



August 15, 2016
Joseph B. Nye, Policy Analyst
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
Washington, D.C. 20503

Re: Agency Information Collection Activities; Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO-1), OMB Control Number 3046-0007, Docket ID EEOC-2016-0002-0340

Dear Mr. Nye:

The National Employment Lawyers Association (NELA) respectfully submits the following comments in support of the Proposed EEOC Revision of the Employer Information Report (EEO-1) OMB Control Number 3046-0007, Docket ID EEOC-2016-0002-0340.

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 Equal Employment Opportunity Commission's (EEOC) proposed revision of the Employer Information Report (EEO-1) to collect pay data from private employers and federal contractors. The proposed collection of pay data 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. Collecting pay data as part of an existing instrument such as the EEO-1, particularly in light of the changes proposed in the Notice of Submission for OMB Review, Final Comment Request ("30-Day Notice"), will also reduce the burden on employers and avoid duplicative or unnecessary efforts and costs. We commend EEOC for its efforts to address employer concerns and urge the swift approval and implementation of the proposed revisions.

I. The Proposed EEO-1 Data Collection Will Be A Critical Tool In Helping To Identify And Address Pay Discrimination, A Crucial Driver Of The Gender Pay Gap.

Pay data collected through the revised EEO-1 will play an important role in uncovering and combating pay discrimination, which is a crucial factor in the gender wage gap. Women working full-time, year-round continue to confront a stark wage gap, typically making only 79 percent of the median annual wages made by men working full-time, year-round. The wage gap is even worse when we look specifically at wage data for women of color. African American women are typically paid only 60 percent, Latinas only 55 percent, and Native American women only 59 percent of the wages typically paid to white, non-Hispanic men for full-time, year-round work.¹ The wage gap has remained stagnant for nearly a decade.² The overall wage gap translates into \$10,762 less in median annual earnings for women and the families they support.³ The result is that a woman working full-time, year-round stands to lose \$430,480 over a 40-year period due to the wage gap.⁴ To make up this lifetime wage gap, a woman would have to work more than eleven years longer than her male counterpart.⁵

While occupational segregation is one cause of the wage gap, even when women and men work in the same occupation, women generally are paid less than men.⁶ Studies show that controlling for race, region, unionization status, education, experience, occupation, and industry still leaves 38 percent of the pay gap unexplained.⁷ Discrimination is one cause of this portion of the pay gap, and it persists because pay discrimination remains difficult to detect in the first instance. Because individuals typically have limited information about the compensation their coworkers receive, discriminatory pay decisions frequently will not be obvious to an affected employee. Indeed, about 60 percent of workers in the private sector are either contractually forbidden or strongly discouraged from discussing their pay with their colleagues.⁸ As a result, employees are often unable to challenge pay discrimination. Collecting compensation data from employers will help both EEOC and the Office of Federal Contract Compliance Programs of the Department of Labor target their limited enforcement resources, greatly enhancing the effectiveness and efficiency of pay discrimination enforcement efforts.

¹ NAT'L WOMEN'S LAW CTR., THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO (Apr. 2016), available at <https://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/> [THE WAGE GAP: THE WHO].

² NAT'L WOMEN'S LAW CTR., THE WAGE GAP IS STAGNANT FOR NEARLY A DECADE 1 (Sept. 2015), available at <http://nwlc.org/resources/wage-gap-stagnant-nearly-decade/> [THE WAGE GAP IS STAGNANT].

³ THE WAGE GAP: THE WHO, *supra* note 1.

⁴ NAT'L WOMEN'S LAW CTR., THE LIFETIME WAGE GAP BY STATE FOR WOMEN OVERALL (2014) (Apr. 2016), available at <https://nwlc.org/resources/the-lifetime-wage-gap-by-state-for-women-overall-2014/> [THE LIFETIME WAGE GAP BY STATE]. Lifetime wage gaps for women of color are significantly larger: African American women lose \$877,480, Native American women \$883,040; and Latinas \$1,007,080. NAT'L WOMEN'S LAW CTR., THE LIFETIME WAGE GAP, STATE BY STATE (Apr. 2016), available at <https://nwlc.org/resources/the-lifetime-wage-gap-state-by-state/>.

