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performing, by delegation, the duties of
the Administrator for Federal Procurement Policy
Office of Federal Procurement Policy
Office of Management and Budget
725 17th St. NW
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Re: FAR Case 2023–021, Office of Federal Procurement Policy; Federal Acquisition Regulation: Pay Equity and Transparency in Federal Contracting

Dear Ms. Harada:

On behalf of the Equal Pay Today campaign, a nationwide coalition of local, state, and national women's rights, civil rights, social justice, and workers' rights organizations, Equal Pay Today member organizations – Equal Rights Advocates, the Institute for Women's Policy Research, the National Women's Law Center, and the National Partnership for Women & Families – and the undersigned groups, we thank you for allowing us to submit comments on this proposed rule.

The undersigned organizations submit this comment in response to the proposed rulemaking by the Office of Federal Procurement Policy (OFPP) prohibiting government contractors and subcontractors from seeking or considering the compensation history of job applicants and requiring such contractors to include compensation information in job postings. As advocates for fair pay, we strongly support the proposed rule and commend the federal government for recognizing the role of pay equity in improving the economy and efficiency of the procurement process.

I. Overview of Comments in Support of the Proposed Rule

The executive branch has broad authority to issue policies that promote economy and efficiency in federal procurement.¹ As detailed in our comments, pay secrecy and reliance on salary history to set pay perpetuate racial and gender wage gaps and thus undermine effective hiring and wage setting for federal contractors. When employers base a new employee's salary off of their prior salaries, rather than factors tied to the current job, it is not an accurate measure of their

¹ 40 U.S.C. §§ 101, 121; *Am. Fed'n of Lab. & Cong. of Indus. Organizations v. Kahn*, 618 F.2d 784, 792 (D.C. Cir. 1979).

qualification or ability to perform a job. Instead, it can reflect market forces that devalue certain workers and can result in prior pay disparities being carried forward from job to job.

A growing body of research demonstrates that compensation history bans and pay range disclosure are critical tools for driving pay equity, decreasing pay disparities, improving worker recruitment and talent pools,² and assisting retention, commitment, and productivity.³ Research has also shown that pay transparency helps foster greater trust in management and contributes to competitive advantage in the labor market.⁴ These factors will improve the economy and efficiency of government contracting and the delivery of services for the federal government.

As such, we, the undersigned organizations, support OFPP's proposal to implement a salary history ban and to require the disclosure of compensation information. In addition, we recommend OFPP clarify the rule's complaint processes and enforcement mechanisms, as well as the scope of the rule's applicability. We applaud OFPP for taking steps to promote practices that increase pay equity and economy and efficiency and ask that OFPP work quickly to finalize the rule.

II. Compensation History Bans Promote Economy and Efficiency in the Procurement Process

A. Compensation history bans improve the economy and efficiency of government contracting by better aligning federal contractor pay with skills and experience.

Prohibiting pay setting based on salary history increases the likelihood that employers will hire the most qualified and productive workers at the most efficient price. Employers who rely on past salary to set pay will tend to over- or under-pay workers simply because they were over- or under-paid before.⁵ Salary history bans can improve the efficiency of the hiring process by better aligning hiring and pay-setting decisions with the skills and qualifications of applicants. Research shows that when employers are not able to rely on salary history to make pay determinations, they collect more information from applicants, ask more substantive and probing questions to evaluate the applicant for the job, and are ultimately more likely to fill the position.⁶ The proposed rule allows federal contractors and subcontractors ample flexibility to determine an employee's pay based on superior needs and special qualifications that are job-related. By removing compensation history as a permissible factor to set pay, OFPP incentivizes federal contractors to more closely examine and align employment decisions with a candidate's skills and experience, helping to ensure more effective hiring and more efficient pay setting that is not based on discrimination, bias, or other factors irrelevant to the business of the federal government.

Prohibiting the use of compensation history to set pay may also increase workers' confidence in the fairness of pay setting, which could boost morale and productivity, resulting in

² See NAT'L WOMEN'S LAW CTR., ASKING FOR SALARY HISTORY PERPETUATES PAY DISCRIMINATION FROM JOB TO JOB 4 (2022), <https://nwlc.org/wp-content/uploads/2020/12/Asking-for-Salary-History-2022.pdf>.

