



April 13, 2017

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John M. Mulvaney, Director
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

**Re: Opposition to Reopening Review of the Equal Employment Opportunity
Commission's Employment Information (EEO-1) Report (OMB Control Number 3046-
0007)**

Dear Director Mulvaney:

On behalf of the Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we write to strongly oppose the recent requests by the U.S. Chamber of Commerce (Chamber) and the Equal Employment Advisory Council (EEAC) that the Office of Management and Budget (OMB) revoke approval of the previously approved Equal Employment Opportunity Commission (EEOC) data collection by means of the Employer Information Report (EEO-1 Form). This collection of pay data by sex, race, and ethnicity 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.

Neither the Chamber nor the EEAC provides an adequate basis for reopening review of this data collection. Current federal rules require the collection of information by means of the EEO-1 Form.ⁱ OMB previously approved the EEO-1 Form revision on September 29, 2016, for a term of three years.ⁱⁱ Because the EEO-1 Form is a previously approved data collection pursuant to federal rules, under the Paperwork Reduction Act, OMB may only review this collection of information after consultation with the EEOC, when relevant circumstances have changed or if the burden estimates provided by the EEOC at the time of its initial submission to OMB were materially in error.ⁱⁱⁱ This standard has not been met. No change in circumstances justifies reopening review of the EEO-1 Form, nor has any material error been shown in the burden estimates previously provided by the EEOC in support of the revision, nor has OMB consulted with EEOC about this matter.

Women working full time, year-round are typically paid 80 cents for every dollar paid by their male counterparts, and when we compare women of color to white, non-Hispanic men, the wage gaps are even larger. African American women and Latinas typically make only 63 cents and 54 cents, respectively, and Native American women make only 58 percent, for every dollar paid to white, non-Hispanic men for full-time, year-round work.

Women are still paid less than men in nearly every occupation,^{iv} and studies show that even controlling for race, region, unionization status, education, experience, occupation, and industry leaves 38 percent of the pay gap unexplained.^v Men of color experience similar gaps compared to white, non-Hispanic men. For every dollar earned by White men, African American men earn 72 cents and Hispanic men earn 62 cents.

When employees are paid less because of their sex, race, or ethnicity, they often have no idea they are being discriminated against. 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.^{vi} Moreover, the most recent survey data available indicates about 60 percent of workers in the private sector are either forbidden or strongly discouraged from discussing their pay with their colleagues.^{vii} As a result, employees face significant obstacles in gathering the information that would indicate they have experienced pay discrimination, which undermines their ability to challenge such discrimination. Consequently, government enforcement and employer self-evaluation and self-correction are critical to combat compensation discrimination. The EEO-1 Form revisions were properly designed to facilitate both.

The revised EEO-1 Report will provide EEOC a critical tool for focusing investigatory resources on identifying pay discrimination. It will allow the EEOC to see which employers have racial, ethnic, 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, and in the same year, the EEOC will be able to tell which employers' pay practices depart from the norm and to investigate possible pay discrimination more efficiently. While the EEO-1 Form will never be the basis of a finding of discrimination standing alone, it provides important information to the EEOC as to where to direct its resources. Again, this is particularly important for enforcement of pay discrimination laws given that so many victims of pay discrimination have no idea they are being paid less than their counterparts, limiting their ability to challenge discrimination without the assistance of the EEOC.

In addition, both the process of responding to the data collection tool and the more effective 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. 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, the revised EEO-1 Report will increase voluntary employer compliance with anti-discrimination laws. 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.

In conclusion, there is no basis for OMB to reopen its review of the revised EEO-1 Form. The pay data collection is a critical equal pay initiative to address the persistent problem of race, sex, or ethnicity discrimination in compensation that shortchanges working people and their families. There is no basis for



revisiting this important and much needed measure. Please contact June Zeitlin, Director, Human Rights Policy at (202) 263-2852 or at zeitlin@civilrights.org if we can be of further assistance.

Sincerely,

Wade Henderson
President & CEO

Nancy Zirkin
Executive Vice President

ⁱ 29 C.F.R. § 1602.7

ⁱⁱ <https://www.reginfo.gov/public/do/DownloadNOA?requestID=275763>

ⁱⁱⁱ 5 C.F.R. § 1320.12(i). In arguing that OMB has the authority to rescind the revised EEO-1 Form under the Paperwork Reduction Act, the Chamber cites the “broad remedial powers” under 5 C.F.R. § 1320.10(g), which states that “[g]or good cause, after consultation with the agency, OMB may stay the effectiveness of its prior approval of any collection of information that is not specifically required by agency rule.” But the EEO-1 Form is specifically required by agency rule, 29 C.F.R. § 1602.7, rendering § 1320.10(g) inapplicable.

^{iv} Hegewisch, A. & Matite, M., *The Gender Wage Gap by Occupation*, INST. FOR WOMEN’S POLICY RESEARCH (2013), available at <http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2>

^v 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.pdf>.

^{vi} As Justice Ginsburg has noted, “Comparative pay information . . . 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 meat 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. “

Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007) (Ginsburg, J. dissenting).

^{vii} Institute 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