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April 22, 2020

Bernadette B. Wilson
Executive Officer, Executive Secretariat
Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, D.C. 20507

Submitted Electronically

Re: Notice of information collection—request for new control number and approval of collection: Employer Information Report (EEO-1) Component 1; revision of existing approval for EEO-1 Component 2, EEOC-2020-0002-0001

Dear Ms. Wilson:

On behalf of the California Women's Law Center (CWLC), we write to comment on the Equal Employment Opportunity Commission's (EEOC) March 23, 2020 "Notice of information collection—request for new control number and approval of collection: Employer Information Report (EEO-1) Component 1; revision of existing approval for EEO-1 Component 2" (30-Day Notice).

The gender pay gap results in an estimated \$78.6 billion in lost wages for women in California each year. Pay discrimination is often hidden from sight and can be a result of unconscious bias or historical inequity. This is compounded by a lack of transparency about pay practices. CWLC's mission is to advance the potential of women and girls through transformative litigation, policy advocacy, and education. For over 30 years, CWLC has been a leader in the fight for pay equity. We are dedicated to ending practices contributing to persistent gender and racial pay gaps.

Component 2 of the EEO-1 was originally approved in September 2016 and requires covered employers to submit data on employees' W-2 earnings and hours worked by pay band, as well as sex, race, ethnicity, and job category. Component 2 pay data is critically important in identifying pay discrimination and improving the enforcement of pay discrimination laws.

We are troubled by the EEOC's decision to pursue this rulemaking in the middle of a national emergency, and to provide only 30 days for public comment. The widespread economic instability created by the COVID-19 pandemic during a national health emergency obviously creates substantial barriers for those who desire to submit comments and to do so in a timely manner.

This pandemic has illuminated the concrete harm women, and particularly women of color, face due to the wage gap. Ensuring equal pay and economic security for women and families is more important now than ever. Pay data collected through Component 2 will play an important role in uncovering and combating pay discrimination, a crucial factor driving the gender and race wage gaps.

The 30-Day Notice contains an extended discussion about the burden on employers in collecting pay data, but contains no analysis or discussion of the benefits. Nor does the EEOC's decision appear to consider the two years of data it has now collected pursuant to court order. Without a good faith analysis of that data, the EEOC cannot appropriately determine whether any burden to employers associated with the pay data collection outweighs the utility of the data. Accordingly, the California Women's Law Center strongly urges the EEOC to immediately request renewal of Component 2 to ensure the continuing collection of pay data from employers.

I. The EEOC Has Failed to Establish That the Burden of Collecting Component 2 Data Outweighs Its Utility.

The EEOC's justification for its decision not to renew Component 2 is that "the unproven utility to its enforcement program of the pay data as defined in the 2016 Component 2 is far outweighed by the burden imposed on employers." But the EEOC's justification is undermined by its premature decision about the burden and utility of the pay data collected pursuant to Component 2 – a decision made prior to conducting any analysis of the data already collected or employers' experiences submitting it.

Thus, the EEOC's statements about burden are based on unsupported assumptions. In contrast, when the Component 2 pay data collection was adopted in 2016, the EEOC relied on a multi-year, extensive and transparent process that included collecting support from multiple sources. The EEOC utilized a 2012 National Academy of Sciences study regarding the collection of compensation data¹; a March 2012 meeting on data collection procedures with multiple experts and stakeholders, including employer representatives²; an EEOC-commissioned pilot study³; a public hearing on the proposed revisions which included testimony from relevant stakeholders, including employers⁴; a vote by EEOC Commissioners; and two rounds of notice and public comment.⁵ The EEOC has provided no such support or evidence in the 30-Day Notice.

¹ NATIONAL RESEARCH COUNCIL OF THE NATIONAL ACADEMIES, *Collecting Compensation Data From Employers* (2012), <http://www.nap.edu/catalog/13496/collecting-compensation-data-from-employers>.

² SAGE COMPUTING, INC., *EEOC Survey System Modernization Work Group Meeting 2* (Mar. 2012), <http://www.eeoc.gov/employers/eeo1survey/survey-modernization.pdf>.

³ SAGE COMPUTING, INC., *Final Report* (Sept. 2015), <http://eeoc.gov/employers/eeo1survey/pay-pilot-study.pdf>.

⁴ U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, *Public Hearing: Public Input into the Proposed Revisions to the EEO-1 Report*, Mar. 16, 2016, <https://www.eeoc.gov/eeoc/meetings/3-16-16/index.cfm>.

⁵ U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, *Agency Information Collection Activities: Revision of the Employer Information Report (EEO-1)*, 81 Fed. Reg. 5113 (Feb. 1, 2016); U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, *Agency Information Collection Activities, Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO-1)*, 81 Fed. Reg. 45479, 45493-5 (July 14, 2016).

II. Component 2 Data Will Help Identify and Address Pay Discrimination, a Crucial Factor in the Gender Wage Gap.

The 30-Day Notice fails to discuss the myriad benefits of pay data collected through Component 2, including that it plays an important role in uncovering and combating pay discrimination, a crucial factor in the gender wage gap. The EEOC's effort to discontinue the Component 2 pay data collection at a time when race and gender wage gaps are causing even more harm, is misguided and short-sighted.