³ See Lisa Nagele-Piazza, *The Importance of Pay Equity*, SHRM (Feb. 21, 2020), <https://www.shrm.org/topics-tools/news/hr-magazine/importance-pay-equity>.

⁴ Richard G. Trotter, Susan Rawson Zacur & Lisa T. Stickney, *The New Age of Pay Transparency*, 60 BUSINESS HORIZONS 529, 534 (2017), https://www.sciencedirect.com/science/article/pii/S0007681317300356?casa_token=NONrAkNzFfQAAAAA:1p4-O7xVkX4IBnvRaDbKIAkfd207NqEYuMDwlf90rE0LvY6tiCtg7qS9bf4MmUz75CAZHkmPEP0#sec0035.

⁵ See NAT'L WOMEN'S LAW CTR., *supra* note 2; Moshe A. Barach & John J. Horton, *How Do Employers Use Compensation History?: Evidence From a Field Experiment* (NBER, Working Paper No. 26627, 2020), <https://www.nber.org/papers/w26627>.

⁶ Barach & Horton, *supra* note 5.

improved delivery of services by federal contractors. Research indicates that a majority of workers believe that employers should not ask about salary history,⁷ suggesting that employees view this practice to be unfair. Employee perceptions of fair pay are closely linked to retention and morale,⁸ and when workers are confident that pay practices are fair and transparent, they experience more loyalty and trust in the employer, are more invested in the success of the business, and are more productive.⁹

B. States that have implemented compensation history bans model benefits of the practice.

As of January 2024, 24 states and the District of Columbia along with over 20 localities have enacted laws limiting employers' reliance on a job applicant's salary history to set pay.¹⁰ Numerous research studies on the impact of salary history bans show that they are helping to narrow gender and racial wage gaps. For example, an April 2020 study in California found that when employers were prohibited from seeking or relying on a job candidate's prior salary, the overall gender wage gap narrowed as a result.¹¹ Another study analyzed the effects of recent state salary history bans and found that they had a significant impact on employers' pay range transparency practices by prompting employers to post salary information more often.¹² The researchers concluded that the impact of salary history bans demonstrated the existence of gender and racial pay gaps unrelated to differences in productivity¹³—which, as discussed above, undermines effective hiring and efficient pay setting— and that the use of salary history in bargaining “appears to perpetuate the effects of past discrimination or other group inequities.”¹⁴

C. Banning prior compensation history can ensure equity across the workforce in wage setting.

The banning of prior compensation history will assist contractors in eliminating irrelevant and economically irrational factors in setting compensation; the elimination of such factors will increase efficiencies in the government contracting process by ensuring that taxpayer funds are not underwriting discrimination in pay. The practice of determining pay based on prior compensation history can allow bias to seep into the hiring process, contributing to persistent gender and race-based wage gaps. Women are still paid less than men, and these gaps are particularly pronounced

⁷ *Glassdoor Survey Finds the Majority of U.S. Workers Believe Employers Should Not Ask About Salary History*, GLASSDOOR (July 12, 2017), <https://www.glassdoor.com/about/press-release/glassdoor-survey-finds-majority-workers-employers-salary-history/>.

⁸ THE GENDER PAY GAP: WHAT YOUR EMPLOYEES REALLY THINK, BEQOM at 8 (2019), <https://www.beqom.com/hubfs/E-Guides%20And%20Reports/2019-Gender-Pay-Gap-Survey-Report.pdf>.

⁹ Deborah Thompson Eisenberg, *Money, Sex, and Sunshine: A Market-Based Approach to Pay Discrimination*, 43 ARIZ. STATE L. J. 951, 1017 (2011), https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2093&context=fac_pubs.

¹⁰ *State and Local Salary History Bans*, AM. ASS'N OF UNIV. WOMEN (Jan. 30, 2024), <https://www.aauw.org/resources/policy/state-and-local-salary-history-bans/>. This count includes a range of laws limiting employers' use of salary history, including laws prohibiting retaliation against applicants who decline to disclose salary history information and laws that apply only to state employers.

