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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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April 22, 2020

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

Dear Chair Dhillon,

I write to oppose the Equal Employment Opportunity Commission's (EEOC) Paperwork Reduction Act (PRA) notice to discontinue collecting Component 2 data on the Employer Information Report (EEO-1) form. Component 2 requires employers to report their employees' pay and hours worked sorted by race, sex, ethnicity, and job category. This information helps the EEOC carry out its mission of combatting harassment in the workplace, addressing the gender pay gap, and enforcing federal anti-discrimination laws. Discontinuing the collection of Component 2 data with only a 30-day comment period undermines the agency's critical mission of identifying industries and workplaces where inequity exists and holding employers accountable for pay discrimination. The EEOC's decision will result in workers continuing to be discriminated against while employers are left unaccountable.

In 2016, after multiple rounds of stakeholder engagement and based on extensive analysis, the EEOC updated its EEO-1 form to add Component 2, which requires companies with 100 or more employees to submit additional data on wages paid to their employees, sorted by job category, gender, race, and ethnicity.¹ In 2017, the Office of Management and Budget (OMB) decided, based on minimal and conclusory analysis, to stay the revised Component 2 pay data collection. In 2019, the EEOC announced that it would not renew its request to OMB to continue to collect EEO-1 Component 2 data.² In 2019, the U.S. District Court for the District of Columbia determined that "OMB's stay of EEOC's pay data collection was illegal."³ The court ordered the revised EEO-1 form go into effect, mandating the agency "take all necessary steps" to complete the 2017 and 2018 Component 2 data collection by January 31, 2020.⁴ In February 2020, the

¹ <https://obamawhitehouse.archives.gov/the-press-office/2016/01/29/fact-sheet-new-steps-advance-equal-pay-seventh-anniversary-lilly>

² <https://www.jdsupra.com/legalnews/end-to-eeo-1-component-2-pay-data-20353/>

³ <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/03/EEO-1-Opinion.pdf>

⁴ <https://www.law360.com/articles/1214925/eeoc-can-t-have-pay-data-collection-declared-over-yet>

court found that the EEOC had completed its collection of the EEO-1 Component 2 data.⁵ Yet, in March 2020, the EEOC sought Paperwork Reduction Act (PRA) authorization to eliminate the collection of Component 2 data.⁶

Pay inequality poses a significant problem for women and people of color. Women in the United States are paid just 82 cents for every dollar paid to men.⁷ The pay gap is wider for women of color: Black, Native American, and Latina women are paid only 62 cents, 57 cents, and 54 cents, respectively, for every dollar paid to a white man. Although Asian American women typically make 85 cents for every dollar paid to white, non-Hispanic men, certain communities of Asian American and Pacific Islander women make significantly less. As we find ourselves in the middle of a global pandemic, the 2019 novel coronavirus (COVID-19) has exacerbated these existing pay inequities for women of color.

The COVID-19 pandemic has exposed a power structure that continues to underestimate and undervalue the work that women, especially women of color, contribute to the economy.⁸ Women, particularly women of color, are overrepresented in jobs on the frontlines of COVID-19. For example, 93 percent of child care workers, 66 percent of grocery store workers, and 70 percent of waiters are women.⁹ Many of these jobs are underpaid and have limited benefits. As COVID-19 unfolds, women are most likely to experience economic hardship and additional pay inequity.¹⁰ Given the significant economic challenges women, especially women of color, continue to face during this pandemic, we need more tools—not less—to ensure the pandemic does not widen the pay gap for women.¹¹

This PRA notice is a poorly reasoned attempt to circumvent a critical tool to address pay discrimination. This notice does not take into account the significant benefits of the Component 2 data collection for workers, including advancing the EEOC’s pay inequity efforts and promoting employer compliance with existing pay discrimination laws. This notice spends a significant amount of time discussing the burden on employers, but it avoids discussing the utility of the data for employees.¹² The EEOC has also taken steps to make sure that the Component 2 data that was collected cannot be shared with state and local enforcement agencies.¹³ Despite the extensive stakeholder analysis conducted for the 2016 regulation that found that “the burden of reporting pay data would be minimal for EEO-1 filers,” the agency misleadingly argues the burden of the pay data collection on employers outweighs the benefits to workers. The elimination of this pay data collection during the COVID-19 pandemic will leave more workers vulnerable to pay discrimination. This Component 2 pay data is crucial in

⁵ <https://www.eeoc.gov/employers/eo1survey/index.cfm>

⁶ <https://www.govinfo.gov/content/pkg/FR-2020-03-23/pdf/2020-06008.pdf>

⁷ <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>

⁸ <https://nwlc.org/blog/the-wage-gap-has-made-things-worse-for-women-on-the-front-lines-of-covid-19/>

⁹ *Id.*

¹⁰ https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/04/Women-in-Low-Paid-Jobs-report_pp04-FINAL-4.2.pdf

¹¹ <https://nwlc.org/blog/the-wage-gap-has-made-things-worse-for-women-on-the-front-lines-of-covid-19/>

¹² <https://www.federalregister.gov/documents/2020/03/23/2020-06008/agency-information-collection-activities-existing-collection>

¹³ *Id.*

understanding the full scope of compensation discrimination and enforcing existing laws on pay discrimination. Without the transparency of this pay data, the EEOC is eliminating a critical tool for workers and employers to address pay inequity. I urge you to reverse this decision and continue the important task of collecting Component 2 pay data from employers.

Sincerely,

A handwritten signature in blue ink that reads "Patty Murray". The signature is written in a cursive style with a large initial "P" and a decorative flourish at the end.

PATTY MURRAY

Ranking Member

U.S. Senate Committee on Health, Education, Labor, and Pensions