

December 22, 2014

Debra A. Carr, Director
Division of Policy and Program Development
Office of Federal Contract Compliance Programs
200 Constitution Ave. NW, Room C-3325
Washington, DC 20210

Via online submission

RE: RIN 1250-AA03 – Government Contractors, Requirement to Report Summary Data on Employee Compensation

Dear Ms. Carr:

On behalf of the undersigned organizations, we write to express our strong support for the Office of Federal Contract Compliance Program's (OFCCP) proposal to collect pay data from federal contractors and subcontractors and incorporate it into the agency's decisions about how to allocate its enforcement resources. This rule will enhance OFCCP's ability to detect violations and improve its enforcement against pay discrimination. First, by gathering general employee compensation information from each contractor and assessing pay disparities in the contractor's workforce, OFCCP can target its limited enforcement resources toward more detailed oversight of contractors who are most likely engaged in discrimination—leading to more effective and efficient enforcement. Second, by incentivizing and facilitating employer self-evaluation, the Equal Pay Report rule will increase voluntary employer compliance with the pay discrimination laws. The process of responding to the data collection tool and more effective and targeted enforcement will spur more contractors to proactively evaluate their pay practices and address any unjustified disparities between employees.¹

The Proposed Equal Pay Report Will Generate Crucial Data for Identifying and Tackling Pay Discrimination by Federal Contractors. OFCCP's proposal includes many of the critical elements for identifying and targeting potential pay discrimination by federal contractors. First, the proposed report will enable the calculation and comparison of compensation data by gender within racial/ethnic groups, and by racial/ethnic groups within genders, permitting OFCCP to capture both gender and racial/ethnic disparities in pay. Under the proposed rule, contractors would provide this detailed information in a manner that would facilitate a consistent comparison of pay disparities among all the federal contractors in an industry or other grouping.

In addition, the proposed report will generate a more comprehensive picture of disparities in employee compensation by requiring contractors to report on total W-2 pay. Collecting data on W-2 pay will help root out pay disparities across the spectrum of take-home compensation, including key components such as bonuses and overtime pay. The Equal Pay report also will enable appropriate comparisons of compensation both between different groups in a contractor's

workforce and between different contractors in order to develop insight into potential instances of unequal pay. And it will reduce any complexity that may arise from the fact that not all employees are being compensated for full-time work. Finally, the report will help OFCCP develop a better understanding of both which industries have the most widespread pay disparities as well as which contractors within each industry have the largest pay gaps, and target its enforcement resources accordingly.

The Equal Pay Report and Aggregate Publication Together Will Foster Greater Compliance with Pay Discrimination Prohibitions. OFCCP's proposal to establish industry-level standards for pay disparities will aid the agency in prioritizing its more detailed compliance evaluations. We also strongly support OFCCP's plan to make aggregate data gathered from the required Equal Pay Reports available to the public. With this data in hand, workplace equality advocates can more efficiently direct their own enforcement, outreach and public education activities to industries or regions where pay disparities are most egregious. Individual employees can find out if they are working in an industry or region where they are at risk of experiencing pay discrimination. And making aggregate data public will facilitate and incentivize voluntary contractor compliance with equal pay protections, by providing benchmarks that contractors can use to assess their own pay practices and to publicize their successes in achieving pay equality.²

The Proposed Equal Pay Report Requirement Will Not Be Unduly Burdensome.

The Equal Pay Report is a low-cost but highly effective tool. Federal law already requires contractors to maintain the information that will be necessary to comply with the Equal Pay Report requirement and OFCCP may already review these records as part of an audit.³ Thus, compiling and reporting this largely pre-existing information pursuant to the proposed rule will impose minimal burdens on contractors. Further, the Equal Pay Report requirement may actually reduce the ultimate burdens of OFCCP enforcement on law-abiding employers because it will improve OFCCP's ability to direct its more detailed audits and other enforcement efforts toward those employers most likely engaged in pay discrimination.⁴ Finally, the smallest federal contractors are excluded from these data collection requirements. Consistent with other data maintenance and collection requirements, we urge OFCCP to extend the Equal Pay Report requirements to contractors and sub-contractors that have 50 or more employees (and otherwise meet the filing requirement criteria); these employers must already file EEO-1 Reports and could consistently complete the Equal Pay Report.

The federal government operates with the important and longstanding principle that companies that have the privilege of profiting from doing business with the federal government should not be permitted to discriminate. Moreover, the many federal contractors that play by the rules should not have to compete at a disadvantage with those that discriminate. Because pay discrimination can be hard for individual employees to detect, the vital task of enforcing pay equity laws can fall heavily on civil rights enforcement agencies. The Equal Pay Report stands to aid OFCCP in enforcing the crucial obligation to not discriminate in pay.

We urge OFCCP to adopt final regulations on the Equal Pay Report requirement swiftly and without any unnecessary delay. Thank you for the opportunity to submit comments on an issue

that is so critical for working women. Please do not hesitate to contact Fatima Goss Graves at fgraves@nwlc.org if we can provide further information.

