



April 1, 2016

Bernadette Wilson, Acting Executive Officer
Executive Secretariat
Equal Employment Opportunity Commission
131 M St., N.E.
Washington, DC 20507

VIA Federal eRulemaking Portal
<https://www.regulations.gov>

Re: Proposed Revision of the Employer Information Report (EEO-1), FR Docket Number 2016-01544, Docket ID EEOC-2016-0002

Dear Ms. Wilson:

The National Employment Lawyers Association (NELA) respectfully submits the following comments in support of the **Proposed Revision of the Employer Information Report (EEO-1), FR Docket Number 2016-01544, Docket ID EEOC-2016-0002.**

NELA is the largest professional membership organization in the country of lawyers who represent employees in labor, employment, wage and hour, and civil rights disputes. NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. Ending discrimination and achieving equal pay for women in the workplace are among our top priorities. Thus, NELA has an interest in the proposed revision of the Employer Information Report referenced above.

NELA supports the proposed revision of the Employer Information Report (EEO-1) promulgated by the Equal Employment Opportunity Commission (EEOC) to collect pay data from private employers and federal contractors. Collecting pay data will help identify pay discrimination, improve enforcement of pay discrimination laws, and increase voluntary employer compliance with those laws. Collecting pay data as part of an existing data collection will also reduce the burden on employers, improve coordination between EEOC and the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (DOL), and avoid duplication of efforts.

The Proposal Will Help Identify And Address Pay Discrimination, A Crucial Factor In The Gender Wage Gap.

Pay data collected through the revised EEO-1 will play an important role in uncovering and combating pay discrimination, which is crucial to efforts to close the gender wage gap. Women working full time, year round typically make only 79 percent of the median annual wages made by men working full time, year round.¹ The wage gap is even worse for women of color: African American women and Latinas typically make only 60 percent and 55 percent, respectively,² and Native American women make only 59 percent,³ of the wages white, non-Hispanic men typically make for full-time, year-round work. This wage gap has remained stagnant for nearly a decade.⁴ Women are still paid less than men in nearly every occupation.⁵ Although pay discrimination is widespread, it remains difficult to detect, and therefore difficult to challenge. About 60 percent of workers in the private sector are either contractually forbidden or strongly discouraged from discussing their pay with their colleagues.⁶ Discriminatory pay decisions may not be obvious to an affected employee, and commonly employees are discouraged from gathering information that would potentially reveal pay discrimination. Routinely collecting compensation data from employers will help EEOC and OFCCP more effectively enforce equal pay laws, and encourage employers to review their own practices and correct any discriminatory wage disparities proactively.

Using A Comprehensive Existing Measure Of Compensation Will Help Identify Pay Discrimination.

NELA supports requiring employers to report total W-2 earnings, which includes pay that exceeds base salary, in order to detect disparities in worker compensation better. If employers only report employees' base rate of pay or base salary, EEOC and OFCCP will not capture information about increasingly important compensation such as overtime pay, severance pay, shift differentials, stock options, commissions and bonuses. These forms of compensation can account for a significant part of a worker's take-home pay, yet they are often discretionary, and therefore more susceptible to discriminatory practices. For example, even when base salaries between comparable male and female workers are equal in a given company, there could be a significant disparity in overall compensation based on the discriminatory allocation of bonuses, commissions and stock options.⁷ Studies show that men receive stock options and bonuses at a

¹ NAT'L WOMEN'S LAW CTR., THE WAGE GAP IS STAGNANT FOR NEARLY A DECADE 1 (2015), available at http://nwlc.org/wp-content/uploads/2015/08/wage_gap_is_stagnant_9.23.15.pdf, <http://nwlc.org/resources/wage-gap-stagnant-nearly-decade/> [THE WAGE GAP IS STAGNANT].

² *Id.*

³ NAT'L WOMEN'S LAW CTR., THE WAGE GAP BY STATE FOR NATIVE AMERICAN WOMEN (2015), available at <http://nwlc.org/resources/equal-pay-for-native-american-women/>.