Women working full-time, year round continue to confront a stark wage gap, typically making only 82 percent of the median annual wages made by men working full time, year round.⁶ The wage gap is even worse when we look specifically at women of color: Black women typically are paid only 62 percent, Native American women 57 percent, Latinas 54 percent of the wages typically paid to white, non-Hispanic men for full-time, year-round work.⁷ These gaps add up to average lifetime income losses of more than \$400,000 – and even more for women of color – and negatively impact women's economic security and the long-term economic stability of their families.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 as much as 38 percent of the pay gap unexplained.¹⁰

Nevertheless, pay discrimination remains difficult to detect. About 60 percent of workers in the private sector are either contractually forbidden or strongly discouraged from discussing their pay with their colleagues.¹¹ Discriminatory pay decisions may not be obvious to an affected employee, and employees are discouraged from gathering information that would suggest that they have experienced pay discrimination, making it harder to challenge.

Closing the wage gap is even more critical in light of COVID-19. Women are on the frontlines of defense against COVID-19 and its devastating consequences, as first responders and people providing essential services like child care, health care, and grocery services. Women are also over-represented in the industries losing jobs as a result of this crisis like restaurants, retailers, and hotels.¹² Their over-representation in low-paid jobs combined with the loss of significant earnings due to the gender wage gap has left them with no financial cushion to pay for health care, rent and

⁶ NAT'L WOMEN'S LAW CTR., *The Wage Gap: The Who, How, Why, and What To Do* (Sept. 2019), <https://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/> [*The Wage Gap: The Who, How*].

⁷ *Id.*

⁸ Black women lose \$941,600 and Latinas \$1,121,440 over a 40-year career. Fins, A., *Women and the Lifetime Wage Gap: How Many Woman Years Does It Take To Equal 40 Man Years?*, NAT'L WOMEN'S LAW CTR. (Mar. 2020), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/03/Women-and-the-Lifetime-Wage-Gap.pdf>.

⁹ Hegewisch, A. & Tesfaselassie, A., *The Gender Wage Gap by Occupation 2018*, INST. FOR WOMEN'S POLICY RESEARCH (Apr. 2019), <https://iwpr.org/publications/gender-wage-gap-occupation-2018/>.

¹⁰ Blau, F. D. & Kahn, L.M., *The Gender Wage Gap: Extent, Trends and Explanations*, NAT'L BUREAU OF ECONOMIC RESEARCH (Jan. 2016), <http://www.nber.org/papers/w21913.pdf>.

¹¹ INST. FOR WOMEN'S POLICY RESEARCH, *Pay Secrecy and Wage Discrimination* (2014), http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at_download/file.

¹² Raghu, M. & Tucker, J., *The Wage Gap Has Made Things Worse for Women on the Front Lines of COVID-19*, NAT'L WOMEN'S LAW CTR. (Mar. 30, 2020), <https://nwlc.org/blog/the-wage-gap-has-made-things-worse-for-women-on-the-front-lines-of-covid-19/>; Tucker, J. & Vogtman, J., *WHEN HARD WORK IS NOT ENOUGH: WOMEN IN LOW-PAID JOBS*, NAT'L WOMEN'S LAW CTR. (Apr. 2020), <https://nwlc.org/resources/when-hard-work-is-not-enough-women-in-low-paid-jobs/>.

food during this pandemic.¹³ The EEOC's decision to reject this important enforcement tool at this time is deeply troubling.

Collecting compensation data from employers will help the EEOC more effectively enforce equal pay laws, and encourage employers to proactively review their own practices and correct any discriminatory wage disparities. The data collection will allow the EEOC to target its limited enforcement resources toward more detailed oversight of the employers most likely to engage in pay discrimination, and will enhance the effectiveness of the EEOC's pay discrimination enforcement.

Additionally, the process of responding to the data collection tool will spur employers to proactively review and evaluate their pay practices and address disparities.¹⁴ Reporting pay data by gender and race within job categories ensures that employers are collecting and analyzing it. By incentivizing and facilitating employer self-evaluation, Component 2 will increase voluntary employer compliance with 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.

The California Women's Law Center strongly supports the collection of pay data from employers and urges the EEOC to request renewal of Component 2 of the EEO-1. This powerful enforcement tool is vital to closing the pay gaps that have shortchanged women, and specifically women of color, for far too long. In this moment of national crisis, women and their families cannot afford to keep waiting for change.

Sincerely,



Betsy Butler
Executive Director

¹³ *Id.*

¹⁴ See HARV. BUS. REV. ANALYTIC SERV., *Pulse Survey: Navigating the Growing Pay Equity Movement: What Employers Need to Know About What To Do* 3 (2019), <https://hbr.org/sponsored/2019/10/why-your-company-needs-to-implement-pay-equity-audits-now> (“54% of U.K. respondents cite pay data reporting requirements from federal/national and regional governments as external drivers for them to perform pay equity analyses, versus 28% for their U.S. counterparts”).