

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

October 22, 2018

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

Dear Director Mulvaney:

We are writing to express our concern over the Office of Management and Budget's (OMB) stay on the 2016 revisions to the EEO-1 pay data collection form. Since this pay data collection was approved in 2016, there has been no change in the compliance burden. Additionally, in the year since OMB stayed the revisions, it has failed to work with the Equal Employment Opportunity Commission (EEOC) to update the revisions to the EEO-1 pay data collection form as required by the Paperwork Reduction Act (PRA). For these reasons, we ask that OMB rescind the stay and update and reinstate the 2016 revisions to the EEO-1 pay data collection form as soon as possible.

The EEOC has collected employer data through the EEO-1 form since 1966 and has collected and maintained sensitive employer information gathered through its investigations since it opened its doors in 1965. For over 50 years, companies have provided the EEOC with important employee demographic information, like sex, race, and ethnicity, by job category through the EEO-1 forms. In 2016, the EEOC issued the EEO-1 pay data collection form revisions because it recognized the need for updated tools to better address the persistent and pervasive pay discrimination based on gender and race. The EEOC went well beyond the regulatory requirements for public input for PRA updates and undertook a rigorous process over a seven-year period. This process included a pilot study and a forum with employer representatives, information technology professionals, human resources professionals, and statisticians. Forum participants unanimously agreed that the one-time burden to create custom reporting programs would be minimal and that the benefits of collecting this data far outweighed the minimal costs.<sup>1</sup> OMB approved the EEOC's final product on September 29, 2016.

The 2016 EEO-1 form revisions expanded employers' obligations to provide pay data as it related to sex, race, and ethnicity for the first-time. This is data that employers already maintain in the normal course of business, and the majority of companies already submit EEO-1 surveys via electronic data submission.<sup>2</sup> Because employers were being asked to report the data through a familiar form—the EEO-1—the revision was the least burdensome way of collecting data.

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<sup>1</sup>Final Report EEOC pay data pilot study final report, *available at*: <https://www.eeoc.gov/employers/eo1survey/pay-pilot-study.pdf>, page 8.

<sup>2</sup>EEOC Proposed Revision of the Employer Information Report and Comment Request Federal Register Notice Vol. 81, No. 20, February 1, 2016, Page 5115.

However, on August 29, 2017, OMB issued a stay of the 2016 revisions to the EEO-1 pay data collection form. The Office of Information and Regulatory Affairs' (OIRA) one-and-a-half-page memorandum failed to describe the changed relevant circumstance or a full analysis of any erroneous burden estimates as required by the PRA's regulations in order to issue a stay. The OIRA memo simply cited the authority it has under 5 C.F.R. 1320.10(f) and (g).<sup>3</sup> Given the OMB's approval of the revisions just a year before, a robust reasoning for its stay was warranted. The memo also asserted "[s]ome aspects of the revised collection of information . . . are unnecessarily burdensome, and do not adequately address privacy and confidentiality issues."<sup>4</sup> This assertion disregarded both the fact that many employers already maintain this information and the EEOC's long history of maintaining sensitive data through the EEO-1 form. Additionally, in the over one year since the stay, there has been no indication that either OIRA or the EEOC have initiated a review of the 2016 EEO-1 revisions, and, as noted above, there has been no change in the compliance burden since the pay data collection was approved in 2016.

The need to address systemic race and gender discrimination in the workplace is clear. Persistent pay gaps exist by race, gender, and ethnicity, and the evidence demonstrates that workplace discrimination is an important contributing factor to these pay gaps. According to 2017 Bureau of Labor Statistics (BLS) data, the median weekly earnings of African American women was 67 percent of what white, non-Hispanic, men earned; Latina women were paid approximately 62 percent of what white, non-Hispanic men earned; and on average, all women made just 81.8 percent of what white, non-Hispanic men earned.<sup>5</sup> These wage disparities also exist for men of color. The weekly earnings of African American men were only 73 percent of white men's weekly earnings, and the weekly earnings of Hispanic men were only 71 percent of white men's weekly earnings.<sup>6</sup> Furthermore, researchers have concluded that 38 percent of the difference in women's and men's pay cannot be explained by factors such as education or career choice.<sup>7</sup> As Dr. Heidi Shierholz noted in her recent testimony before the House Committee on Education and the Workforce:

"Even if you control for education, age, geography, etc... women make less than men; black workers make less than white workers ... for the racial wage gap, [pay disparities] have not improved; they have actually deteriorated a little bit over the last 40 years ... This kind of pay data collection would have allowed people to figure out where that's going on and what we can do about it. So putting it on hold will just keep that kind of discrimination in the dark."<sup>8</sup>

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<sup>3</sup>Neomi Rao, Memorandum: EEO-1 Form; Review and Stay, August 29, 2017, available at: [https://www.reginfo.gov/public/jsp/Utilities/Review\\_and\\_Stay\\_Memo\\_for\\_EEOC.pdf](https://www.reginfo.gov/public/jsp/Utilities/Review_and_Stay_Memo_for_EEOC.pdf)

<sup>4</sup> *Id.*

<sup>5</sup>Ariane Hegewish and Emma Williams-Baron, *The Gender Wage Gap: 2017 Earnings Differences by Race and Ethnicity*, Institute for Women's Policy Research, March 7, 2018, available at: <https://iwpr.org/publications/gender-wage-gap-2017-race-ethnicity/>

<sup>6</sup> *Id.*

<sup>7</sup> Sarah Jane Glynn, Gender Wage Inequality, Washington Center for Equitable Growth, April 9, 2018, available at: <https://equitablegrowth.org/research-paper/gender-wage-inequality/?longform=true>

<sup>8</sup> *Regulatory Reform: Unleashing Economic Opportunity for Workers and Employers: Hearing Before the Subcomm. on Workforce Protections of the H. Comm on Education and the Workforce*, 115th Cong. (statement of Dr. Heidi Shierholz, Senior Economist and Director of Policy, Economic Policy Institute).



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The 2016 revisions to the EEO-1 would provide both the EEOC and the Office of Federal Contract Compliance Programs (OFCCP) with the ability to better analyze demographic employment data, enabling them to be better equipped to address race and gender pay discrimination in the workplace. As OMB delays in making a final determination, it leaves the EEOC and the OFCCP without the full suite of tools they need and further exacerbates their ability to conduct robust enforcement.

We ask that OMB rescind the stay and update and reinstate the 2016 revisions to the EEO-1 pay data collection form as soon as possible.

Sincerely,



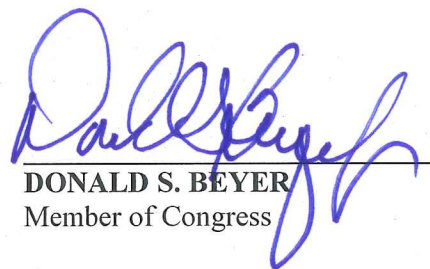
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**ROBERT C. "BOBBY" SCOTT**  
Ranking Member  
Committee on Education and the  
Workforce



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**MARK TAKANO**  
Ranking Member  
Subcommittee on Workforce  
Protections



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**DONALD S. BEYER**  
Member of Congress