¹¹ Benjamin Hansen & Drew McNichols, *Information and the Persistence of the Gender Wage Gap: Early Evidence from California's Salary History Ban* (NBER, Working Paper No. 27054, 2020), <https://www.nber.org/papers/w27054>.

¹² James E. Bessen, Chen Meng & Erich Denk, *Perpetuating Inequality: What Salary History Bans Reveal About Wages* (Boston Univ. Sch. of L., Working Paper No. 20-19, 2020), https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3882760_code355514.pdf?abstractid=3628729&mirid=1&type=2.

¹³ *See id.* at 27.

¹⁴ *See id.*

for women of color.¹⁵ Setting starting pay based on prior compensation is not just a one-time decision: it affects a worker’s subsequent raises, bonuses, promotions, and retirement savings, as well as any other factors that may be tied to their starting pay.¹⁶ Occupational and industry segregation also depresses women’s compensation, as women are more likely to be impacted by lower pay in predominantly female industries.¹⁷

While there are many complex and interrelated factors that contribute to the pay gap, carrying forward prior compensation in setting wages for a new job is one of them.¹⁸ In fact, research on employers’ self-analysis of pay within their workforce has found the use of compensation history to be a key driver of gender wage gaps.¹⁹ In a survey of U.S. workers, about half reported that employers had learned about their past pay before making the offer that led to their current job.²⁰ Prohibiting reliance on compensation history in pay setting recognizes that an employee’s pay history is not an objective measure of a worker’s value.²¹ It is an inaccurate proxy. It leads a federal contracting employer to make false assumptions about applicants that reaffirms previous disparities.²² Moreover, a low-cost worker, based on prior discriminatory pay, is not better for the contracting workforce; it means taxpayer funds are underwriting that discrimination. And as discussed throughout this comment, changing to a more equitable system, based on objective factors measuring the value of the job and the skill and experience of the applicant, can produce long term benefits for the federal contracting workforce—from promoting retention and to improving productivity and delivery of services to more—leading to a more efficient use federal funds overall.

III. Compensation Disclosures Provide Benefits in the Hiring Process

A. *Compensation disclosure requirements promote economy and efficiency of the contractor workforce.*

The proposed rule also requires the inclusion of compensation information in job postings, a practice that is incentivized by the rule’s prohibition on seeking and considering compensation history.²³ When employers cannot screen applicants based on the employer’s belief that an applicant’s past pay is too high to render them a plausible candidate for a particular position, many

¹⁵ *Earnings and Ratios*, DEP’T OF LAB. WOMEN’S BUREAU, <https://www.dol.gov/agencies/wb/data/earnings> (accessed Mar. 22, 2024).

¹⁶ See Robin Bleiweiss, *Why Salary History Bans Matter to Securing Equal Pay*, CTR. FOR AM. PROGRESS (Mar. 24, 2021), <https://www.americanprogress.org/article/salary-history-bans-matter-securing-equal-pay/>.

¹⁷ Thomas B. Foster, Marta Murra-Close, Liana Christin Landivar & Mark Dewolf, *An Evaluation of the Gender Wage Gap Using Linked Survey and Administrative Data*, U.S. CENSUS BUREAU (2020), <https://www.census.gov/library/working-papers/2020/adrm/CES-WP-20-34.html>.

¹⁸ Francine D. Blau & Lawrence M. Kahn, *The Gender Wage Gap: Extent, Trends, and Explanations* (NBER, Working Paper No. 21913, 2016), <https://doi.org/10.3386/w21913>.

¹⁹ *Navigating the Growing Pay Equity Movement: What Employers Need to Know About What to Do*, HARV. BUS. REV. (2019), <https://trusaic.com/resources/pay-equity-downloads/harvard-business-review-trusaic-pulse-survey>; Laura Adler, *Information and Discrimination in Employer Responses to the Salary History Ban*, ACAD. OF MGMT. (2023), doi.org/10.5465/AMPROC.2023.19265abstract.

²⁰ Robert E. Hall & Alan B. Krueger, *Evidence on the Incidence of Wage Posting, Wage Bargaining, and On-the-Job Search*, 4 AM. ECON. J.: MACROECONOMICS 56 (2012).

²¹ Bleiweiss, *supra* note 16.

