



January 5, 2015

Debra A. Carr

Director, Division of Policy, Planning, and Program Development
Office of Federal Contract Compliance Programs
200 Constitution Avenue, NW, Room C-3325
Washington, DC 20210

Re: **RIN 1250-AA03, Comments in Response to OFCCP's Notice of Proposed Rulemaking Regarding Government Contractors' Requirement to Report Summary Data on Employee Compensation**

Dear Ms. Carr:

The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 200 national organizations with promoting and protecting the civil and human rights of all persons in the United States. We are particularly committed to advancing equity and ending unlawful discrimination in the workplace, with a strong focus on workplace fairness for women, people of color, and people with disabilities.

The undersigned members of The Leadership Conference Employment Task Force appreciate the opportunity to comment on the Office of Federal Contract Compliance Programs' (OFCCP) Notice of Proposed Rulemaking (NPRM) regarding the development and implementation of a compensation data collection tool. We strongly support the creation of the data collection tool – or “Equal Pay Report” – which will help to ensure that the over \$450 billion in taxpayer dollars spent on federal contracts each year are not used to subsidize unlawful compensation discrimination.

OFCCP plays a vital role in combating unlawful employment discrimination in the federal contracting workforce, and in turn, impacts the lives of millions of workers. OFCCP has responsibility for enforcing executive orders and laws requiring federal contractors and subcontractors to ensure equal employment opportunity. The agency's jurisdiction reaches employers that employ a total of at least 28 million workers, comprising nearly one quarter of the civilian workforce. Identifying and remedying compensation discrimination is an important part of OFCCP enforcement efforts.

As OFCCP has recognized, women and workers from communities of color continue to face significant pay disparities in the United States. On average, women working full time, year round are paid only 78 cents for every dollar paid to men.ⁱ African-American and Latino full-time, year-round workers overall are paid only 75 cents and 65 cents, respectively, for every dollar paid to white, non-Hispanic workers.ⁱⁱ African-American and Latina women are at a particular disadvantage: they earn only 64 cents and 56 cents for year-round, full-time work, respectively, for every dollar paid to white men.ⁱⁱⁱ Women in every age group,^{iv} at every level of educational achievement^v and in every industry^{vi} are underpaid relative to their male counterparts. These troubling statistics underscore the need for scrutiny of federal contractors' pay practices.

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We applaud OFCCP's move to institute the Equal Pay Report and appreciate the care the Department has taken in the proposed rule to strike a balance between the need for data to address compensation discrimination and the contracting community's need for an efficient reporting mechanism that is not unduly burdensome. This rule will enhance OFCCP's ability to detect pay discrimination and to enforce equal pay requirements. The Equal Pay Report will enable OFCCP to identify disparities in compensation so that it can more effectively and efficiently select contractors for closer scrutiny, and will allow OFCCP to analyze trends in compensation practices across industries. The data collection and reporting required by the proposed rule will also encourage employers to assess their own compensation data, voluntarily address disparities and improve their practices.

With OFCCP's objectives in mind, we offer the following comments:

I. OFCCP's decisions about what data to collect in the Equal Pay Report should appropriately balance the needs of employees and employers.

Collecting W-2 earnings and total hours worked will enable OFCCP to analyze the compensation data and assess and investigate disparities. We applaud OFCCP's decision to collect W-2 earnings because they provide a more complete picture than the more limited Occupational Employment Statistics definition of compensation by including all taxable wages (minus pretax deductions). W-2 earnings provide information about certain benefits, overtime, shift differential pay, and other types of compensation. This information will help OFCCP obtain a more comprehensive view of compensation practices and pay disparities.

We believe it is vital that once a contractor is selected for a compliance review, OFCCP continue its current practice of collecting and reviewing data in specific categories of compensation. Our understanding is that OFCCP currently collects information on bonuses, incentives, commissions, merit increases, locality pay and overtime during compliance reviews, and this level of data review should continue. OFCCP should also collect data on paid leave and paid sick time, which are important types of compensation that are often provided only to more highly-compensated professional employees within a firm. Collecting and analyzing information in these categories enables OFCCP to determine whether there are compensation disparities within specific categories of compensation that are not reflected in W-2 earnings as a whole.

