

**PAYCHECK FAIRNESS COALITION AND SUPPORTERS  
COMMENTS TO OFCCP ON DATA COLLECTION PROPOSAL**

October 11, 2011

**Submitted Via Federal Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov)**

Debra A. Carr  
Director, Division of Policy, Planning, and Program Development  
Office of Federal Contract Compliance Programs  
U.S. Department of Labor  
200 Constitution Avenue, NW, Room C-3325  
Washington, DC 20210

Re: RIN 1250-AA03  
Comments Regarding OFCCP's Proposal to Develop and Implement a Compensation  
Data Collection Tool

Dear Ms. Carr:

We, the undersigned, write as members of the Paycheck Fairness Coalition and other concerned groups, in response to the Advance Notice of Proposed Rulemaking published by the Department of Labor on August 10, 2011 (76 Fed. Reg. 49398, RIN No. 1250-AA03). We are pleased to have the opportunity to submit the following comments in support of OFCCP's proposal to develop and implement a compensation data collection tool. However, in order to comprehensively and effectively redress the discrimination with which we and OFCCP are concerned, we also are writing to recommend that the survey request information, in addition to compensation, on other employment practices as well.

**Background**

The Paycheck Fairness Coalition was formed to fight wage discrimination and promote pay equity. The Coalition has long advocated passage of the Paycheck Fairness Act, which would update and strengthen the Equal Pay Act (EPA) of 1963 to ensure that it will provide effective protection against sex-based pay discrimination. To that end, the bill also bars retaliation against workers who voluntarily discuss or disclose their wages; allows women to receive the same remedies for sex-based pay discrimination that are currently available to those subject to discrimination based on race and ethnicity; and provides much needed training, technical assistance, and research. In addition, the Paycheck Fairness Act would provide for regular collection of comprehensive employment data from federal contractors whose practices and affirmative action efforts are reviewed by OFCCP.

For the benefit of our nation's workers, the Paycheck Fairness Act *and* OFCCP's robust oversight are both urgently needed. The wage gap between men and women is persistent and stagnant. Women working full time, year round in 2010 were paid only 77 cents for every dollar paid to their male counterparts, a disparity unchanged from 2009. The pay gaps for black and

Hispanic women relative to white, non-Hispanic men were 62 cents and 54 cents, respectively (neither of which were significantly different compared to 2009).<sup>1</sup> With a record population of more than 71 million women in the workforce<sup>2</sup>, and women increasingly taking on the role of primary breadwinner in their households (22% of all women<sup>3</sup> and 34% of working mothers<sup>4</sup>; additionally, approximately 44% of all working women are co-breadwinners<sup>5</sup>), the compensation gap is undermining the economic security of a majority of American families. It should be no surprise that in a recent poll, 84 percent of voters supported “a new law that would provide women more tools to get fair pay in the workplace.”<sup>6</sup>

In light of the entrenchment and severity of the wage gap and its consequences, it is imperative that government use all the tools at its disposal to identify its causes and end discriminatory practices. As a coalition we have long supported OFCCP’s systematic survey of contractor employment data to target enforcement efforts and better understand why women and people of color continue to be paid so much less relative to their counterparts. Ever since OFCCP ceased regularly collecting pay, hiring, promotions, firing and other statistics, the Paycheck Fairness Coalition has consistently called for reinstatement of this type of activity.

### **Compensation Data**

Therefore, we are extremely pleased that the agency now proposes to conduct compensation surveys of supply and service contractors. As OFCCP designs its new data collection instrument, we recommend the agency frame the inquiry into compensation broadly to ensure that all possible forms of employee remuneration are taken into account. OFCCP should instruct contractors to submit data, under the umbrella of “compensation,” on total salaries, hourly wages and hours worked by hourly-compensated employees, holiday pay, shift differentials, overtime pay, hazard pay, cost-of-living allowances, commissions, stock options, bonuses, paid leave, health and retirement benefits, disability and life insurance, and fringe benefits such as tuition assistance and child-care subsidies. Contractors may use any combination of these elements to pay employees for their services, and OFCCP must ensure that pay disparities are not effectively hidden by being effected through forms of compensation not examined in the oversight process.