⁴ THE WAGE GAP IS STAGNANT at 1.

⁵ 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>.

⁶ INST. 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.

⁷ See MERCER, GENDER EQUITY REPORT (Nov. 2015), available at https://www.imercer.com/uploads/Aust/pdfs/Marketing/gender_pay_executive_summary.pdf (survey of Australian companies finding that women receive lower variable reward/incentive pay despite receiving the same performance ratings as their male counterparts; males who only partially met their objectives received bonuses that were 35 percent larger (as a percentage of employment cost) than their female counterparts).

rate twenty to thirty times than of women.⁸ Studies also indicate that compensation for men consists of 85 percent salary and 15 percent stock options, profit sharing, and other bonuses, while compensation for women consists of 91 percent salary and 9 percent stock options, profit sharing, and other bonuses.⁹ Accordingly, NELA supports using a tool like the W-2 that collects data on as many forms of compensation as possible. Moreover, reporting W-2 earnings and hours worked will not be unduly burdensome for employers.

Making Aggregate Compensation Data Available To The Public Will Help Reduce Pay Disparities.

NELA strongly supports the plan to make aggregate data gathered from the revised EEO-1 reports available to the public. Workplace equality advocates can use the data to more efficiently direct their own enforcement, outreach, and public education activities to industries or regions where pay disparities are most egregious. Individual employees can find out if they are working in an industry or region where they are more at risk of experiencing pay discrimination, investigate further to ensure that they are being treated fairly, and negotiate fair pay. Making data public will also give employers an incentive to be proactive in reviewing their current pay practices to ensure compliance with the law.

The Proposal Minimizes The Burden On Employers.

The proposal to collect pay information through the EEO-1 and to share it across agencies minimizes the burden for employers, and avoids duplication of effort or wasted costs. Employers who are already required to report race and gender data under the EEO-1 are familiar with the form, the job categories, and reporting requirements. Moreover, federal law already requires employers to maintain and generate the information in W-2 forms that will be required under the proposal, and this information is readily available to most employers in their payroll software systems; federal law also requires employers to keep records of hours worked for non-exempt employees.

Pay Data Collection Should Be Further Strengthened.

The proposed compensation data collection will enhance enforcement of antidiscrimination laws. NELA urges EEOC to strengthen the effectiveness of the pay data collection further in a few key ways:

- Extend the proposal to cover smaller federal contractors that have between 50 to 99 employees and are otherwise required to submit the EEO-1. Recipients of public funds, regardless of their size, should not discriminate in pay practices.
- Require employers to report their pay data using additional, narrower pay bands to capture data on pay disparities for employees earning more than \$208,000. Data show

⁸ Alyssa Lebeau, *The New Workplace Woman: "Are We There Yet?,"* BUSINESS WOMAN, Fall 2001.

⁹ *Id.*

that women up and down the income scale experience pay gaps compared to their male counterparts, including in highly paid roles such as attorneys, executives, and surgeons.¹⁰

- Move forward in revising the EEO-5 form to collect compensation data from public elementary and secondary school districts and to update the EEO-4 form to collect compensation data from state and local governments.

NELA applauds EEOC for its continued leadership on equal pay. We strongly support the proposed revisions to the EEO-1 and urge their swift adoption and implementation. The powerful enforcement tool proposed by EEOC will make a real difference in closing the pay gaps that have shortchanged women for far too long.

Respectfully submitted,



Terisa E. Chaw
Executive Director

¹⁰ U.S. CENSUS BUREAU, 2014 AMERICAN COMMUNITY SURVEY, Table 1 (Full-Time, Year-Round Workers and Median Earnings in the Past 12 Months by Sex and Detailed Occupation: 2014) (2016), *available at* http://www.census.gov/people/io/publications/table_packages.html?eml=gd&utm_medium=email&utm_source=gov_delivery.