A possible future improvement to the Equal Pay Report would be to collect summary data in additional related categories. These categories include average tenure and average number of hours worked, median starting or initial total compensation, average pay raises, average bonuses, the minimum and maximum salary, the standard deviation or variance of salary, and the number of workers by gender and race/ethnicity. This data would provide valuable context and help OFCCP account for hiring practices, small sample sizes, outliers, and other factors.

Reporting data by EEO-1 job categories by race, ethnicity, and sex in the Equal Pay Report will facilitate data collection. EEO-1 job categories divide jobs into ten categories based on the average skill level, knowledge and responsibility involved in the position. We support OFCCP using EEO-1 job categories in its initial data collection to minimize burdens and promote efficiencies for employers. In addition, we applaud OFCCP's decision to collect the data based on race, ethnicity, and sex. Discrimination often occurs across multiple characteristics, and obtaining the data this way will allow OFCCP to compare compensation information across categories to more accurately identify the basis of

discriminatory practices.

At the compliance review stage, review of compensation data by Affirmative Action Plan (AAP) job groups is appropriate. AAP job groups are created based on similar job duties and responsibilities, as well as similar wages and similar opportunities for training, promotion, transfer, and other employment benefits. Because AAP job groups are based on more information than EEO-1 job categories, OFCCP can more accurately determine whether there are compensation disparities between employees in similar positions.

In addition to using the EEO-1 job categories, the rule would adopt the EEO-1 Report's definition of "employee," which includes part-time workers.^{vii} At least one in five women ages 25 to 64 works part-time, compared with just one in ten men of comparable age, and women made up 64 percent of the part-time workforce in 2012.^{viii} Including part-time workers is vital to understanding pay disparities, and we applaud OFCCP for taking this step. In addition, it is just as vital to collect information on temporary workers, which the EEO-1 Report's definition of "employee" excludes. We urge OFCCP to consider including these workers in its initial data collection and in compliance reviews.

II. Data should be collected from all contractors and subcontractors who are required to submit EEO-1 reports because the interests of the government in identifying compensation discrimination and the interests of employees in fair compensation are the same regardless of the employer's size.

OFCCP should collect Equal Pay Report data from contractors and subcontractors with 50 or more employees rather than setting a higher employer-size threshold. OFCCP proposes to collect Equal Pay Report data from prime contractors and first tier subcontractors that are required to file an EEO-1 report, have more than 100 employees and a federal contract, subcontract or purchase order amounting to \$50,000 or more. The 100-employee size threshold is too high. Contractors must file EEO-1 reports if they have at least 50 employees and a contract of \$50,000 or more. Utilizing the 50-employee threshold would not significantly burden smaller contractors because these contractors are already required to maintain compensation data for the purpose of compliance reviews. The Equal Pay Report would simply require these contractors to submit this data as a matter of course. Conversely, setting a higher threshold for the Equal Pay Report means that smaller contractors will not be routinely screened for discriminatory pay practices and their data will not be included in analyzing trends across industries, making it easier for these contractors to conceal wage discrimination.

Construction contractors should be required to submit the Equal Pay Report because the same goals are served as by requiring supply and service contractors to submit compensation data. Under the proposed rule, construction contractors are required to submit the Equal Pay Report based on the same requirements as for other contractors – if they have contracts of \$50,000 or more and more than 100 employees. We agree that construction contractors should be covered by the rule. However, in the NPRM, OFCCP explains that many construction contractors are not likely to meet these thresholds, as 99 percent of construction firms have fewer than 100 employees.^{ix} For this reason, we again urge OFCCP to require all contractors with 50 or more employees to submit the Equal Pay Report. In addition to capturing other smaller contractors, this would bring more construction contractors under the proposed rule's coverage.

III. OFCCP should collect and disseminate the data in a timely manner to better enable the contracting community to voluntarily monitor and improve pay practices.

OFCCP's plan to publish collected data, and to use the data to analyze compensation trends by industry, will assist employers in complying with equal pay requirements. OFCCP proposes publishing aggregate information based on the collected compensation data, such as ranges or averages by industry or labor market. It would use this data to develop objective industry-based compensation standards, with the goal that employers who fall below the industry average might voluntarily change their employment policies and practices in reliance on this data. The industry-based standards would include the total number of employees in each EEO-1 category based on all the data submitted by contractors in a particular industry group, the industry group's total W-2 pay and total hours worked, and the mean hourly wage in the industry group. This information would be calculated separately by sex, race and ethnicity. We strongly support OFCCP publishing this data and using it for these purposes. Disclosure should lead to better outcomes for all.

