has worked for over 40 years to advance and protect women’s equality and opportunity—with a focus on women’s employment, education, income security, health, and reproductive rights—and has long worked to remove barriers to equal treatment of women in the workplace, including by ending pay discrimination against women. We join the undersigned organizations committed to workplace equality to express our support for the proposed interim rule, which will help prevent and remedy pay discrimination among millions of workers. We agree that urgent and compelling reasons exist to promulgate this interim rule, which will allow these important protections to be included in solicitations and contracts immediately.


Women working full time, year round continue to confront a stark wage gap, typically making only 80 percent of the median annual wages made by men working full time, year round.\(^2\) The wage gap is even worse when we look specifically at women of color: African American women typically are paid only 63 percent, Native American women only 58 percent, and Latinas only 54 percent of the wages typically paid to white, non-Hispanic men for full-time, year-round work.\(^3\) Although Asian American women overall make 85 percent of the median annual wages of white, non-Hispanic men, the wage gap is substantially wider for some

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\(^3\)Id.
subgroups of Asian American women. For example, Vietnamese American women typically make just 62 percent of what white, non-Hispanic men make, and Indian American women only 73 percent.\(^4\) This wage gap has remained stagnant for nearly a decade.\(^5\) The result is that a woman working full time, year round stands to lose $418,800 over a 40-year period due to the wage gap.\(^6\) To make up this lifetime wage gap, a woman would have to work ten years longer than her male counterpart.\(^7\)

A range of factors contributes to the pay gap, including pay discrimination between employees of different genders who are doing the same job.\(^8\) Women are still paid less than men in nearly every occupation,\(^9\) and studies show that even controlling for race, region, unionization status, education, experience, occupation, and industry leaves 38 percent of the pay gap unexplained.\(^10\) Conscious and unconscious stereotypes about working women remain a driver of this unexplained gap.\(^11\)

Yet pay discrimination remains difficult to detect in the first instance. Because pay often is cloaked in secrecy, when a discriminatory salary decision is made, it is seldom as obvious to an affected employee as a demotion, a termination, or a denial of a promotion.\(^12\) Pay secrecy policies and practices perpetuate pay discrimination by making it difficult for individuals to


\(^5\) THE WAGE GAP IS STAGNANT, supra note 2.


\(^7\) Id.


\(^10\) Blau & Kahn, supra note 8.


\(^12\) As Justice Ginsburg has noted:

'Pay disparities often occur, as they did in Ledbetter’s case, in small increments; cause to suspect that discrimination is at work develops only over time. Comparative pay information, moreover, is often hidden from the employee’s view. Employers may keep under wraps the pay differentials maintained among supervisors, no less the reasons for those differentials. Small initial discrepancies may not be seen as meet for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves. Pay disparities are thus significantly different from adverse actions “such as termination, failure to promote, …or refusal to hire,” all involving fully communicated discrete acts, “easy to identify” as discriminatory.'

learn about unlawful pay disparities. In fact, about 60 percent of workers in the private sector
nationally are either forbidden or strongly discouraged from discussing their pay with their
colleagues. 13 When employees face penalties or termination for merely inquiring about or
discussing their pay, they face significant obstacles to gathering the information that reveals
pay discrimination, which undermines their ability to challenge such discrimination. By
making it nearly impossible for many women to detect pay disparities, pay secrecy policies
and practices operate as a fundamental roadblock to the operation of both Title VII and
Executive Order 11246. By eliminating the secrecy and fear surrounding inquiring about,
discussing, or disclosing compensation information, the proposed interim rule will help
employees discover unlawful wage disparities and take steps to address them.

The significantly narrower wage gap in the public sector – where pay secrecy rules are
uncommon – is evidence of the difference that transparency makes. Approximately sixty
percent of employees in the private sector report that discussing their wages is either
prohibited or discouraged, compared to eleven to eighteen percent of public sector
employees.14 And while the gender wage gap for full time workers, based on median
earnings, is twenty percent, in the federal government, where pay rates and scales are
transparent and publicly available, the gender wage gap is thirteen percent.15

II. The Proposed Interim Rule Will Benefit Businesses, Individual Workers and the
Economy.

The proposed interim rule provides a uniform pay transparency policy for federal contractors
that will promote efficient contracting, and help ensure that companies that have the privilege
of doing business with the federal government also abide by its laws. Federal contractors who
engage in pay discrimination, or employ policies and practices that penalize workers for
discussing compensation, may be subject to enforcement actions and litigation by employees,
increasing the risk of disruption, delay, and increased expense. The proposed interim rule will
help federal contractors avoid discrimination by providing incentives to proactively identify,
investigate, and remedy wage disparities within their workforces, reducing the need for costly
litigation. And allowing workers to discuss their pay without fear will motivate employers to
avoid perpetuating past discrimination in their pay-setting practices. Moreover, shareholders
and potential investors increasingly 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.16

13 INST. FOR WOMEN’S POLICY RESEARCH, PAY SECRECY AND WAGE DISCRIMINATION (Jan. 2014), available at
14 Id. Sixty-two percent of women and 60 percent of men working for private employers report that wage and
salary information is secret, while 11 percent of men in the public sector and 18 percent of women in the public
sector report that wage discussion is discouraged or prohibited.
15 U.S. OFFICE OF PERSONNEL MGMT’, GOVERNMENTWIDE STRATEGY ON ADVANCING PAY EQUALITY IN THE
leave/reference-materials/reports/governmentwide-strategy-on-advancing-pay-equality-in-the-federal-
government.pdf (gender wage gap was 13 percent for all “white collar” workers (all pay plans) and 11 percent
for workers on the GS scale only).
Pay secrecy policies are bad for business not only because they give cover to discrimination, but also because they lead to poorer performance, employee dissatisfaction and lower motivation, mistrust of management, and an inefficient market. Competitive — and fair — pay is critical for recruiting and retaining a diverse workforce and high performers, particularly for younger women workers. Studies have shown that increased pay transparency creates work environments where employees are more likely to believe they are paid fairly, and thus are more engaged and productive.

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. 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. Increased wages would augment these workers’...
consumer spending power and benefit businesses and the economy. Another 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.

The proposed interim rule will be an effective measure to combat pay discrimination and close the wage gap. It gives federal contractors the tools to self-correct and avoid discrimination, gives employees the ability to discover and address pay inequities, and improves the morale and productivity of the workplace. We urge the swift adoption of the rule without any unnecessary delay.

Please do not hesitate to contact Emily J. Martin (emartin@nwlc.org) or Maya Raghu (mraghu@nwlc.org) if we can provide further information.

Sincerely,

9to5, National Association of Working Women
AFL-CIO
American Association of University Women (AAUW)
American Civil Liberties Union
Catalyst
Equal Pay Today!
Equal Rights Advocates
Feminist Majority
Institute for Science and Human Values
Labor Council for Latin American Advancement
Make it Work
MomsRising
National Advocacy Center of the Sisters of the Good Shepherd
National Asian Pacific American Women’s Forum
National Council of Jewish Women
National Employment Lawyers Association
National Organization for Women
National Partnership for Women & Families

25 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).
With the law on your side, great things are possible.