

April 12, 2017

John M. Mulvaney, Director  
Office of Management and Budget  
725 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20503

**Re: Opposition to Reopening Review of the Equal Employment Opportunity Commission's Employment Information (EEO-1) Report (OMB Control Number 3046-0007)**

Dear Director Mulvaney:

The National Women's Law Center (the Center) has worked for 45 years to advance and protect women's equality and opportunity—with a focus on women's employment, education, income security, health, and reproductive rights—and has long sought to remove barriers to equal treatment of women in the workplace, particularly those that suppress women's wages. The Center and the 90 undersigned organizations committed to workplace equality write in strong opposition to the recent requests by the U.S. Chamber of Commerce (Chamber) and the Equal Employment Advisory Council (EEAC) that the Office of Management and Budget (OMB) revoke approval of the previously approved Equal Employment Opportunity Commission (EEOC) data collection by means of the Employer Information Report (EEO-1 Form). This collection of pay data by sex, race, and ethnicity will be critically important in helping to identify compensation discrimination and improving enforcement of pay discrimination laws, and will benefit businesses, individual workers, and the economy.

Neither the Chamber nor the EEAC provides an adequate basis for reopening review of this data collection. Current federal rules require the collection of information by means of the EEO-1 Form.<sup>1</sup> OMB previously approved the EEO-1 Form revision on September 29, 2016, for a term of three years.<sup>2</sup> Because the EEO-1 Form is a previously approved data collection pursuant to federal rules, under the Paperwork Reduction Act, OMB may only review this collection of information after consultation with the EEOC, when relevant circumstances have changed or if the burden estimates provided by the EEOC at the time of its initial submission to OMB were materially in error.<sup>3</sup> This standard has not been met. No change in circumstances justifies reopening review of the EEO-1 Form, no material error has

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<sup>1</sup> 29 C.F.R. § 1602.7.

<sup>2</sup> U.S. Office of Mgm't and Budget, *Notice of Office of Management and Budget Action* (Sept. 29, 2016), available at <https://www.reginfo.gov/public/do/DownloadNOA?requestID=275763>.

<sup>3</sup> 5 C.F.R. § 1320.12(i). In arguing that OMB has the authority to rescind the revised EEO-1 Form under the Paperwork Reduction Act, the Chamber cites the "broad remedial powers" under 5 C.F.R. § 1320.10(g), which states that "[g]or good cause, after consultation with the agency, OMB may stay the effectiveness of its prior approval of any collection of information that is not specifically required by agency rule." But the EEO-1 Form is specifically required by agency rule, 29 C.F.R. § 1602.7, rendering § 1320.10(g) inapplicable.

been shown in the burden estimates previously provided by the EEOC in support of the revision, and OMB has not consulted with the EEOC about this matter.

## **I. The Pay Data Collection Pursuant to the Revised EEO-1 Revisions Addresses a Serious Pay Discrimination Problem.**

Women working full time, year round are typically paid 80 cents for every dollar paid by their male counterparts, and when we compare women of color to white, non-Hispanic men, the wage gaps are even larger. African American women and Latinas typically make only 63 cents and 54 cents, respectively, and Native American women make only 58 cents for every dollar paid to white, non-Hispanic men for full-time, year-round work. While Asian American and Pacific Islander (AAPI) women are cited as making 85 cents for every dollar paid to white, non-Hispanic men, AAPI subgroups experience drastically wider pay gaps. For instance, Southeast Asian and Pacific Islander women have some of the widest wage gaps compared to other communities of color, with Bhutanese women making as little as 38 cents for every dollar paid to white, non-Hispanic men.<sup>4</sup>

Women are still paid less than men in nearly every occupation,<sup>5</sup> and studies show that even controlling for race, region, unionization status, education, experience, occupation, and industry leaves 38 percent of the pay gap unexplained.<sup>6</sup> Stereotypes about working women remain a driver of this unexplained gap. For example, a 2012 experiment revealed that compared to an identical female applicant, science professors offered a male applicant for a lab manager position a salary of nearly \$4,000 more, as well as additional career mentoring, and judged him to be significantly more competent and hireable.<sup>7</sup>

Men of color experience similar dynamics compared to white, non-Hispanic men. For every dollar earned by White men, African American men earn 72 cents and Hispanic men earn 62 cents.