²² Laura Adler, *What’s a Job Candidate Worth? Explaining Variation in Pay-Setting Practices*, SOCARXIV 33-34 (Sep. 28, 2020), <https://osf.io/preprints/socarxiv/ctu8m/>.

²³ “The national share of online help wanted ads listing salary information increased by around a quarter of all ads following the introduction of SHBs in a dozen states.” Bessen, *supra* note 12 at 26.; See also Gurpal Sran, Felix Vetter & Matthew Walsh, *Employer Responses to Pay History Inquiry Bans* 20 (Working Paper, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3587736.

employers respond by providing compensation disclosure information at the outset, allowing applicants to self-select in order to ensure a better match between opportunity and applicant.²⁴ Thus, posting compensation information can make hiring more efficient and less costly for employers by ensuring that only those individuals who are open to a position within the relevant compensation range apply for the job.

In addition, increased pay transparency can boost trust and productivity,²⁵ improving economy and efficiency by seeing more outputs for workers based on their knowledge of where they fall in the payscale or opportunities for future advancement.²⁶ Transparent pay practices can also decrease employees' intent to leave, suggesting that pay transparency can reduce turnover, which is estimated to cost U.S. businesses one trillion dollars annually.²⁷ Reducing turnover would lower employer recruitment and onboarding costs and increase retention of organizational knowledge. More than half of employees (58 percent) also reported in a 2020 survey that they would consider switching jobs for more pay transparency, and for younger workers this number is even higher, at 70 percent.²⁸ Not only does a compensation disclosure requirement prompt employers to review and evaluate their compensation practices,²⁹ it can provide workers with more confidence that they are being paid fairly,³⁰ which leads to more job satisfaction, which boosts productivity and the quality of their work.³¹

B. States and employers that have implemented salary range disclosure requirements model benefits of the practice.

A growing number of states are requiring employers to provide pay ranges during the hiring process. As of March 2024, 10 states and the District of Columbia have passed salary range transparency requirements, although the specific requirements of these laws vary.³² As of March 2023, nearly 44.8 million people in the labor force were covered by pay range transparency

²⁴ See Bessen, *supra* note 12, at 6.

²⁵ See Adrienne Colella et al., Exposing Pay Secrecy, 32 ACAD. OF MGMT. REV. 55, 62–63 (2007); see generally Cédric Gutierrez et al., *Pay Transparency and Productivity* (Working Paper, 2023) (discussing finding that “across a range of metrics, transparency causes no decrease and, in some cases, results in an increase in performance outcomes”); *New SHRM Research Shows Pay Transparency Makes Organizations More Competitive, Leads to Increase in Qualified Applicants*, SHRM (Mar. 14, 2023), <https://www.shrm.org/about/press-room/new-shrm-research-shows-pay-transparency-makes-organizations-competitive-leads-to-increase-qualified-applicants>.

²⁶ Kathryn Mayer, *One Benefit of Pay Transparency? More Productive Workers*, SHRM (Apr. 25, 2023),

<https://www.shrm.org/topics-tools/news/benefits-compensation/one-benefit-pay-transparency-productive-workers>.

²⁷ Amy Stewart, *Pay Transparency Increases Retention by 30 Percent or More According to New Research*, Payscale (June 6, 2023), <https://www.payscale.com/compensation-trends/pay-transparency-increases-retention-by-30-percent-or-more-according-to-new-research/>; Shane McFeely & Ben Wigert, *This Fixable Problem Costs U.S. Businesses \$1 Trillion*, GALLUP (Mar. 13, 2019), <https://www.gallup.com/workplace/247391/fixable-problem-costs-businesses-trillion.aspx>.

²⁸ BEQOM, 2021 COMPENSATION AND CULTURE REPORT 9 (2021), <https://www.beqom.com/hubfs/E-Guides%20And%20Reports/2021-Compensation-And-Culture-Report.pdf>.

²⁹ SHRM, *supra* note 25.

³⁰ Kristy Threlkeld, *A Piece of the Pie: Understanding the Importance of Fair Pay*, INDEED (Jan 22, 2021), <https://www.indeed.com/lead/the-importance-of-fair-pay-and-salary-transparency>.