⁵ THE LIFETIME WAGE GAP BY STATE, *supra* note 4.

⁶ Schieder, S. & Gould, E., "Women's work" and the gender pay gap 3, ECONOMIC POLICY INST. (July 2016), available at <http://www.epi.org/publication/womens-work-and-the-gender-pay-gap-how-discrimination-societal-norms-and-other-forces-affect-womens-occupational-choices-and-their-pay/>.

⁷ 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>.

⁸ 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.

The proposed pay data collection also will help uncover other forms of gender discrimination that can contribute to compensation disparities. Bias and discrimination, whether overt or implicit, can impact employer decisions at critical points in the employment relationship, including recruitment, hiring, performance evaluations and promotions, allocation of assignments and opportunities, and opportunities for advancement and leadership development. Discriminatory decisions made at each of these junctures not only create pay disparities, but perpetuate and magnify them over time. Stereotypes about the needs, abilities, and priorities of women, particularly those with families and caregiving responsibilities, as well as assumptions that only men are primary family breadwinners, contribute to women being denied promotions, assignments, or other opportunities that would lead to career-track, high paying jobs. In addition, harassment that pushes women out of male-dominated, highly paid jobs, and deters other women from seeking those positions, may result in pay gaps that will be reflected in the proposed data collection. Thus, collecting compensation data could help uncover other manifestations of gender discrimination and allow for more targeted enforcement of a range of antidiscrimination protections.

II. The Proposed Pay Data Collection Will Help Address Pay Disparities, Benefiting Businesses, Individual Workers, And The Economy.

Business, workers, and the economy will benefit from the proposed data collection. Self-evaluation engendered by the proposed pay data collection will hopefully spur responsible employers to voluntarily and proactively implement practices to help prevent and/or correct pay disparities. This type of voluntary response will, in turn, encourage compliance with antidiscrimination laws, decrease the need for enforcement actions or litigation, and promote increased diversity in the workforce. A diverse workforce and equitable employment practices can confer a wide array of benefits on a company, including decreased risk of liability, access to the best talent, increased employee satisfaction and productivity, increased innovation, an expanded consumer base, and stronger financial performance.⁹ Equal pay is essential for recruiting and retaining a diverse workforce and high performers, particularly younger workers.¹⁰ When workers are confident they are being paid fairly, they are more likely to be engaged and productive.¹¹ Shareholders and potential investors are increasingly interested in companies' commitment to diversity and equal employment opportunity, and view compliance with

⁹ Hunt, V., Layton, D. & Prince, S., *Diversity Matters* 9-13, MCKINSEY & CO. (Feb. 2015) (finding diverse workforces correlate with better financial performance, because diversity helps to recruit the best talent, enhance the company's image, increase employee satisfaction, and improve decision making, including fostering innovation); Hewlitt, S.A., Marshall, M. & Sherbin, L., *How Diversity Can Drive Innovation*, HARVARD BUS. REV. (Dec. 2013), available at <https://hbr.org/2013/12/how-diversity-can-drive-innovation>. Conversely, companies that fail to address gender wage disparities and discriminatory employment practices could damage their reputation and brand among consumers, leading to a loss of profits and shareholder value. Lamb, N. & Klein, W., *A Proactive Approach to Wage Equality is Good for Business*, EMPLOYMENT RELATIONS TODAY (Summer 2015).

¹⁰ A recent study found that "pay and financial benefits drive Millennials' choice of organization more than anything else." THE 2016 DELOITTE MILLENNIAL SURVEY: WINNING OVER THE NEXT GENERATION OF LEADERS 19 (2016), available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-millennial-survey-2016-exec-summary.pdf>. Noel, L. & Hunter Arscott, C., *Millennial Women: What Executives Need to Know About Millennial Women* 4, ICEDR (2015), available at http://www.icedr.org/research/documents/14_millennial_snapshot.pdf (Millennial women leave jobs primarily for more compensation).