When employees are paid less because of their sex, race, or ethnicity, they often have no idea they are being discriminated against. Because pay often is cloaked in secrecy, when a discriminatory salary decision is made, it is seldom as obvious to an affected employee as a demotion, a termination, or a denial of a promotion.<sup>8</sup> Moreover, the most recent survey data

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<sup>4</sup> NAT'L ASIAN PACIFIC AMERICAN WOMEN'S FORUM, FIGHTING INVISIBILITY: CLOSING THE WAGE GAP 10 (Mar. 2017), available at [https://napawf.org/wp-content/uploads/2017/03/FIGHTING-INVISIBILITY\\_FINAL-3.29.17.pdf](https://napawf.org/wp-content/uploads/2017/03/FIGHTING-INVISIBILITY_FINAL-3.29.17.pdf).

<sup>5</sup> Hegewisch, A. & Matite, M., *The Gender Wage Gap by Occupation*, INST. FOR WOMEN'S POLICY RESEARCH (2013), available at <http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2>

<sup>6</sup> Blau, F. D. & Kahn, L.M, *The Gender Wage Gap: Extent, Trends and Explanations*, NAT'L BUREAU OF ECONOMIC RESEARCH (Jan. 2016), available at <http://www.nber.org/papers/w21913.pdf>.

<sup>7</sup> Moss-Racusin, C.A. et al., *Science faculty's subtle gender biases favor male students*, PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA (Aug. 2012), available at <http://www.pnas.org/content/109/41/16474.abstract#aff-1>.

<sup>8</sup> As Justice Ginsburg has noted:

Comparative pay information . . . is often hidden from the employee's view. Employers may keep under wraps the pay differentials maintained among supervisors, no less the reasons for those differentials.

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available indicates about 60 percent of workers in the private sector are either forbidden or strongly discouraged from discussing their pay with their colleagues.<sup>9</sup> As a result, employees face significant obstacles in gathering the information that would indicate they have experienced pay discrimination, which undermines their ability to challenge such discrimination. Consequently, government enforcement and employer self-evaluation and self-correction are critical to combat compensation discrimination. The EEO-1 Form revisions were properly designed to facilitate both, as set out in greater detail in the Center’s previous comments to the EEOC and to OMB in support of the EEO-1 Form Revision.<sup>10</sup>

## **II. The EEO-1 Burden Estimates Were Based on Careful, Rigorous, and Transparent Analysis.**

The EEOC calculates that to complete the revised EEO-1 Form, 60,886 firms will file 674,146 establishment reports, taking 15.2 burden hours per firm and 1.9 burden hours per establishment, for a total 1,892,979.5 hours--approximately 31 hours per firm.<sup>11</sup> Neither the Chamber nor the EEAC demonstrates material error in the EEOC’s estimate.

The revised EEO-1 Form was adopted after an extensive and transparent process, including a public hearing, a vote by the EEOC Commissioners, and two rounds of notice and public comment (“60-Day Notice” and “30-Day Notice”). As that process made clear, in estimating burden and concluding that the revised EEO-1 Form would not unduly burden employers, the EEOC collected data from multiple sources. As set out in its 30-Day Notice,<sup>12</sup> the EEOC’s proposal was informed by the 2012 National Academy of Sciences’ study regarding the collection of compensation data (NAS Study), which concluded that use of the EEO-1 for pay data collection would be “quite manageable for both the EEOC and the respondents.”<sup>13</sup> The EEOC then commissioned an independent Pay Pilot Study (Pilot Study) to identify the most efficient means of collecting pay data, with a specific focus on the most

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Small initial discrepancies may not be seen as meet for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves. Pay disparities are thus significantly different from adverse actions “such as termination, failure to promote, ... or refusal to hire,” all involving fully communicated discrete acts, “easy to identify” as discriminatory.

Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007) (Ginsburg, J. dissenting).

<sup>9</sup> INST. FOR WOMEN’S POLICY RESEARCH, PAY SECRECY AND WAGE DISCRIMINATION (2014), available at [http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at\\_download/file](http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at_download/file)

<sup>10</sup> See Nat’l Women’s Law Ctr., *Comment Re: Proposed Revision of the Employer Information Report (EEO-1)*, FR Docket Number 2016-01544, Docket ID EEOC-2016-0002 (Apr. 1, 2016); Nat’l Women’s Law Ctr., *Comment Re: Agency Information Collection Activities; Notice of Submission for OMB Review, Final Comment Request: Revision of the Employer Information Report (EEO-1)*, OMB Control Number 3046-0007, Docket ID EEOC-2016-0002-0340 (Aug. 15, 2016).

<sup>11</sup> 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 (July 14, 2016) (“30-Day Notice”).

<sup>12</sup> *Id.* at 45480.

<sup>13</sup> NAT’L RESEARCH COUNCIL OF THE NAT’L ACADEMIES, COLLECTING COMPENSATION DATA FROM EMPLOYERS 60 (2012), available at <http://www.nap.edu/catalog/13496/collecting-compensation-data-from-employers>.

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efficient and least costly methods for employers to transmit pay data.<sup>14</sup> This Pilot Study was completed in 2015 and also informed the EEOC's analysis.<sup>15</sup> In addition, the EEOC held a two-day meeting in March 2012 on data collection procedures with employer representatives, statisticians, human resources information systems experts, and information technology specialists, which included a discussion of pay data collection and estimated burdens; the recommendations provided in that meeting included a recommendation that reporting requirements be aligned with other agencies but concluded that the cost burden of reporting pay data to the EEOC would be minimal.<sup>16</sup>

The EEOC also reviewed the burden analysis the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor had previously conducted on a compensation data collection tool focused narrowly on federal contractors in 2014, and the public comments submitted to OFCCP regarding burden estimates based on that proposal.<sup>17</sup> In March 2016, the EEOC held a public hearing on the proposed revisions where it heard testimony from employer representatives, among others.<sup>18</sup>

The EEOC also received and considered hundreds of public comments on its 60-Day Notice, including numerous comments from the employer community. Based on its consideration of these comments, the EEOC made multiple revisions to the burden analysis between the 60-Day Notice and 30-Day Notice. For example, based on comments, the EEOC lowered its estimate of the level of automation typical for employer completion of the EEO-1 Form. While the 60-Day Notice assumed that EEO-1 forms would all be submitted in one data upload filed by a firm on behalf of all of the firm's establishments, in the 30-Day Notice, the EEOC based its estimate of the number of firms who would rely on an automated data upload on the number of firms using this method in 2014<sup>19</sup>—a conservative estimate given that from year to year, more firms automate this process. It also increased its estimate of the number and variety of professional staff who would spend time gathering the relevant data and submitting the report at both the firm and the establishment level, based on employer input.<sup>20</sup>

Further, as the EEOC observed in its 30-Day Notice, the employer community offered widely discrepant estimates of the time necessary to complete the revised EEO-1 Form.<sup>21</sup> For example, the Society for Human Resources Management (SHRM) reported that in its survey

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<sup>14</sup> SAGE COMPUTING, INC., FINAL REPORT 8, 101 (Sept. 2015), available at <http://eeoc.gov/employers/eo1survey/pay-pilot-study.pdf> [PILOT STUDY].

<sup>15</sup> 30-Day Notice, 81 Fed. Reg. at 45480.

<sup>16</sup> See SAGE COMPUTING, INC., EEOC SURVEY SYSTEM MODERNIZATION WORK GROUP MEETING 2 (Mar. 2012), available at <https://www.eeoc.gov/employers/eo1survey/survey-modernization.pdf>.

<sup>17</sup> 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) ("60-Day Notice").

