



November 8, 2019

The Honorable Janet Dhillon
Chair
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

Dear Chair Dhillon:

The Leadership Conference on Civil and Human Rights, together with 45 organizations committed to protecting the civil rights of all people and promoting fair and equitable workplaces, write to express our concerns regarding the Equal Employment Opportunity Commission's (EEOC) commitment to meaningfully examine the 2017 and 2018 EEO-1 Component 2 pay data, which the commission is collecting pursuant to a court order. Given the importance of this data to detecting discrimination and promoting equal pay, we urge the EEOC to ensure that it collects complete data sets for 2017 and 2018 and then fully analyze and use this data to identify potential pay disparities along lines of race, ethnicity, and gender within certain employers and industries, and to assist in federal civil rights enforcement.

Although our organizations oppose the EEOC's intention to stop collecting Component 2 data going forward, this letter focuses solely on the use of the 2017 and 2018 data, which is not addressed in the EEOC's notice published in the Federal Register on September 12, 2019 ("September 2019 Notice").

Pay inequality continues to be a pressing problem for women and people of color despite federal laws protecting against pay discrimination by race, ethnicity, and gender. Overall, a woman working full-time, year-round in the United States is paid only 82 cents for every dollar paid to a man. When examined by race, women of color face even greater disparities. Black women, for example, are paid just 62 cents for every dollar paid to a white man. Latina women are paid only 55 cents, and some Asian American and Pacific Islander women are paid as low as 50 cents for every dollar paid to a white man. Black, Latina, and AAPI women are also paid less than Black, Latino, and AAPI men.ⁱ 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.ⁱⁱ

Pay discrimination persists, in part, because it is so difficult to detect. The EEO-1 Component 2 data can help provide the EEOC with information to assist in identifying trends in pay disparities and future enforcement efforts, but only if the EEOC collects complete data and subjects that data to thorough review and analysis.

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Anti-Defamation League
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The EEOC, however, indicated in its September 2019 notice – published before it completed the 2017 and 2018 data collection – that Component 2 data had “unproven utility,” suggesting that the EEOC may be predisposed to discount the data collected.

We are disappointed that the EEOC is collecting this data only at the behest of a federal court order and has repeatedly tried to evade or curtail its obligation to collect a complete data set. Although the Office of Management and Budget (OMB) approved the Component 2 pay data collection in 2016 and employers were scheduled to start reporting in March 2018, OMB abruptly stayed the data collection in August 2017 without any public notice or input from stakeholders, prompting the National Women’s Law Center and the Labor Council for Latin American Advancement to sue OMB in federal court. While OMB’s stay required EEOC to submit a new information collection package for the EEO-1 form to OMB for review addressing OMB’s purported concerns with the particular approach taken in the pay data collection, EEOC failed to do so and apparently did not undertake any further analysis regarding how it might collect this pay data consistent with OMB’s purported concerns. In its order dated March 4, 2019, the district court found that OMB “failed to demonstrate good cause for the stay” and that it provided “inadequate reasoning” for its decision, which “conflicted with its prior findings that the EEOC’s data collection had practical utility.”ⁱⁱⁱ The court found that OMB’s decision was arbitrary and capricious and then ordered the agency to initiate a collection encompassing two years of pay data promptly. Just this past October, the EEOC requested that the district court issue an order determining that the agency had completed the Component 2 data collection based on the percentage of employers who had provided this data. The court, however, denied the motion, finding that the EEOC had not yet collected a complete data set.^{iv}

The EEOC must ensure that it has collected complete data sets for 2017 and 2018 in order to make certain that the agency has meaningful data to analyze and assess. We therefore urge the EEOC to provide ongoing technical assistance to employers who must comply with the EEO-1 Component 2 filing requirements until the district court deems the collection complete. In addition to technical assistance, the EEOC should conduct affirmative outreach to employers who have not yet complied with the filing requirements to remind them of their obligation to report the Component 2 data and the consequences for failure to comply. The EEOC has an affirmative duty to ensure that employers meet the requirements for filing reports required by the commission. We urge that the EEOC do all it can to obtain complete data, including taking steps to compel compliance when appropriate.^v

Given the context in which the Component 2 data collection is occurring, however, and the agency’s seeming hostility to the data collection itself, our organizations remain concerned that the EEOC will not prioritize rigorous and objective analysis of the data that it does collect. This concern is only magnified by the September 2019 notice, from the EEOC itself, announcing its intention to stop collecting Component 2 data beyond the 2017 and 2018 period, a decision the agency made without first analyzing, or even fully collecting, the 2017 and 2018 data sets.