Moreover, since data shows that industries exhibit varying rates of wage and employment disparity,<sup>7</sup> OFCCP should ensure that the data collected can be and is used to conduct trend

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<sup>1</sup> National Women’s Law Center calculations from U.S. Census Bureau, Current Population Survey, 2011 Annual Social and Economic Supplement, Table PINC-05: Work Experience in 2010 - People 15 Years Old and Over by Total Money Earnings in 2010, Age, Race, Hispanic Origin, and Sex, available at <http://www.census.gov/hhes/www/cpstables/032011/perinc/toc.htm>.

<sup>2</sup> U.S. Department of Labor, Women’s Bureau, *Employment Status of Women and Men in 2008*, available at [www.dol.gov/wb/factsheets/Qf-ESWM08.htm](http://www.dol.gov/wb/factsheets/Qf-ESWM08.htm).

<sup>3</sup> Pew Research Center, *New Economics of Marriage: The Rise of Wives* (January 19, 2010), available at <http://pewresearch.org/pubs/1466/economics-marriage-rise-of-wives>.

<sup>4</sup> U.S. Cong. Joint Econ. Comm., *Understanding the Economy: Working Mothers in the Great Recession 2-3* (2010), available at [http://jec.senate.gov/public/?a=Files.Serve&File\\_id=c8242af9-a97b-4a97-9a9d-f7f7999911ab](http://jec.senate.gov/public/?a=Files.Serve&File_id=c8242af9-a97b-4a97-9a9d-f7f7999911ab).

<sup>5</sup> Heather Boushey and Ann O’Leary, *A Woman’s Nation Changes Everything: Executive Summary* (October 2009), available at [www.awomansnation.com/execSum.php](http://www.awomansnation.com/execSum.php).

<sup>6</sup> PFA Coalition Poll, *New Polling Data Shows Voters Overwhelmingly Support the Paycheck Fairness Act* (June 9, 2010), available at [http://www.aclu.org/files/assets/PFA\\_Poll\\_Data\\_Colored\\_Graphs.pdf](http://www.aclu.org/files/assets/PFA_Poll_Data_Colored_Graphs.pdf)

<sup>7</sup> Catherine Rampell, *The Gender Pay Gap by Industry*, NY Times (Feb. 17, 2011), available at <http://economix.blogs.nytimes.com/2011/02/17/the-gender-pay-gap-by-industry/>.

analyses of pay practices in various industries, and to focus education and compliance efforts on contractors in the most problematic fields. This might also allow OFCCP to, for example, direct its limited resources to addressing pay discrimination in industries where pay gaps are especially large.

Finally, with regard to needed data on compensation practices, the agency should also query contractors about the existence of pay secrecy policies that prohibit employees from disclosing wage information, and/or punish such activity. Many employers can terminate or take other adverse actions against employees who disclose or inquire about their own wages. These pay secrecy policies penalize workers unfairly, make it difficult for employees to determine whether they are paid appropriately, and impede OFCCP's goal of reducing wage gap by masking ongoing wage discrimination.

### **Other Employment Data**

However, in order to comprehensively and effectively redress the discrimination with which we and OFCCP are concerned, the survey instrument must request information on more than just compensation. Contractors should be queried regarding the pool of applicants from which they select new employees; hirings, promotions, demotions, and terminations; and employees' tenure with the company, among other data points. Comprehensive data that illuminates racial, ethnic, and gender disparities in hiring, promotions, pay, and more is an important tool in OFCCP's enforcement efforts.

Equal pay protections cannot be enforced in a vacuum, without reference to the broader picture of employment discrimination. Where violations occur, they are very often inextricably intertwined with other practices which also fall within OFCCP's purview. For example, without information about practices such as hiring and applicant profiles, OFCCP will merely see differences in average pay, and not gain any insight into whether employers have attracted or fully considered well-qualified candidates of all backgrounds. The recent employment discrimination case brought by a group of female employees against Novartis Pharmaceuticals illustrates how charges of wage disparity often involve, and are coupled with, allegations of other kinds of systemic discrimination: in that case, the plaintiffs successfully argued that training opportunities and promotions were discriminatorily granted and that women's compensation suffered as a result. Each piece of the employment picture is relevant to understanding company culture and the causes of disparate pay, and ultimately, OFCCP has responsibility for addressing not only wages, but other aspects of employment discrimination.