<sup>18</sup> Public Hearing before the U.S. Equal Employment Opportunity Commission, Public Input into the Proposed Revisions to the EEO-1 Report, Mar. 16, 2016, available at <https://www.eeoc.gov/eeoc/meetings/3-16-16/index.cfm>.

<sup>19</sup> 30-Day Notice, 81 Fed. Reg. at 45493-5.

<sup>20</sup> *Id.* at 45493.

<sup>21</sup> *Id.*

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of members, 80 percent estimated that the revised EEO-1 Form would require 30 hours of time or less to file.<sup>22</sup> This survey of the employer community actually suggests a lighter burden than does the final EEOC conclusion that on average a firm would be able to complete the revised EEO-1 Form in 31 hours. SHRM surveyed 262 of its members in reaching this conclusion.<sup>23</sup> By contrast, the Chamber's assertion in its February 27, 2017, letter to OMB that completing the revised EEO-1 Form will take 132 hours per firm is based on a survey of only 50 employers. The EEOC's conclusion, consistent with SHRM estimates, was further informed by its own experience working with EEO-1 stakeholders over many years.<sup>24</sup>

The EEOC also undertook its own analysis regarding the burden of bridging HRIS and payroll systems for reporting pay data on the EEO-1 Form in the face of a broad variety of employer estimates of the cost and burden of providing such data. As it stated in the 30-Day notice, it determined that major HRIS vendors already allow for the collection of EEO-1 demographic data and offer the capacity to record year-to-date gross and paid earnings. The EEOC thus reasonably concluded that "creating software solutions for the EEO-1, components 1 and 2, may not be as complex or novel as some comments suggested."<sup>25</sup> Indeed, compensation management systems and software are specifically designed to be updated routinely to accommodate changes in federal, state or local income tax rules, new accounting rules, and employer changes in fringe benefits or compensation practices and can be expected to provide off-the-shelf solutions to allow this bridging of systems.<sup>26</sup>

Moreover, throughout the design and review of the revised EEO-1 Form, the EEOC has carefully analyzed and taken steps to minimize any burden imposed on employers by this data collection. For example, in initially proposing the revision to the EEO-1 Form in February 2016, the EEOC was guided by the 2011 and 2014 rounds of public comments to OFCCP on its proposed compensation data collection tool.<sup>27</sup> When OFCCP proposed collecting compensation data from federal contractors through a separate tool on a different reporting schedule from the EEO-1, employer representatives, including the EEAC, urged in the strongest terms that instead EEOC and OFCCP coordinate their data collection through

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<sup>22</sup> Society for Human Resource Mgm't, *Comment on the Equal Employment Opportunity Commission's Proposed Revision of the Employer Information Report (EEO-1)*; ID: EEOC-2016-0002-0001, 81 Fed. Reg. 5113 (Feb. 1, 2016) 22 (Apr. 1, 2016).

<sup>23</sup> *Id.* at 8.

<sup>24</sup> 30-Day Notice, 81 Fed. Reg. at 45493.

<sup>25</sup> *Id.* at 45487.

<sup>26</sup> For example, Intuit provides regular updates for subscribers to its Quick Books Payroll service. See <http://payroll.intuit.com/support/kb/2000204.html>; Sage provides similar software updates to its subscribers. See [https://support.na.sage.com/selfservice/microsites/msbrowse.do?UMBrowseSelection=SG\\_SAGE50\\_U\\_S\\_EDITION\\_1](https://support.na.sage.com/selfservice/microsites/msbrowse.do?UMBrowseSelection=SG_SAGE50_U_S_EDITION_1).

<sup>27</sup> U.S. Dep't of Labor, Office of Federal Contract Compliance Programs, *Non-Discrimination in Compensation: Compensation Data Collection Tool, Advanced Notice of Proposed Rulemaking*, 76 Fed. Reg. 49398 (Aug. 10, 2011); U.S. Dep't of Labor, Office of Federal Contract Compliance Programs, *Government Contractors, Requirement to Report Summary Data on Employee Compensation, Notice of Proposed Rulemaking*, 79 Fed. Reg. 46561 (Aug. 8, 2014). While the Chamber attempts to characterize this OFFCP proposal as a failed and abandoned effort, in fact, the comments and analysis undertaken led to the decision to broaden the reach of the pay data collection through the revised EEO-1 Form, which includes both federal contractors and other private employers with more than 100 employees.