³¹ Joanna Kim-Brunetti, *What It Takes to Be a Fair-Pay Workplace*, HARVARD BUS. REV. (Dec. 12, 2022) <https://hbr.org/2022/12/what-it-takes-to-be-a-fair-pay-workplace>.

³² NAT'L WOMEN'S L. CTR., NEW POLLING SHOWS THAT AMERICANS SUPPORT PAY RANGE TRANSPARENCY AND EMPLOYERS MAY BENEFIT TOO 4 (2024), <https://nwlc.org/wp-content/uploads/2024/01/PRT-national-fs.pdf>; see also NAT'L WOMEN'S L. CTR., PAY RANGE TRANSPARENCY IS CRITICAL FOR DRIVING PAY EQUITY 4 (Mar. 2024), <https://nwlc.org/wp-content/uploads/2024/03/Pay-Range-Transparency-2024v2.pdf>.

requirements,³³ and this number is continuing to grow as additional state laws are passed. Moreover, employers are increasingly choosing to post salary ranges even when not required by law,³⁴ reflecting growing recognition among businesses that pay range transparency can improve their hiring processes with minimal burden.

The experiences of businesses that have adopted pay range transparency practices illustrate that compensation range transparency can improve efficiency in the hiring process for federal contractors. Businesses have reported that posting salary ranges saves them time in the hiring process because applicants' pay expectations are better aligned with the range being offered for the position, and they do not have to spend time reviewing applications and interviewing candidates whose compensation expectations are not aligned with the position.³⁵ Businesses have also reported that posting salary ranges improves the effectiveness of the hiring process by increasing the quality of the applicant pool. In one recent survey, nearly 70% of organizations that include pay ranges in job postings reported that it led to increased applications, and 66% of these organizations reported that the quality of applicants improved.³⁶

C. Compensation disclosure requirements can reduce disparities in compensation and increase efficiency in hiring.

Practices promoting increased pay transparency, including requiring compensation disclosure in job postings, can combat gender- and race-based pay disparities and enhance the efficiency and efficacy of the hiring process. These benefits are realized through multiple pathways. First, specifying clear compensation expectations in job postings can change or reduce the need for pay negotiations.³⁷ This is critical as research indicates that women and people of color who negotiate their pay are more likely to face backlash from their potential employer, thus impacting their negotiation outcomes.³⁸ Second, when negotiation still takes place, the clear delineation of the range in which that negotiation can occur “helps level the negotiating playing field by giving applicants important information that can inform an opening offer that is less tied to their previous

³³ BROOKE LEPAGE, NEARLY 21 MILLION WOMEN BENEFIT FROM PAY RANGE TRANSPARENCY LAWS. ANOTHER 18.5 MILLION COULD SOON (Mar. 2023), <https://nwlc.org/resource/pay-range-transparency-laws-benefit/>.

³⁴ SHRM, *supra* note 25 (noting that “over two in three (67%) HR professionals say their organization voluntarily lists start pay in their job postings sometimes, often, or always” even when not required by law).

³⁵ See, e.g., *Labor and Employment - Wage History and Wage Range: Hearing on S.B. 217 Before the S. Fin. Comm.*, 2020 Leg., 441st Sess. (Md. 2020) (Testimony of Aubrey Batten, Well-Paid Maids in SUPPORT of SB 217); Sarah Kessler, *Who Benefits When Salary Info is Public?*, N.Y. TIMES (Jan. 14, 2023),

<https://www.nytimes.com/2023/01/14/business/pay-transparency-public-salary-information.html>.

³⁶ SHRM, *supra* note 25.; see also NAT'L WOMEN'S LAW CTR, NEW POLLING SHOWS THAT AMERICANS SUPPORT PAY RANGE TRANSPARENCY AND EMPLOYERS MAY BENEFIT TOO, *supra* note 32 (analyzing new polling data and finding that “pay range transparency increases job applicants' interest in applying for a job, improves their perceptions of employer brand, and ultimately increases job applications”).

