

United States Senate

WASHINGTON, DC 20510

November 12, 2019

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

RE: Comment on Notice of Information Collection—Request for new Control Number for a Currently Approved Collection: Employer Information Report (EEO-1) Component 1; Revision of Existing Approval for EEO-1 Component 2 (Docket Number: EEOC-2019-0003)

Dear Chairwoman Dhillon:

We write to oppose the Equal Employment Opportunity Commission's (EEOC) decision to remove Component 2 from its 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 will undermine the agency's critical mission of identifying industries and workplaces where inequity exists and holding employers accountable for pay discrimination. The EEOC's rationale for ceasing this data collection is unfounded and will result in workers continuing to be discriminated against while employers are left unaccountable.

1. Gender and Racial Discrimination Drive the Wage Gap

Despite making up nearly half the workforce, women are paid less for the same work.¹ Women in the United States are paid just 82 cents for every dollar paid to men.² The pay gap is even 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.³ The wage gaps also vary by state and zip code.⁴

The wage gaps harm women and families across the economy, as women head close to 15 million households in the U.S. and about 26 percent of those families have incomes that fall

¹ <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/10/The-Wage-Gap-Who-How-Why-and-What-to-Do-2019.pdf>

² <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>

³ <https://nwlc.org/resources/equal-pay-for-asian-pacific-islander-women/>

⁴ <https://www.aauw.org/resource/gender-pay-gap-by-state-and-congressional-district/>

below the poverty line.⁵ Further delays in eliminating the wage gap for women mean that women in the U.S. lose close to \$915 billion every year.⁶ As a result, women – and especially women of color – have less money to support themselves, their families, and to secure their retirement.

2. Eliminating the Collection of Component 2 Data Undermines the EEOC's Ability to Combat Wage Discrimination

Given the clear evidence of a persistent gender pay gap, which is driven in significant part by pay discrimination, there is little reason why the agency charged with shining light on the wage gap and battling discrimination would stop collecting Component 2 data. The Component 2 data, which covers over 60 million employees, is intended to provide greater transparency about wage gaps that occur across various industries and job categories and to aid enforcement of pay discrimination laws – which are under enforced precisely because a culture of secrecy around pay makes pay discrimination harder to identify and thus harder to challenge.⁷ Starting nearly a decade ago, the EEOC started looking at “ways to improve enforcement of federal laws prohibiting pay discrimination.”⁸ In 2012, the EEOC convened a meeting of employer representatives, statisticians, human resource information systems (HRIS) experts, and information technology specialists, who concluded “the burden of reporting pay data would be minimal for EEO-1 filers.”⁹

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.¹⁰ 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 U.S. District Court for the District of Columbia determined that “OMB’s stay of EEOC’s pay data collection was illegal” and ruled that OMB “did not explain in any substantive way why it believed the revised EEO-1 was contrary to [Paperwork Reduction Act] standards.”¹¹ The court ordered that the revised EEO-1 form go into effect. The agency is still in the process of collecting Component 2 data for 2017 and 2018, and the court has mandated the agency “take all necessary steps” to complete the data collection by January 31, 2020.¹²

The EEOC’s decision to abandon the pay data collection going forward – before it has fully collected, let alone analyzed, the data under the current collection – is a remarkable step backward. The EEOC is electing to use fewer tools to identify pay discrimination, and this decision will fundamentally obstruct the agency’s mission to fight pay discrimination.

⁵https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_DP03&prodType=table

⁶ <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>

⁷ *Id.*

⁸ <https://nwlrc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/03/EEO-1-Opinion.pdf>

⁹ *Id.*

¹⁰ <https://obamawhitehouse.archives.gov/the-press-office/2016/01/29/fact-sheet-new-steps-advance-equal-pay-seventh-anniversary-lilly>

¹¹ <https://nwlrc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/03/EEO-1-Opinion.pdf>

¹² <https://www.law360.com/articles/1214925/eec-can-t-have-pay-data-collection-declared-over-yet>


3. The EEOC Fails To Justify Its Decision To Cease Collecting This Critical Data

The EEOC has failed to justify its assertion that the burden on employers of providing Component 2 data far outweighs the benefits for working women and communities of color. According to the notice, the EEOC recently revised its previous methodology for calculating burdens on employers and arrived at higher calculations of burden. The revised burden estimates led the agency to conclude, “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 that must comply with the reporting obligation.”¹³

The EEOC reached this conclusion before it completed the 2017 and 2018 data collection or conducted any analysis of the data. Additionally, the agency does not take into account the fact that employers now have processes and systems in place to provide such data, given that they have submitted 2017 and 2018 data, which will streamline the process for future collections. The agency simply has failed to collect the information it needs to make any judgment about the benefits or burdens of the data collection to workers or employers. This disingenuous reasoning makes clear the EEOC is not actually considering the value of the Component 2 data collection to workers and the agency’s potential ability to use this information to address the wage gap.

Lost wages every year mean families, businesses, and the economy suffer. The EEOC has the authority to investigate inequity in pay and wage discrimination against employers and to prevent discrimination through outreach and education.¹⁴ The more information the EEOC has about the wage gap, the more likely the agency will be able to address it. Ending the collection of Component 2 data without considering the impact on women – and especially women of color – will worsen pay inequities in the workplace. We strongly urge the EEOC to reconsider this decision and continue collecting Component 2 data from EEO-1 filers.

Sincerely,



Patty Murray
United States Senator




Maria Cantwell
United States Senator

¹³ <https://www.federalregister.gov/documents/2019/09/12/2019-19767/agency-information-collection-activities-existing-collection>


¹⁴ <https://www.eeoc.gov/eeoc/index.cfm>



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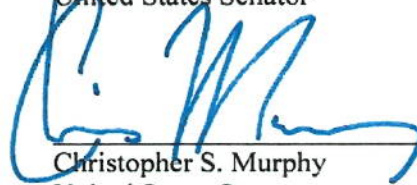
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