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use of a single, unified instrument.<sup>28</sup> The EEO-1 Form revision proposed by the EEOC accomplished this goal, avoiding duplication of effort or wasted costs for either employers or enforcement agencies.

The selection of W-2 income as the proper measure of compensation was also designed to minimize employer burden, while capturing the relevant range of employee compensation. Federal law already requires employers to maintain and generate the information in W-2 forms that will be required for the revised EEO-1.<sup>29</sup> HRIS experts consulted for the Pilot Study reported that most major payroll software systems are preprogrammed to compile the data for generating W-2 forms. This led the Pilot Study to conclude that employers using such software to generate W-2 forms could report the proposed data with relatively little additional burden.<sup>30</sup> The EEOC properly relied on this analysis in its burden estimates.

The EEOC also minimized employer burden by moving the EEO-1 Form filing deadline from September to March, to align with employers' annual W-2 calculations, eliminating the need for employers to generate a separate, non-calendar year W-2 calculation. This change, which directly responded to employers' concerns, allows the use of the same calendar year W-2 data for the purposes of both the EEO-1 Form and federal tax law. Similarly, in response to employer concerns, the EEOC moved the "workforce snapshot" period from the third quarter (July-September) to the fourth quarter (October-December).<sup>31</sup>

Finally, it is important to note that various elements of the description of the revised EEO-1 Form by the Chamber and the EEAC are misleading at best. For example, the EEAC emphasizes that the revisions to the EEO-1 "increase the total number of data fields for each establishment from 180 to 3,660," implying that employers' burden in completing the EEO-1 Form has increased by a similar factor. But this emphasis on number of data fields is misleading, given the automation of the process. As noted by the EEOC, the online portal for submitting the EEO-1 Form does not require that "zeros" be entered in cells for which employers do not have data: "No EEO-1 filers enter data in every cell, so basing the annual PRA burden on the total number of cells on the EEO-1 form would be inaccurate."<sup>32</sup>

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<sup>28</sup> See SAGE COMPUTING, INC., EEOC SURVEY SYSTEM MODERNIZATION WORK GROUP MEETING 2 (Mar. 2012), available at <http://www.eeoc.gov/employers/eeo1survey/survey-modernization.pdf>; see also, e.g., Equal Employment Advisory Council, *Comments on the Office of Federal Contract Compliance Programs' Proposed Requirement to Report Summary Data on Employee Compensation* (Jan. 5, 2015); Society for Human Resource Management and the College and University Professional Association for Human Resources, *Comment on Advanced Notice of Proposed Rulemaking Related to Non-Discrimination in Compensation* 3-4 (Oct. 11, 2011).

<sup>29</sup> 26 C.F.R. § 31.6051-1.

<sup>30</sup> PILOT STUDY, *supra* note 14 at 8, 101. The Pilot Study acknowledged that some companies may need to make a one-time capital investment to write a software program to import data from payroll programs into the HRIS system. PILOT STUDY at 8.

<sup>31</sup> 30-Day Notice, 81 Fed. Reg. at 45484-5.

<sup>32</sup> *Id.* at 45493.

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### **III. No Relevant Circumstances Have Changed.**

In the six months since the revised EEO-1 Form was approved, no relevant circumstances have changed, and the Chamber does not attempt to argue otherwise. The EEAC, however, asserts that the data file specifications published by the EEOC this fall constitute a change in circumstances. This ignores that fact that the EEOC noted in its 30-Day Notice that it would be posting data file specifications to support employers and HRIS vendors to accommodate Component 2 of the EEO-1 Form.<sup>33</sup> OMB approved the data collection with the knowledge that these data file specifications would be posted thereafter. Moreover, no employer is required to utilize these data file specifications to submit the EEO-1 Form. This is one option to submit data offered for employer convenience. It provides no basis for reopening review of the data collection.