Sincerely,

9to5, National Association of Working Women

9to5 Atlanta
9to5 Bay Area Chapter
9to5 California
9to5 Colorado
9to5 Los Angeles Chapter
9to5 Wisconsin

A Better Balance

American Association of University Women (AAUW)

AAUW of Alabama
AAUW of Alaska
AAUW of Arizona
AAUW of Arkansas
AAUW of California
AAUW of Colorado
AAUW of Connecticut
AAUW of Delaware
AAUW of District of Columbia
AAUW of Florida
AAUW of Georgia
AAUW of Hawaii
AAUW of Idaho
AAUW of Illinois
AAUW of Indiana
AAUW of Iowa
AAUW of Kansas
AAUW of Kentucky
AAUW of Louisiana
AAUW of Maine
AAUW of Maryland
AAUW of Massachusetts
AAUW of Michigan
AAUW of Minnesota
AAUW of Mississippi
AAUW of Missouri
AAUW of Montana
AAUW of Nebraska

AAUW of Nevada
AAUW of New Hampshire
AAUW of New Jersey
AAUW of New Mexico
AAUW of New York
AAUW of North Carolina
AAUW of North Dakota
AAUW of Ohio
AAUW of Oklahoma
AAUW of Oregon
AAUW of Pennsylvania
AAUW of Rhode Island
AAUW of South Carolina
AAUW of South Dakota
AAUW of Tennessee
AAUW of Texas
AAUW of Utah
AAUW of Vermont
AAUW of Virginia
AAUW of Washington
AAUW of West Virginia
AAUW of Wisconsin
AAUW of Wyoming

American Civil Liberties Union

American Federation of State, County and Municipal Employees (AFSCME)

Business and Professional Women's Foundation

Business and Professional Women/St. Petersburg-Pinellas

California Women's Law Center

Center for Community Change Action

Center for Effective Government

Coalition of Labor Union Women

Coalition on Human Needs

Democratic Women's Club of Florida

Disciples Justice Action Network

Equal Pay Coalition NY

Family Values At Work

Feminist Majority

Hadassah, The Women's Zionist Organization of America, Inc.

Institute for Science and Human Values

Jewish Women International

Labor Project for Working Families

Legal Momentum

Legal Voice

MomsRising

Montgomery County Commission for Women

National Advocacy Center of the Sisters of the Good Shepherd

National Center for Lesbian Rights

National Committee on Pay Equity

National Consumers League

National Council of Jewish Women

National Council of Jewish Women Seattle Section

National Council of Jewish Women Bergen County Section

National Council of Women's Organizations (NCWO)

Older Women's Economic Security Task Force, NCWO

National Employment Lawyers Association

National Organization for Women Foundation

West Pinellas National Organization for Women (NOW-FL)

National Partnership for Women & Families

National Women's Law Center

NETWORK, A National Catholic Social Justice Lobby

OWL-The Voice of Women 40+

Sargent Shriver National Center on Poverty Law

The Solomon Project

UltraViolet

Union for Reform Judaism

UNITE HERE

United Steelworkers

UniteWomen.org

Wider Opportunities for Women

Women Employed

Women of Reform Judaism

Women's Law Project

Women's Media Center

Women's Sports Foundation

¹ We note that many non-construction contractors should already be analyzing their compensation systems to determine if there are gender or racial/ethnic disparities and to correct any problem areas as part of their affirmative action programs. 41 C.F.R. § 60-2.17.

² We do recommend that in making such aggregate information available OFCCP not only provide average pay disparities in given industries, regions or other groupings, but also other relevant information such as minimums and maximums. Unequal pay is a ubiquitous phenomenon in many industries and regions, and even the average performers within a group may still have problems with pay discrimination in their workforces. We therefore should be encouraging contractors, in conducting self-evaluations of their pay practices, to strive to be even better than the average among their peers.

³ Under 26 C.F.R. § 31.6051-1, employers must generate W-2 forms for their paid employees. Under 29 C.F.R. § 516.2, employers must keep records of hours worked for all employees not exempt from the Fair Labor Standards Act. The proposed rule allows contractors to apply default assumptions in calculating the number of hours worked by employees for whom they do not have to keep track of, or are not already tracking, hours worked. Under 41 C.F.R. § 60-1.12, federal contractors are required to preserve all their personnel and employment records, and make those records identifiable by the gender, race and ethnicity of the employee. And under 41 C.F.R. § 60-1.7 most federal contractors are required to submit EEO-1 Reports that include information by gender, race/ethnicity, and job grouping categories.

⁴ Also, ensuring equal pay for female and minority workers can be good for businesses in terms of increasing consumer spending power and promoting employee satisfaction, productivity and retention. *See, e.g., Access to Justice: Ensuring Equal Pay with the Paycheck Fairness Act, Hearing on S. 84 Before the S. Comm. On Health, Education, Labor & Pensions*, 113th Cong. (statement of ReShonda Young, Operations Manager and Corporate Vice President, Alpha Express, Inc. & Founder and Owner, Popcorn Heaven), *available at* <http://www.help.senate.gov/imo/media/doc/Young5.pdf>; HEIDI HARTMANN, JEFF HAYES & JENNIFER CLARK, INST. FOR WOMEN'S POLICY RESEARCH, *HOW EQUAL PAY FOR WORKING WOMEN WOULD REDUCE POVERTY AND GROW THE AMERICAN ECONOMY* 1 (2014), *available at* <http://www.iwpr.org/publications/pubs/how-equal-pay-for-working-women-would-reduce-poverty-and-grow-the-american-economy/> (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); DOW SCOTT, TOM McMULLEN & MARK ROYAL, *WORLDATWORK, REWARD FAIRNESS: SLIPPERY SLOPE OR MANAGEABLE TERRAIN?* 2 (2011), *available at* <http://www.worldatwork.org/waw/adimLink?id=53154>.