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United States Senate

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LABOR, AND PENSIONS

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January 7, 2020

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Dear Secretary Scalia:

I write to strongly urge the Department of Labor (the Department) to reconsider the Office of Federal Contract Compliance Programs' (OFCCP) recent decision not to use data collected from employers about wage gaps. OFCCP is tasked with ensuring federal contractors and subcontractors comply with federal laws that prohibit them from paying workers differently because of their sex, race, or other protected characteristics. Discontinuing the request for and use of data regarding wage disparities undermines OFCCP's ability to address inequities among those hired to complete work for the federal government.

Disparities in pay are a pernicious and systemic problem in the United States. Women are paid just 82 cents for every dollar paid to men.¹ 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.

OFCCP was created in order to ensure that federal contractors and subcontractors are not engaged in unlawful pay discrimination, including by enforcing Executive Order (EO) 11246, which prohibits employment discrimination by federal contractors and subcontractors against any employee regardless of race, color, religion, sex (including sexual orientation and gender identity), or national origin. OFCCP also prohibits federal contractors and subcontractors from taking "adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers."²

Despite its responsibility to protect workers from wage discrimination, on November 25, 2019, OFCCP announced its decision not to "request, accept, or use" wage gap data, otherwise known as "Component 2 data."³ Component 2 data is a source of information developed by the Equal Employment Opportunity Commission (EEOC) in 2015. The data collection, which was

¹ <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>

² https://www.dol.gov/ofccp/regs/compliance/ca_11246.htm

³ <https://www.govinfo.gov/content/pkg/FR-2019-11-25/pdf/2019-25458.pdf>

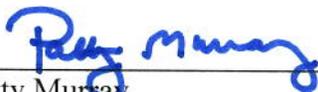
developed after multiple rounds of stakeholder engagement, and based on extensive analysis, is designed to collect information about how employers pay their workers disaggregated by categories such as sex and race. The collection and use of this data is intended to assist the EEOC—and OFCCP—in carrying out their shared missions of enforcing federal anti-discrimination laws and addressing the pay gap.

OFCCP’s reasoning for setting aside the wage gap data is wholly unjustified, stating it “does not expect to find significant utility in the data given limited resources and its aggregated nature.” OFCCP fails to articulate how the data is not useful as well as describe the flaws in its data collection. This failure is perhaps unsurprising given the first round of Component 2 data was still being collected and analyzed by the EEOC even as OFCCP announced its decision. OFCCP determined the wage gap data was useless prior to analyzing that data.

The OFCCP notice is the latest decision by the Trump Administration to favor employers over workers and ignore data that could highlight differences in pay based on gender, race, or other protected characteristics. In September 2016, the Office of Management and Budget (OMB) approved the EEOC’s proposed collection of Component 2 data; however, less than a year later, under the direction of the Trump Administration, OMB reversed course and decided to stay its own approval of the data collection. In March 2019, the U.S. District Court for the District of Columbia—finding OMB’s justification for the stay was “misdirected, inaccurate, and ultimately unpersuasive” and the agency failed to “explain in any substantive way why it believed that the revised EEO-1 was contrary to the PRA”—ruled that “OMB’s stay of EEOC’s pay data collection was illegal” and ordered the revised EEO-1 for 2017 and 2018 be put into immediate effect.⁴ On September 12, 2019, however, the EEOC announced its decision not to renew the collection of Component 2 data going forward.

The OFCCP’s decision to forgo wage gap data undermines its mission to protect workers, promote diversity, and enforce the law. I strongly urge you to stand up for the mission of OFCCP, take a meaningful look at the wage gap data collected by EEOC, and reverse the OFCCP decision. The OFCCP must be armed with more information, not less, if we are to address the unacceptable and unlawful wage gaps experienced by workers on federal contracts.

Sincerely,



Patty Murray
Ranking Member
Senate Committee on Health, Education,
Labor, and Pensions

⁴ <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/03/EEO-1-Opinion.pdf>