³⁷ Rani Molla, *Companies are being forced to reveal what a job pays. It's a start.*, VOX (Oct. 17, 2022), <https://www.vox.com/recode/2022/10/17/23404953/pay-transparency-laws-salary-wage-gap> (“Disclosing a pay range lessens the likelihood implicit bias will creep into new salaries because it changes the need for negotiating salary, which typically works out unfavorably for women and people of color. When women ask for raises (which they do as much as men), for example, they're simply less likely to get them.”).

³⁸ See generally Jennifer E. Dannals, et al., *The Dynamics of Gender and Alternatives in Negotiation*, 106 J. OF APPLIED PSYCH. 1655 (2021) (discussing study findings consistent with a “backlash account” of gender differences in negotiation performance); see also Morela Hernandez et al., *Bargaining While Black: The Role of Race in Salary Negotiations*, 104 AM. PSYCH. ASS'N 581, 582 (2019) (“Our investigation into how racial bias impacts job evaluators' differential expectations, perceptions, and treatment of Black (vs. White) negotiators builds on extant research in this area by identifying the prescriptive nature of stereotype-based application in the devaluation of Black job seekers on the basis of their race.”).

pay levels or personal identity.”³⁹ Since the negotiation process can contribute to wage disparities and allow for the introduction of implicit biases and subjective criteria in the initial wage-setting decision, a reduction in the need for negotiation brought about by clear compensation ranges increases the likelihood of equitable wage-setting.⁴⁰

Third, requiring compensation disclosures in job postings also incentivizes a contractor to conduct an internal assessment of their current wages to determine the proper range for new postings, thus increasing the likelihood that the contractor will uncover and move to remedy existing discriminatory wage differentials.⁴¹ Efforts to increase pay transparency from the very beginning of the employer-employee relation not only minimizes the lasting effects of inequitable starting salaries, but also fosters greater trust and buy-in from these new employees.⁴² Fourth and finally, increasing compensation transparency provides the taxpayer with more insight into wages for federal contractors.⁴³ More transparency about pay is important given the fact that “despite the federal government’s need to hire only responsible contractors, studies have shown that many contractors with the largest wage-and-hour gaps and the largest number of worker safety violations continue to receive new Contracts.”⁴⁴

IV. Factors to Consider for Positions of High Occupational Segregation

The OFPP Administrator has requested comments on the proposed policy and asked what factors should be considered for positions of high occupational segregation. Occupational segregation, or more specifically, the overrepresentation of women in lower-paid occupations, compared to occupations that are more integrated or predominantly held by men, is one of the major contributing factors to the gender wage gap.⁴⁵ As discussed above, jobs that are predominantly held by women tend to pay less than those predominantly held by men, even at the same level of skill and education.⁴⁶ If women received the same pay per hour worked as men with the same level of education, the same time in the labor market, and the same rural/urban status, poverty for working women would be reduced by more than 40 percent.⁴⁷ The gap in earnings between female-dominated and male-dominated occupations is particularly stark in occupations which require some training and post-secondary education, but not a full bachelor’s degree.⁴⁸ Care occupations, which

³⁹ NAT’L WOMEN’S LAW CTR., SALARY RANGE TRANSPARENCY REDUCES GENDER WAGE GAPS 1–2 (2022), <https://nwlc.org/wp-content/uploads/2022/09/Salary-Transparency-FS-2021-9.20.22.pdf>.

⁴⁰ See Molla, *supra* note 37.

⁴¹ NAT’L WOMEN’S LAW CTR., PAY RANGE TRANSPARENCY IS CRITICAL FOR DRIVING PAY EQUITY, *supra* note 32, at 2; see also Molla, *supra* note 37.

⁴² See, e.g., Tomasz Obloj & Todd Zenger, *The Influence of Pay Transparency on (Gender) Inequity, Inequality and the Performance Basis of Pay*, 6 NATURE HUM. BEHAV. 646, 653; Trotter et al., *supra* note 4, at 534.

⁴³ Bilma Canales, *Closing the Federal Gender Pay Gap Through Wage Transparency*, 55 HOUS. L. REV. 959, 983 (2018).

⁴⁴ *Id.* at 982.