It is crucial that the EEOC conduct a thorough analysis of complete data sets. The EEOC should also consider engaging relevant stakeholders, including civil rights and worker advocates, labor

economists, and academic researchers, in determining how its Office of Enterprise Data and Analytics conducts this analysis. In addition, in order to fully reap the benefits of the data, we urge the EEOC to provide data sets to appropriate researchers and to disseminate aggregate data to the public.

Data collection and analysis is critical to evaluate progress on closing the pay gap, to ensure proper enforcement of federal civil rights laws, and to identify patterns and trends that could help shape proactive measures to prevent pay discrimination. We urge the EEOC to conduct meaningful and thorough analyses of the 2017 and 2018 Component 2 pay data and fully utilize the data to fulfill its mission to protect the public from unlawful employment discrimination. If you have any questions, please contact Gaylynn Burroughs, Senior Policy Counsel at The Leadership Conference on Civil and Human Rights, at (202) 466-3311 or burroughs@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Association of University Women
American Civil Liberties Union
American Federation of State, County and Municipal Employees
AnitaB.org
Asian Pacific American Labor Alliance, AFL-CIO
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Center for American Progress
Clearinghouse on Women's Issues
CLUW RI
Coalition of Labor Union Women
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Equal Pay Today
Equal Rights Advocates
Feminist Majority Foundation
Futures Without Violence
Justice for Migrant Women
Labor Council for Latin American Advancement (LCLAA)
Lawyers' Committee for Civil Rights Under Law
Legal Aid at Work
Maine Women's Lobby
Methodist Federation for Social Action
Missouri Coalition Labor Union Chapter
MomsRising
NAACP
National Advocacy Center of the Sisters of the Good Shepherd
National Asian Pacific American Women's Forum (NAPAWF)
National Blacks In Government, Inc.

National Center for Transgender Equality
National Council of Jewish Women
National Employment Law Project
National Employment Lawyers Association
National Organization for Women
National Partnership for Women & Families
NETWORK Lobby for Catholic Social Justice
Restaurants Opportunities Centers United
Shriver Center on Poverty Law
The WAGE Project, Inc.
The Women's Law Center of Maryland
Union for Reform Judaism
United State of Women
Women Employed
Women's Law Project
Workplace Fairness
YWCA USA
9to5

Cc: Victoria Lipnic, Commissioner
Charlotte Burrows, Commissioner
Sharon Gustafson, General Counsel
Chris Haffer, Chief Data Officer, Office of Enterprise Data and Analytics

ⁱ Ariane Hegewisch & Adiam Tesfaselassie, Institute for Policy Research, *The Gender Wage Gap: 2018; Earnings Differences by Gender, Race, and Ethnicity* (Sept. 11, 2019), <https://iwpr.org/publications/annual-gender-wage-gap-2018/>; Morgan Harwood, National Women's Law Center, *Equal Pay for Asian American and Pacific Islander Women* (Mar. 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/03/Asian-Women-Equal-Pay-3.7.19-v2.pdf>.

ⁱⁱ National Women's Law Center, *The Lifetime Wage Gap, State by State* (Oct. 10, 2019), <https://nwlc.org/resources/the-lifetime-wage-gap-state-by-state/>.

ⁱⁱⁱ *Nat'l Women's Law Ctr. v. Office of Mgmt & Budget*, Civ. Action No. 17-cv-2458, at 33-35 (D.D.C. Mar. 4, 2019), available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/03/EEO-1-Opinion.pdf>.

^{iv} In April 2019, the District Court determined that the Component 2 data collection would not be deemed complete “until the percentage of EEO-1 reporters that have submitted their required EEO-1 Component 2 reports equals or exceeds the mean percentage of EEO-1 reporters that actually submitted EEO-1 reports in each of the past four reporting years.” Although District Court acknowledged the EEOC’s representation that as of October 28, 2019, 81.1 percent of eligible filers submitted EEO-1 Component data for 2017 and 81.5 percent submitted data for 2018, a percentage greater than the mean percentage of reports submitted at the deadline for the 2014, 2106, and 2017 collection years, the court noted that it has been the practice of the EEOC to continue to accept reports beyond the deadline. Using the actual number of reports submitted as the baseline, the mean percentage of reporters to submit reports in those years was 98.3 percent. The court therefore found that the EEOC had “not even collected the average response rate it calculates for reporters who submitted data within the grade period (rather than at the deadline) in previous years,” and ordered the agency 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).

^v See 29 C.F.R. § 1602.9.