### **IV. The Revised EEO-1 Form Will Generate Substantial Benefit.**

OMB may only reopen review of a previously approved collection when the burden estimates by the agency are shown to be in material error or when circumstances have changed. The applicable standard does not permit revocation of approval based on disagreement regarding benefits generated by the information collection. Nevertheless, it is important to note that the Chamber is wrong when it states that the EEOC failed to identify any benefit from the revised EEO-1 report. In its 30-Day Notice, the EEOC describes in detail the ways in which the data will aid EEOC investigations and the ways in which the EEOC has tested the utility of its planned analyses through the use of comparable databases.<sup>34</sup>

The revised EEO-1 Report will provide the EEOC with a critical tool for focusing investigatory resources to identify pay discrimination. It will allow the EEOC to see which employers have racial, ethnic, or gender pay gaps that differ significantly from the pay patterns from other employers in their industry and region. By comparing wage data for firms employing workers in the same job categories, in the same industry, in the same location, in the same year, the EEOC will be able to tell which employers' pay practices depart from the norm and to investigate possible pay discrimination more efficiently. While the EEO-1 Form will never be the basis of a finding of discrimination standing alone, it provides important information to the EEOC to direct its resources. Again, this is particularly important for enforcement of pay discrimination laws, given that so many victims of pay discrimination have no idea they are being paid less than their counterparts, limiting their ability to challenge discrimination without the assistance of the EEOC.

In addition, both the process of responding to the data collection tool and the more effective enforcement that the tool permits will spur more employers to proactively review and evaluate their pay practices and to address any unjustified disparities between employees. Reporting pay data by gender and race within job categories ensures that employers are collecting and evaluating it. By incentivizing and facilitating such employer self-evaluation, the revised EEO-1 Report will increase voluntary employer compliance with discrimination

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<sup>33</sup> *Id.* at 45487.

<sup>34</sup> *Id.* at 45490.

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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 revised EEO-1 Report encourages employers to proactively implement practices to help prevent pay disparities in the first instance and to develop a diverse workforce, both of which are good for business. A diverse workforce and equitable employment practices can confer a wide array of benefits on a company beyond decreased risk of liability, including access to the best talent, increased employee satisfaction and productivity, increased innovation, an expanded consumer base, and stronger financial performance.<sup>35</sup> Competitive—and thus equal—pay is critical for recruiting and retaining a diverse workforce and high performers, particularly for younger women workers.<sup>36</sup> And when employees are confident they are being paid fairly, they are more likely to be engaged and productive.<sup>37</sup> Significantly, shareholders and potential investors are recognizing these benefits and increasingly are interested in companies' commitment to diversity and equal employment opportunity, and see compliance with antidiscrimination laws—particularly with regard to equal pay—as an important factor impacting risk and profitability, and therefore relevant to investment decisions.<sup>38</sup>

Furthermore, addressing discrimination and closing the gender wage gap would have a significant positive impact on the economy. A recent study found that if women received the same compensation as their comparable male co-workers, the poverty rate for all working women would be reduced by half, from 8.0 percent to 3.8 percent.<sup>39</sup> Moreover, nearly 60

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<sup>35</sup> Hunt, V., Layton, D. & Prince, S., *Diversity Matters* 9-13, MCKINSEY & CO. (Feb. 2015) (finding diverse workforces correlate with better financial performance, because diversity helps to recruit the best talent, enhance the company's image, increase employee satisfaction, and improve decision making, including fostering innovation); Hewlitt, S.A., Marshall, M. & Sherbin, L., *How Diversity Can Drive Innovation*, HARVARD BUS. REV. (Dec. 2013), available at <https://hbr.org/2013/12/how-diversity-can-drive-innovation>. Conversely, companies that fail to address gender wage disparities and discriminatory employment practices could damage their reputation and brand among consumers, leading to a loss of profits and shareholder value. Lamb, N. & Klein, W., *A Proactive Approach to Wage Equality is Good for Business*, EMPLOYMENT RELATIONS TODAY (Summer 2015), available at <http://arjuna-capital.com/news/a-proactive-approach-to-wage-equality-is-good-for-business/> [Proactive Approach].