OFCCP should implement the Equal Pay Report without delay. In the interest of speedy implementation necessary to prevent and correct compensation discrimination among companies who receive federal contracts, we do not think OFCCP should pilot the Equal Pay Report. OFCCP's previous experience collecting the Equal Opportunity Survey, a more complex data collection tool than the Equal Pay Report, reduces the need for further testing. OFCCP should move forward with the Equal Pay Report. Refinements or improvements can be made after the tool has been established.

We appreciate this opportunity to submit comments. We strongly support the development and swift implementation of the Equal Pay Report and believe that this action will significantly advance OFCCP's efforts to combat pay discrimination. If you have any questions regarding these recommendations, please contact Vicki Shabo, Vice President at the National Partnership for Women and Families (vshabo@nationalpartnership.org or 202.238.4832), or Lexer Quamie, Senior Counsel at The Leadership Conference on Civil and Human Rights (quamie@civilrights.org or 202.466.3648).

Sincerely,

National organizations

9to5, National Association of Working Women
AFL-CIO
American Association of University Women (AAUW)
Asian Americans Advancing Justice | AAJC
Association of University Centers on Disabilities
Equal Rights Advocates
Institute for Science and Human Values
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
National Employment Law Project
National LGBTQ Task Force
National Partnership for Women & Families
National Women's Law Center
Wider Opportunities for Women
Women Employed

State organizations

Democratic Women's Club of Bay County

Democratic Women's Club of Charlotte County
Democratic Women's Club of Escambia County
Democratic Women's Club of Upper Pinellas
Essex County Chapter of the National Organization for Women of NJ
National Organization for Women of New Jersey
National Women's Political Caucus of Florida
New Jersey Tenants Organization
Okaloosa Democratic Women's Club
Wayne County Chapter, National Organization for Women
Women's Production Network Inc.

i U.S. Census Bureau. (2014). *Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-05: Work Experience in 2013 – People 15 Years Old and Over by Total Money Earnings in 2013, Age, Race, Hispanic Origin, and Sex*. Retrieved 18 September 2014, from http://www.census.gov/hhes/www/cpstables/032014/perinc/pinc05_000.htm (Unpublished calculation based on the median earnings of all men and women who work full-time, year-round in 2013)

ii Ibid.

iii Ibid.

iv U.S. Census Bureau. (2014). *Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-04. Educational Attainment--People 18 Years Old and Over, by Total Money Earnings in 2013, Work Experience in 2013, Age, Race, Hispanic Origin, and Sex*. Retrieved 18 September 2014, from http://www.census.gov/hhes/www/cpstables/032014/perinc/pinc04_000.htm

v U.S. Census Bureau. (2014). *Current Population Survey, Annual Social and Economic (ASEC) Supplement: Table PINC-03. Educational Attainment--People 25 Years Old and Over, by Total Money Earnings in 2013, Work Experience in 2013, Age, Race, Hispanic Origin, and Sex*. Retrieved 18 September 2014, from http://www.census.gov/hhes/www/cpstables/032014/perinc/pinc03_000.htm

vi Bureau of Labor Statistics. (2013). *Highlights of Women's Earnings in 2012* (pp. 61-73). Retrieved 24 October 2014, from <http://www.bls.gov/cps/cpswom2012.pdf>

vii Equal Employment Opportunity Commission. (2006, January). *Equal Employment Opportunity, Standard Form 100, Employer Information Report EEO-1: Instruction Booklet*. Retrieved from http://www.eeoc.gov/employers/eeo1survey/upload/instructions_form.pdf

viii Pew Research Center. (2013). *On Pay Gap, Millennial Women Near Parity – For Now*. Pew Research Center Publication. Retrieved 30 October 2014, from http://www.pewsocialtrends.org/files/2013/12/gender-and-work_final.pdf

ix U.S. Census Bureau. (2013, December). *Statistics of U.S. Businesses—U.S., all industries*. Retrieved 14 November 2014, from <http://www.census.gov/econ/susb/> (Unpublished calculation based on the number and sizes of construction firms under NAICS code 23)