OFCCP has likewise recognized the importance of collecting comprehensive information going to the array of equal employment opportunity laws it enforces, stating in a memo to OMB that collecting data on applicant pools, hiring, promotions, terminations, compensation and tenure "allow[s] OFCCP to more accurately identify those contractors that have a high potential for being in violation of OFCCP's regulations."<sup>8</sup> While earlier data collection efforts were never

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<sup>8</sup> OFCCP, *Report on the Use of the Equal Opportunity Survey, Prepared for The Office of Management and Budget* (October 2000).

fully implemented,<sup>9</sup> the value of the data proposed to be collected in understanding and rooting out employment discrimination remains paramount.

### **Conclusion**

An enormous sum of more than \$500 billion in taxpayer money goes to contractors to the federal government each year<sup>10</sup>, and in exchange for the privilege of securing this business, companies have a critical obligation to extend equal opportunities in employment, and to participate in efforts to ensure their compliance. Our government must under no circumstances pay to subsidize discrimination. The prospective benefits of data collection, which will be seen in identification and elimination of discriminatory practices and increased economic opportunity for all Americans, easily outweigh the burden it will impose on contractors, given that they are already required to compile and keep data on current employment, applicant pools, hiring, promotions, terminations, and compensation disaggregated by race/ethnicity and gender for mandatory Affirmative Action Plans and/or auditing purposes.

We applaud OFCCP's effort, and thus we strongly support the development and swift implementation of a comprehensive new data collection tool. Thank you for this opportunity to provide comments.

If you have any questions, please contact, Deborah J. Vagins, ACLU Washington Legislative Office at [dvagins@dcaclu.org](mailto:dvagins@dcaclu.org) or (202) 675-2335; Lisa Maatz, AAUW at [maatzi@aauw.org](mailto:maatzi@aauw.org) or Fatima Goss Graves, The National Women's Law Center at [fgraves@nwlc.org](mailto:fgraves@nwlc.org).

Sincerely,

9to5, National Association of Working Women

9to5 Atlanta Working Women

9to5 Bay Area (CA)

9to5 Colorado

9to5 Los Angeles

9to5 Milwaukee

African American Ministers In Action

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<sup>9</sup> See, e.g., Leadership Conference on Civil Rights, *Key Anti-Discrimination Tool on Cutting Block* (Feb. 17, 2006), available at <http://www.civilrights.org/equal-opportunity/employment/key-anti-discrimination-tool-on-cutting-block.html> (noting that, "Any employer who did not respond, submitted incomplete information, or refused to comply was excluded from the study [evaluating the performance of the survey], creating an unbalanced picture of contractors' compliance with civil rights laws.").

<sup>10</sup> Joe Davidson, *Deficit-cutters must also weigh costs of contractors*, Washington Post (Feb. 4, 2011), available at <http://www.washingtonpost.com/wp-dyn/content/article/2011/02/03/AR2011020306809.html>.

Alliance for Justice

American Association of University Women (AAUW)

American Civil Liberties Union

Asian American Justice Center, member of Asian American Center for Advancing Justice

A Better Balance: The Work & Family Legal Center

Center for Advancement of Public Policy

Center for Social Inclusion

Coalition of Labor Union Women

Equal Pay Coalition NYC

Equal Rights Advocates

Federally Employed Women

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

Jewish Reconstructionist Federation

Jewish Women International

Lawyers' Committee for Civil Rights Under Law

The National Committee on Pay Equity

National Council of Jewish Women

National Council of Women's Organizations

National Employment Lawyers Association (NELA)

National Organization for Women Foundation

National Partnership for Women and Families

National Women's Law Center

National Women's Political Caucus

New York Women's Agenda

Union for Reform Judaism

Women of Color Policy Network, NYU Wagner

Women Employed

Women of Reform Judaism

Women's League for Conservative Judaism (WLCJ)