<sup>36</sup> A recent study found that “pay and financial benefits drive Millennials’ choice of organization more than anything else.” THE 2016 DELOITTE MILLENNIAL SURVEY: WINNING OVER THE NEXT GENERATION OF LEADERS 19 (2016), available at <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/About-Deloitte/gx-millennial-survey-2016-exec-summary.pdf>. Noel, L. & Hunter Arscott, C., *Millennial Women: What Executives Need to Know About Millennial Women* 4, ICEDR (2015), available at [http://www.icedr.org/research/documents/14\\_millennial\\_snapshot.pdf](http://www.icedr.org/research/documents/14_millennial_snapshot.pdf) (Millennial women leave jobs primarily for more compensation).

<sup>37</sup> Courtney Seiter, “The Counterintuitive Science of Why Transparent Pay Works,” *Fastcompany.com*, Feb. 26, 2016, available at <http://www.fastcompany.com/3056975/the-future-of-work/the-transparent-pay-revolution-inside-the-science-and-psychology-of-open->

<sup>38</sup> *Proactive Approach*, *supra* note 35; Natasha Lamb, “Closing the pay gap: Silicon Valley’s gender problem,” *Ethical Boardroom*, June 7, 2016, available at <http://ethicalboardroom.com/leadership/diversity/close-the-pay-gap/>; Trillium Asset Mgm’t, *Letter to Citigroup Shareholders*, Apr. 16, 2016, available at <https://www.sec.gov/Archives/edgar/data/831001/000121465916010905/j415160px14a6g.htm>.

<sup>39</sup> Milli, J., et al., *The Impact of Equal Pay on Poverty and the Economy* 1, INST. FOR WOMEN’S POLICY RESEARCH (Apr. 2017), available at <https://iwpr.org/publications/impact-equal-pay-poverty-economy/>.

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percent of women would earn more if working women were paid the same as men of the same age with similar education and hours of work.<sup>40</sup> Increased wages would augment these workers' consumer spending power and benefit businesses and the economy.<sup>41</sup> Another recent study estimates that by closing the wage gap entirely, women's labor force participation would increase and \$4.3 trillion in additional gross domestic product could be added in 2025, about 19 percent more than would otherwise be generated in 2025.<sup>42</sup>

## V. The EEOC Has Fully Addressed How It Will Ensure Confidentiality of Data.

The Chamber, again ignoring the standard that applies to OMB in reopening review of a data collection required by a final rule, asserts that review should be reopened because the EEOC has ignored privacy and confidentiality concerns in its revision of the EEO-1 Form. This is not only an inappropriate basis for OMB to reopen review of the data collection, it is flatly untrue. As the EEOC stated in its 30-Day Notice, its employees are bound to keep EEO-1 Form data confidential on threat of criminal penalties.<sup>43</sup> Contractors, other federal agencies, and state and local agencies are provided access to this information only upon submitting to the same strict confidentiality requirements. As the EEOC also explained, in considerable detail, it maintains "a robust cyber security and privacy program, in compliance with the Federal Information Security and Modernization Act of 2014."<sup>44</sup> The Chamber fails to offer any support at all for its bare assertions to the contrary.

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For all these reasons, there is no basis for OMB to reopen its review of the revised EEO-1 Form. The pay data collection is a critical equal pay initiative to address an ongoing problem of discrimination on the basis of sex, race, and ethnicity in compensation that shortchanges working people across the country. It was adopted after an open, vigorous, thoughtful process that invited and considered the participation of all stakeholders and was based on careful and thorough analysis. It aligns with this Administration's expressed commitment to ensuring equal pay for equal work. There is no basis for revisiting this important and much needed measure. Please do not hesitate to contact Emily Martin, General Counsel and Vice President for Workplace Justice at the National Women's Law Center, at (202) 588-5180, if we can be of further assistance as you consider this important matter.