⁴⁵ See Blau & Kahn, *supra* note 18; Foster, et al., *supra* note 17; ARIANE HEGEWISCH & HEIDI HARTMANN, OCCUPATIONAL SEGREGATION AND THE GENDER WAGE GAP: A JOB HALF DONE (Inst. for Women’s Pol’y Rsch 2014), <https://iwpr.org/wp-content/uploads/2020/08/C419.pdf>.

⁴⁶ See Blau & Kahn, *supra* note 18; Foster, et al., *supra* note 17; HEGEWISCH & HARTMANN, *supra* note 45.

⁴⁷ ELYSE SHAE & HALIE MARIANO, *NARROW THE GENDER PAY GAP, REDUCE POVERTY FOR FAMILIES: THE ECONOMIC IMPACT OF EQUAL PAY BY STATE 1* (Inst. for Women’s Pol’y Rsch. 2021), https://iwpr.org/wp-content/uploads/2021/05/Economic-Impact-of-Equal-Pay-by-State_FINAL.pdf.

⁴⁸ ARIANE HEGEWISCH ET AL., *PATHWAYS TO EQUITY: NARROWING THE WAGE GAP BY IMPROVING WOMEN’S ACCESS TO GOOD MIDDLE-SKILL JOBS* (Inst. for Women’s Pol’y Rsch. 2016), <https://iwpr.org/pathways-to-equity-narrowing-the-wage-gap-by-improving-womens-access-to-good-middle-skill-jobs/>.

are predominantly held by women, are particularly underpaid compared to those with educational and certification requirements.⁴⁹

Given the pay inequities associated with occupational segregation, we urge the OFPP, together with the Department of Labor, to encourage federal contractors and subcontractors to examine their compensation setting schemes to help ensure that their practices are equitable and free of gender bias. Job evaluation schemes should provide a fair and consistent approach to setting pay relativities within organizations.⁵⁰ However, many job evaluation schemes have undervalued factors and components of jobs particularly associated with occupations predominantly held by women and occupations historically dominated by Black workers.⁵¹ For example, a recent review of the Federal Government's factor evaluation system highlights how this system may contribute to pay inequities by assigning lower values to factors more commonly found in female dominated occupations.⁵² Systematic reviews and adjustments of compensation relativities for gender bias in 14 states in the 1980s resulted in significant reductions of gender wage gaps for public employees in those states.⁵³ Compensation reviews, already required of federal contractors, could also be the starting point for identifying potential inequities resulting from occupational segregation.⁵⁴ Further, EEO-1 forms, which federal contractors are required to submit to the EEOC in receipt of contracts of \$10,000 or more, provide a tool for analyzing occupational segregation and for developing occupational and industry benchmarks. This information can help guide OFPP, in conjunction with EEOC and DOL, in providing targeted assistance to federal contractors and subcontractors that will strengthen the effect of the proposed rule.

V. Recommendations for Strengthening the Final Rule

A. *The final rule should clarify the scope of its applicability to companies that perform work on and separate from federal government contracts.*

We support the Proposed Rule's intended scope of applying to recruitment and hiring for any position to perform work on or in connection with a government contract. We commend the Administrator for including language that further encourages contractors to apply the same prohibitions and requirements to other positions. To offer the greatest clarity to businesses and prospective applicants, however, the final rule should apply to recruitment and hiring for positions where the contractor knows there is a strong or equal likelihood that the applicant might perform work on or in connection with a federal contract as they are to perform non-federal contract work.

⁴⁹ WAGE EQUITY STUDY TEAM, WAGE EQUITY FOR NON-PROFIT HUMAN SERVICES WORKERS: A STUDY OF WORK AND PAY IN SEATTLE AND KING COUNTY (Univ. Wash. 2023), https://socialwork.uw.edu/sites/default/files/WageEquityStudy_Summary_withAppendices_0.pdf.

⁵⁰ *Performing Job Evaluations*, SHRM, <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/performingjobevaluations.aspx> (last visited June 5, 2023).