¹¹ Courtney Seiter, "The Counterintuitive Science of Why Transparent Pay Works," *Fastcompany.com*, Feb. 26, 2016, available at <http://www.fastcompany.com/3056975/the-future-of-work/the-transparent-pay-revolution-inside-the-science-and-psychology-of-open->

antidiscrimination laws—particularly with regard to equal pay—as an important factor impacting risk and profitability, and therefore relevant to investment decisions.¹²

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.¹³ 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.¹⁴ Increased wages would augment these workers' consumer spending power and benefit businesses and the economy.¹⁵ A 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 2025.¹⁶

III. The Revisions Proposed By the 30-Day Notice Further Minimize the Reporting Burden to Employers.

We commend EEOC for constructively addressing the concerns expressed by employers regarding the burden of the proposed pay data collection, and support its suggested changes. The proposal to collect pay information through the EEO-1 and to share it across agencies reduces a significant amount of the reporting burden for employers. Employers who are already required to report race and gender data under the EEO-1 are familiar with the form, the job categories, and the reporting requirements. Moreover, the proposal requires employers to report W-2 earnings¹⁷ as the measure of compensation, utilizing a source of data employers are already required to maintain and generate under federal law.

The additional revisions of filing deadlines proposed in the 30-Day Notice will further diminish employers' reporting burden. EEOC's proposal to move the 2017 report's filing deadline to March 31, 2018, will allow employers to utilize, for the purposes of the EEO-1, the calculation and reporting of W-2 data for the calendar year that is already required by federal law. The

¹² *Proactive Approach*, *supra* note 9; Natasha Lamb, "Closing the pay gap: Silicon Valley's gender problem," *Ethical Boardroom*, June 7, 2016, available at <http://ethicalboardroom.com/leadership/diversity/close-the-pay-gap/>; Trillium Asset Mgm't, *Letter to Citigroup Shareholders*, Apr. 16, 2016, available at <https://www.sec.gov/Archives/edgar/data/831001/000121465916010905/j415160px14a6g.htm>.

¹³ Hartmann, H., Hayes, J. & Clark, J., *How Equal Pay for Working Women Would Reduce Poverty and Grow the American Economy* 1, INST. FOR WOMEN'S POLICY RESEARCH (2014), available at <http://www.iwpr.org/publications/pubs/how-equal-pay-for-working-women-would-reduce-poverty-and-grow-the-american-economy/>.

¹⁴ *Id.*

¹⁵ *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).

¹⁶ Ellingrud, K., *et al.*, *The power of parity: Advancing women's equality in the United States* 1-2, MCKINSEY GLOBAL INST. (Apr. 2016), available at <http://www.mckinsey.com/global-themes/employment-and-growth/the-power-of-parity-advancing-womens-equality-in-the-united-states>. The same study estimates that even if the wage gap was only partially closed, \$2.1 trillion in additional GDP could be added in 2025.

¹⁷ The 30-Day Notice further clarifies that the revised EEO-1 would use the measure of compensation reported in Box 1, wages, tips and other compensation. 81 Fed. Reg. 45479, 45486 (July 14, 2016). The W-2 provides a comprehensive picture of compensation, which is critical because although compensation discrimination may manifest in workers' base salaries, it may also occur through discrimination in other less frequently measured forms of compensation such as bonuses, commissions, stock options, differential pay, and opportunities for overtime.

proposed change would also allow employers more time to adapt their payroll and HRIS systems to prepare for the new data collection.

In the 30-Day Notice the EEOC also proposes moving the “workforce snapshot” period from the third quarter (July-September) to the fourth quarter (October-December) to address employer concerns. By counting and reporting its total number of employees in the fourth quarter, an employer can fully account for promotions that result in job category or pay band changes for employees during that calendar year. The proposed change, which would take effect for the 2017 reporting cycle, thus aligns the workforce snapshot period with the federally required W-2 reporting timeline, and should result in more accurate and less burdensome reporting.

We applaud the EEOC for its continued leadership on the issue of equal pay. We strongly support the proposed revisions to the EEO-1 and urge their swift approval and implementation. Women cannot afford to keep waiting for change; nor can the families depending on their earnings. The powerful enforcement tool proposed by EEOC will make a meaningful difference in closing the pay gaps that have shortchanged women for far too long.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Terisa E. Chaw". The signature is fluid and cursive, with a large initial "T" and "C".

Terisa E. Chaw
Executive Director