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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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October 18, 2019

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

Dear Chairwoman Dhillon:

I write to request information about 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, which helps the EEOC carry out its mission to combat workplace discrimination by shedding light on the wage gap and aiding in the enforcement of federal anti-discrimination laws. Discontinuing the collection of Component 2 data will fundamentally obstruct and frustrate the fight for equal pay, and I seek to understand the agency's decision to undermine this critical piece of its mission. People expect the EEOC to hold companies accountable for pay discrimination, not help them sweep it under the rug.

In 2016, the EEOC updated its EEO-1 form to require companies with 100 or more employees to submit information on employee pay by race, sex, ethnicity, pay band, and job category.¹ 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.² In March 2019, following a decision by the Office of Management and Budget (OMB) to stay the data collection, the District Court for the District of Columbia ordered the revised EEO-1 be put into immediate effect. On September 30, 2019, EEOC completed the process of collecting the court-ordered data for 2017 and 2018. Yet, on September 12, 2019, prior to the end of the 2017 and 2018 data collection, EEOC filed a notice in the Federal Register announcing it does not intend to collect Component 2 data going forward.³

It is confounding that the agency charged with shedding light on the wage gap and combatting wage discrimination would cease to collect this critical data, particularly given clear evidence of the gender pay gap. Women in the United States are paid just 82 cents for every dollar paid to

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

² *Id.*

³ <https://www.federalregister.gov/documents/2019/09/12/2019-19767/agency-information-collection-activities-existing-collection>

men.⁴ 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. Women head close to 15 million households in the U.S., and about 26 percent of those families have incomes that fall below the poverty line.⁵ 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.⁶ Not eliminating the wage gap for women means that women in the U.S. lose close to \$915 billion every year.⁷ As a result, women—and especially women of color—have less money to support themselves, their families, and to secure their retirement.

Eliminating the collection of Component 2 data weakens the EEOC's ability to fulfill its mandate to combat wage discrimination in the workplace. Without the collection of information on wages and salaries, the EEOC will have fewer tools to effectively identify pay discrimination, making it difficult to address and remedy. Meanwhile, lost wages every year mean families, businesses, and the economy suffer.

The EEOC has failed to justify its decision to cease collecting this critical data. The notice claims the agency "re-examined the methodology used to calculate the 2016 burden [on employers] for the collection of EEO-1 data" and arrived at a new methodology that estimates the new burden at more than ten times the 2016 estimates. Based on these new estimates, the agency then weighed the alleged burden on employers of producing this data, stating, "At this point in time, the unproven utility to its enforcement program of the pay data ... is far outweighed by the burden imposed on employers." It is difficult to understand how the agency reached this conclusion before it completed the 2017 and 2018 data collections and before any analysis of the data. Further, the EEOC fails to note in its estimate that the burden should decline over time as the EEOC and employers develop processes and procedures to collect the data, making it easier in future years.

I strongly urge you to reconsider this harmful decision and continue collecting Component 2 pay data to help ensure EEOC has the tools it needs to combat pay discrimination. To help me better understand the agency's decision to reverse course and abandon its collection of Component 2 pay data, please respond to the following questions by no later than October 31, 2019:

1. Throughout the process of drafting the September 12 notice, did EEOC consult with any community organizations, stakeholders, or workers? If so, what feedback did the organizations or individuals provide? In addition, please provide the dates of any consultations and names of the participants involved.
2. Has EEOC examined the effects of its decision to cease the Component 2 data collection on the benefits of the equal pay data collection for working women and people of color

⁴ <http://www.nationalpartnership.org/our-work/resources/workplace/fair-pay/americas-women-and-the-wage-gap.pdf>.

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

⁶ <https://nwlc.org/resources/equal-pay-for-asian-pacific-islander-women/>

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

who have been harmed by the pay gap? If so, please provide a detailed explanation of that examination. If not, please explain why not.

3. The EEOC's justification for discontinuing the collection of Component 2 data was that the enormous burden on employers for providing the data "far outweighed" the "unproven utility" of collecting the data. Please provide a detailed explanation and analysis of why and how the agency made this determination, including a complete breakdown and analysis of the estimated costs of the Component 2 data collection.
4. The EEOC says it "should consider information from the ongoing Component 2 data collection before deciding whether to submit pay data collection to OMB." Please provide a detailed explanation of the information EEOC will consider in addressing whether to submit the Component 2 data from the ongoing collection.
5. In the notice, the EEOC explains it will continue to collect Component 1 data because it "is necessary for the proper performance of the agency's functions and has a practical utility to the fulfillment of the EEOC's mission." Please explain why the same rationale does not apply to Component 2 data.

Thank you in advance for your attention to this matter. If you have any questions or would like to further discuss this issue, please contact Michael Huggins, Democratic staff for the Committee on Health, Education, Labor, and Pensions, at (202) 224-0767.

Sincerely,



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