Sincerely,

National Women's Law Center

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<sup>40</sup> *Id.*

<sup>41</sup> *See id.* at 2 (finding that the U.S. economy would have produced additional income of more than \$512.6 billion in 2016 if women received pay equal to their male counterparts).

<sup>42</sup> Ellingrud, K., *et al.*, *The power of parity: Advancing women's equality in the United States* 1-2, MCKINSEY GLOBAL INST. (Apr. 2016), available at <http://www.mckinsey.com/global-themes/employment-and-growth/the-power-of-parity-advancing-womens-equality-in-the-united-states>. The same study estimates that even if the wage gap was only partially closed, \$2.1 trillion in additional GDP could be added in 2025.

<sup>43</sup> 30-Day Notice, 81 Fed. Reg. at 45491-92.

<sup>44</sup> *Id.* at 45492.

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9to5, National Association of Working Women  
AFL-CIO  
    South Florida AFL-CIO  
American Association of University Women (AAUW)  
    Jacksonville, FL, Branch of AAUW  
American Civil Liberties Union  
Americans for Democratic Action (ADA)  
Atlanta Women for Equality  
Bazelon Center for Mental Health Law  
California Employment Lawyers Association  
Cashdan & Kane PLLC  
Center for Biological Diversity  
Center for Law and Social Policy (CLASP)  
Center for Media and Democracy  
Center on Budget and Policy Priorities  
Colorado Center on Law and Policy  
Deeds Not Words  
Economic Opportunity Institute  
Economic Policy Institute  
Economic Progress Institute (RI)  
Equal Pay Today!  
Equal Rights Advocates  
Equality California  
Fair Work Center  
Family Equality Council  
Family Values @ Work  
Feminist Majority  
Fiscal Policy Institute  
Food & Water Watch  
FORGE, Inc.  
Futures Without Violence  
Indiana Institute for Working Families  
Institute for Science and Human Values  
Interfaith Worker Justice  
    South Florida Interfaith Worker Justice  
International Federation of Professional and Technical  
Engineers (IFPTE)  
International Union, United Automobile, Aerospace &  
Agricultural Implement Workers of America, UAW  
JOBS NOW Coalition  
Jobs With Justice  
Keystone Research Center  
Labor Council for Latin American Advancement  
Labor Project for Working Families  
Lambda Legal

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Lawyers' Committee for Civil Rights Under Law  
The Leadership Conference on Civil and Human Rights  
Legal Aid at Work  
Los Angeles Alliance for a New Economy  
Los Angeles Black Worker Center  
Make it Work  
Massachusetts Law Reform Institute  
NAACP  
National Asian Pacific American Women's Forum  
National Black Justice Coalition  
National Center for Lesbian Rights  
National Center for Transgender Equality  
National Coalition Against Domestic Violence  
National Committee on Pay Equity  
National Council of Jewish Women  
National Domestic Workers Alliance  
National Employment Law Project  
National Employment Lawyers Association  
National Latina Institute for Reproductive Health  
National LGBTQ Task Force  
National Organization for Women  
    Southwest PA National Organization for Women  
National Partnership for Women & Families  
Network Lobby for Catholic Social Teaching  
New York University School of Law  
North Carolina Justice Center  
People Demanding Action  
PolicyLink  
Policy Matters Ohio  
PowHer New York  
Progressive Democrats of America  
Protect All Children's Environment  
Public Citizen  
Restaurant Opportunities Centers United  
Santa Clara County Wage Theft Coalition  
Sargent Shriver National Center on Poverty Law  
Sisters of Our Lady of Charity of the Good Shepherd  
Chapters  
    Mid-North America Province  
    National Advocacy Center of the Sisters of the  
    Good Shepherd  
    New York/Toronto Province  
    US Central South Province  
UltraViolet  
The United State of Women

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Wisconsin Council on Children and Families  
Women Employed  
Women's Law Project  
Women's Rights and Empowerment Network (WREN)

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