⁵¹ DONALD TOMASKOVIC-DEVEY, GENDER AND RACIAL INEQUALITY AT WORK: THE SOURCES & CONSEQUENCES OF JOB SEGREGATION (ILR Press 1993); SUE FAERMAN ET AL., PAY EQUITY STUDY IN NEW YORK STATE AND LOCAL GOVERNMENT: A RESEARCH REPORT (Ctr. for Women in Gov't & Civil Society, Univ. at Albany, State Univ. of N.Y, last accessed Mar. 22, 2024), <https://www.cs.ny.gov/extdocs/pdf/WageEquityReport.pdf>; James N. Baron & Andrew E. Newman, *Pay the Man: Effects of Demographic Composition on Prescribed Wage Rates in the California Civil Service*, in *PAY EQUITY: EMPIRICAL INQUIRIES* 107–130 (Robert T. Michael et al. eds., Nat. Acad. Press 1989); Paula England, *The Case for Comparable Worth*, 39 Q. REV. ECON. AND FIN. 743 (1999), [https://doi.org/10.1016/S1062-9769\(99\)00026-5](https://doi.org/10.1016/S1062-9769(99)00026-5).

⁵² See Rashmi Chordiya & Larry Hubbell, *Fostering Internal Pay Equity Through Gender Neutral Job Evaluations: A Case Study of the Federal Job Evaluation System*, 52 PUB. PERSONNEL MGMT. 25, 43 (2022).

⁵³ See Heidi I. Hartmann & Stephanie Aaronson, *Pay Equity and Women's Wage Increases: Success in the States, a Model for the Nation*, 1 DUKE J. GENDER L. & POL'Y 69, 72–73 (1994).

⁵⁴ See DEP'T OF LAB., DIRECTIVE (DIR) 2022-01 REVISION 1 (2022).

This ensures that for the employees of those contractors who are or shortly will be on a federal contract, the government benefits from the economies and efficiencies highlighted above – including an increased applicant pool and improved morale. Posting the compensation ranges for positions where the successful applicant is likely to perform work on a contract will offer greater clarity, offer efficiency in administration, and better fulfill the intent of the rule.

B. The final rule would be strengthened by addition of clear enforcement mechanisms.

It is important that applicants understand how the proposed rule will be enforced, what the complaint process will entail, and how complaints of noncompliance will be resolved. The proposed rule provides that an applicant can report a contractor’s noncompliance by filing a complaint with the contracting agency, which will review the complaint, consult with the applicant, and “take action as appropriate.”⁵⁵ The final rule should provide additional detail about the complaint process, including a timeline for resolving complaints and clarity about what constitutes appropriate agency action to address noncompliance.

Conclusion

On behalf of the Equal Pay Today campaign and all the undersigned organizations committed to pay equity, thank you for the opportunity to submit comments on the NPRM. Please do not hesitate to contact Deborah J. Vagins, National Campaign Director and Director of Equal Pay Today, at Equal Rights Advocates at dvagins@equalrights.org with any questions.

Sincerely,

Equal Pay Today
9to5

American Civil Liberties Union (ACLU)

AnitaB.org

Autistic Self Advocacy Network (ASAN)

Better Life Lab at New America

Building Pathways

California Women's Law Center

Center for American Progress

Center for Law and Social Policy

Economic Opportunity Institute

Economic Policy Institute

Equal Rights Advocates

Esperanza United

Family Values @ Work

Florida People’s Advocacy Center

Indiana Community Action Poverty Institute

Institute for Women's Policy Research

Jewish Women International

Legal Aid at Work

Legal Momentum, The Women's Legal Defense and Education Fund

MANA, A National Latina Organization

⁵⁵ Federal Acquisition Regulation: Pay Equity and Transparency in Federal Contracting, 89 Fed. Reg. 5843, 5852 (proposed Jan. 30, 2024).

Methodist Federation for Social Action
Mississippi Black Women's Roundtable (MSBWR)
MomsRising
National Asian Pacific American Women's Forum
National Coalition on Black Civic Participation's Black Women's Roundtable
National Committee on Pay Equity
National Council of Jewish Women
National Employment Law Project
National Employment Lawyers Association
National Institute for Workers' Rights
National Organization for Women Foundation
National Partnership for Women & Families
National Taskforce on Tradeswomen's Issues
National Women's Law Center
NETWORK Lobby for Catholic Social Justice
New Jersey Policy Perspective
North Carolina Justice Center
One Fair Wage
Service Employees International Union
Shriver Center on Poverty Law
Women Employed